

WHITE-COLLAR CRIME IN MALAYSIA

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INTRODUCTION

The notion that most crimes are committed by persons from the lower class has dominated much of the criminological thinking since the 19th century. Crimes committed by the middle-upper class – the so-called “crimes of the powerful” – have often been neglected or underestimated. Criminologist Ross (1907) first sought to focus attention on the threat presented by a form of “crimes of the powerful” (Pearce, 1976), i.e. corporate crime (white-collar crime) almost 100 years ago. He described the corporate criminal as enjoying “immunity” for his “new sin” and was protected from public condemnation because of his apparent respectability. From 1940 onwards, Sutherland (1949) made pioneering efforts in the study of white-collar crime in America, supplementing theory with empirical work. However, until the 1970s, white-collar crime received very little exposure in the media as compared to conventional crime. The relatively lenient sanctions (until 1980s and 1990s) associated with the complexity of the offences have further worsened the situation. Consequently, white-collar crime continues to flourish in America, Europe as well as developing countries.

DEFINITION

Sutherland (1949:9) first coined the term “white-collar crime”. According to him, ‘white-collar crime may be defined approximately as a crime committed by a person of respectability and high social status in the course of his or her occupation’. He went on to say that white-collar crime referred to crime committed by business managers and executives.

Since Sutherland, there were several influential attempts by criminologists to expand the definition beyond a narrower focus on the high-status criminals. Edelhertz (1970: 3) suggested that Sutherland’s definition was far too restrictive. In his definition, Edelhertz not only dropped any reference to social status, but also the restriction that these offences must occur in an occupational setting. He defined white-collar crime as ‘an illegal act or series of illegal acts committed by non-physical means and by concealment or guile, to obtain money or property, to avoid the payment or loss of money or property, or to obtain business or personal advantage’.

The most influential attempt to distinguish among different forms of white-collar crime has been that of Clinard and Quinney (1973: 188). They divided white-collar crime into 2 types: occupational crime and corporate crime. Occupational crime consists of offences committed by individuals for themselves in the course of their occupations and offences of employees against their employers. Corporate crime, on the other hand, is defined as

'the offences committed by corporate officials for their corporation and the offences of the corporation itself'.

Terms like economic crime, commercial crime and business crime are used interchangeably to denote a variety of white-collar offences, though they are rarely defined. However, economic crime has been defined by the Interpol to cover business and commercial crime and in fact, all fraudulent operations conducted to the detriment of individuals or society in general, and constitutes a form of crime which seriously affects the economy of many countries.

CRIMINOLOGICAL THEORIES AND WHITE-COLLAR CRIME

When Sutherland first wrote about white-collar crime, he maintained that it was best explained by his theory of differential association. For Sutherland, the law-breaking behaviour of businessmen, professionals and politicians (as well as all other law violators) was the product of a learning process. Violators encountered examples of law-breaking among those with whom they worked and they drifted or jumped into such patterns of behaviour as part of their routine indoctrination into the requirements of their job. In time, they found that the definitions they encountered favourable to violation of the law overruled those encouraging law-abiding behaviour (Brown et al. 2004:533).

There are some empirical supports for Sutherland's argument, in respect of corporate crime. Geis (1967) examined evidence given during hearings of illegal price-fixing activities of The Heavy Electrical Equipment Antitrust cases in 1961 in America, and found that people taking up new posts tended to find price-fixing to be an established practice, and picked it up themselves as part of learning their job. Baumhart (1961) found that businessmen's unethical behaviour was influenced by superiors and peers. Both studies suggest that learning process is reinforced by rewards and punishments, which are the characteristics of corporate culture.

Some criminologists have tried to explain white-collar crime in terms of the concept of 'anomie' of Merton (1949) which stated that the disjuncture between cultural goals of success and legitimate means to achieve these goals as a possible source of crime. The cultural system of society enjoins upon all men to strive for goals by means of normatively regulated or approved forms of behaviour. However, opportunities to reach these goals through socially approved means are unequally distributed. Crime or deviant behaviour ensues when social structure restricts or completely closes a person's access to the approved modes of reaching these goals. Corporate fraud, insider trading and criminal breach of trust are some notable examples. In relation to this, Neil Shover (1998) states that some white-collar crimes are committed as a result of the pressure to meet self-defined or externally imposed standards of successful performances. When medical scientists experience pressure to produce research

breakthroughs, or when business owners see their profits decline, the odds are increased that they will resort to criminal resolutions.

The “Techniques of Neutralization” described by Sykes and Matza (1957) can also be used to explain white-collar crime. The criminals may claim that no one was actually harmed, either physically or financially, to rationalize their acts. Embezzlers typically insist that they were only borrowing the money and that they intended to repay it after they dealt with other financial demands that were vexing them. Antitrust violators may maintain that they are seeking to stabilize an out-of-control market situation when they conspire with others to fix prices. Rarely will there appear a white-collar offender with the refreshing honesty to admit: “I was deliberately engaged in crooked business dealings” (Brown, 2004: 528). Rather, they blame their violations on personal problems such as alcoholism, drug addiction, financial speculations or marital difficulties.

CAUSES OF WHITE-COLLAR CRIME

According to Dr. Yusof Nook (1993) and Joseph Eby Ruin (1996), there are 3 main causes of white-collar crime:

1. Opportunities to commit crime,
2. Situational pressures on the individuals, and
3. Issues pertaining to integrity.

A decision to commit fraud is known to be influenced by the interaction of all these three causes. Opportunities include increasing individual knowledge of a company’s operations, advancing to a position of trust, and becoming the only individual who knows a particular procedure (for example, correcting or modifying a computer programme). An organization could also provide opportunities for its staff to commit fraud by having a complex structure, allowing related party transactions; condoning weak internal control systems policies and procedures; or by frequently switching its legal or accounting firms.

Situational pressures refer to the immediate pressures a person experiences within his environment, and the most overwhelming of all situational pressures are the unusually high personal debts or financial losses. Situational pressures might also be generated by official directives from leaders in the organization to achieve unrealistic performance objectives at any cost, or even by strong peer group influences. There are times when situational pressures encourage people to perpetrate fraud for their corporation rather than against their corporation such as the threat of losing a business license, delisting from the stock exchange, loss of employment or a cash shortage.

Personal integrity factors refer to each individual’s personal code of ethics. While this element appears to be a straightforward determination of a person’s honesty, the issue is actually more complex than it seems. A

person ought to acquire a general definition of honest and dishonest behaviour, and know which principles to adopt when developing a general trait of honesty. On top of that, a person needs to be consistently reinforced for honest behaviour before internalizing a standard of honesty and being intrinsically rewarded for honest conduct.

THE SITUATION IN MALAYSIA

Based on the definition of Clinard and Quinney (1973) (who divided white-collar crime into occupational crime and corporate crime), white-collar crime in Malaysia can be categorized as follows:

Offences	Provisions of Law
Criminal misappropriation of property	sect. 403 to 404, Penal Code
Criminal breach of trust	sect. 405 to 409, Penal Code
Cheating /fraud	sect. 415 to 420, Penal Code
Forgery/credit/ATM card fraud	sect. 464 to 477A, Penal Code
Counterfeiting currency	sect. 489a to 489D, Penal Code
Defamation	sect. 499 to 502, Penal Code
Product piracy	Copyright Act 1987 / Optical Discs Act 2001
Product counterfeiting	Trade Mark Act 1976, Trade Mark Amendment Act 2000, Trade Descriptions Act 1972, Industrial Designs Act 1996, Patents Act 1983.
Cyber crime	Computer Crimes Act 1997, Digital Signature Act 1997, Telemedicine Act 1997.
Offences of communications and multimedia industries	Communications and Multimedia Act 1998, Malaysian Communications and Multimedia Commission Act 1998.
Offences of printing and publication	Printing Presses and Publications Act 1984
Banking / financial fraud	Banking and Financial

	Institutions Act 1989,
Loan sharking	Money Lenders Act 1951 (Amendments 2003)
Securities fraud/ Listing offences/ Insider trading	Securities Industry Act 1983 Securities Commission Act 1993
Commodities fraud	Futures Industry Act 1993
Money laundering	Anti-Money Laundering Act 2001
Insurance fraud	Insurance Act 1996 / Penal Code
Maritime fraud	Merchant Shipping Ordinance 1952 / Penal Code
Offences of company	Companies Act 1965
Tax evasion	Income Tax Act 1967 (revised 1971)
Customs and smuggling offences	Customs Act 1967
Immigration and human trafficking offences	Immigration Act 1959/63, Child Act 2001
Bribery and corruption	Anti-Corruption Act 1997
Exchange control violations	Exchange Control Act 1953
Consumer fraud	Consumer Protection Act 1999
Pollution offences	Environmental Quality Act 1974
Occupational offences	Occupational Safety and Health Act 1994

The Royal Malaysia Police (RMP) as the main law enforcement agency in the country has specific offences to deal with. Among the offences investigated by the Commercial Crime Investigation Department (CCID) of RMP are as follows:

- a. Offences under the Penal Code such as criminal breach of trust, criminal misappropriation of property, cheating and forgery (include ATM/credit card fraud), false accounting, counterfeiting currency and criminal defamation.
- b. Cyber crime under the Computer Crime Act 1997 such as hacking, e-mail fraud, Internet fraud, ATM/credit card fraud.

- c. Product piracy under the Copyright Act 1997 and Optical Disc Act 2001 such as pirated VCD/DVD and computer software.
- d. Money laundering under the Money Laundering Act 2001.
- e. Loan sharking under the Money Lenders Act 1951 (Amendments 2003).

Apart from the police, other law enforcement agencies such as Bank Negara, Securities Commission, Anti-Corruption Agency, Inland Revenue Department, Customs and Excise Department, Environmental Department and others are also empowered to investigate certain offences according to specific provisions and respective jurisdictions.

THE EXTENT AND COST OF WHITE-COLLAR CRIME

Over the years, capitalists, corporate executives and even some criminologists argue that white-collar crime is not as serious or harmful as other forms of crime. They contend that white-collar crime has only diffused economic effects and that these crimes are not violent and therefore less important. However, it cannot be denied that the extent and cost of white-collar crime is indeed serious. It is submitted that the economic, physical and social consequences of white-collar crime are far greater than those associated with conventional crime.

According to Bob Sullivan (2004), white-collar crime strikes ordinary citizens and celebrities alike. This crime of the 21st century is profitable, nearly unpreventable, and hardly ever prosecuted. Some estimates say that 10 million Americans each year become victims and the crime shows no signs of letting up. A report by Price Waterhouse Coopers Global Economic Crime reveals that 39% of organizations in the Asia Pacific region have been victims to economic crime in the past 2 years.

In Malaysia, white-collar crime cases (investigated by the police) tripled in the last 10 years, with criminal breach of trust, cheating and misappropriation of funds forming the bulk of cases. In 2003, about RM 579 million was involved in 11,714 cases, compared to 4,229 cases (involving RM 153.8 million) in 1994. Fewer cases were recorded in 2004 (9,899 cases) but the amount of losses went up (RM 836.29 million).

<u>Year</u>	<u>Cases</u>	<u>Amount of Losses (RM mil.)</u>
1992	4,386	153.08

1993	4,929	181.08
1994	4,229	153.84
1995	4,227	180.91
1996	4,809	238.59
1997	7,137	556.93
1998	10,390	4,600.00
1999	9,546	1,426.80
2000	9,931	575.46
2001	10,578	797.89
2002	10,857	1,125.60
2003	11,714	579.80
2004	9,899	836.29

Source: CCID, Bukit Aman

The post-1990s era also witnessed a great change in the trend and modus operandi of white-collar crime. The criminals have become more organized, systematic and sophisticated. The advancement in technology and telecommunication systems has also rendered assistance to these syndicates. Some syndicates are highly specialized in specific activities, and adopt specific modus operandi in the continuing economic enterprise. Organized white-collar crime is now a force to reckon with. They have turned to “attack” on individuals, businesses and organizations alike. Examples include the cases of “high-tech cheque scams” (cloning of cheques of the State Governments of Penang and Melaka), ATM/credit card fraud, share scams, “Flight by Night” scams, Internet fraud and money laundering.

On the other hand, fraud involving companies are also on the rise. The KPMG Fraud Survey 2004 which surveyed 130 listed companies showed that 83 % of respondents admitted they had experienced fraud, an increase of 33 % from 2002. The survey cited secret commission or kickbacks, lapping (involves withholding cash receipts) and kiting (to mistake account) and false invoicing as the three most common types of fraud experienced by businesses in Malaysia. (*The Sun*, 15/6/2005).

COMBATING WHITE-COLLAR CRIME

Law and punishment

According to Ball and Friedman (1977:320), “statutes aimed at economic regulation (white-collar crime) often provide multiple, alternative sanctions. The sanctions may include cease and desist orders, injunctive divestiture proceedings, awards of damages, monetary fines or forfeitures, seizures of goods, revocations of business or occupational licences and prison sentences...”. They concluded that direct imprisonment is generally considered criminal sanctions whereas fine or money penalty, awards or damages and other forms of non-criminal sanctions are classified as “civil” or regulatory sanctions.

Those in favour of using imprisonment as a sanction argue that the impact of white-collar crimes is so severe that they warrant harsh punishments which should be at least on par with those imposed upon conventional street offenders. Furthermore, some white-collar offenders have based their personal success in life on respectability and conformity. Therefore, imprisonment is a more effective deterrent to white-collar offenders than conventional street offenders because the stigma of prison is more intensely felt by the middle and upper-class offenders (Braithwaite, 1984). Clinard (1952) reported that imprisonment, even for sentences as short as six months, was punishment most feared by businessmen, according to their own testimony.

In Malaysia, the Parliament amended the provisions of punishments for certain white-collar offences on 17 September 1993. Offences of criminal breach of trust under sections 406 to 409 and cheating under section 420 of the Penal Code now carry a mandatory minimum term of imprisonment (one year) together with mandatory whipping, and the courts have the discretion to further impose a fine. This shift in legislative policy to make both imprisonment and whipping mandatory is attributable to the public outcry against the high spate of acquittals in white-collar crimes then and the lenient punishments meted out to offenders who were successfully prosecuted (Francis Ng Aik Guan, 2000:409). In the case of *PP v Tan Koon Swan (1987 1 MLJ)*, the court stated that criminal breach of trust or abetment thereof committed in the heart of a financial centre would certainly attract deterrent terms as “public interest plainly requires that the accused receive a punishment which will not only fit his crime but which will act as a deterrent to other persons who may be similarly disposed” and the “commercial market place must be protected from and purged of the likes of the accused”.

Enforcement

The Royal Malaysia Police, through its Commercial Crime Investigation Department (CCID), is the main agency that investigates white-collar crime

cases in Malaysia. In view of the drastic rise of cases and complexity of the offences over recent years, the CCID has undergone expansion since 1 January 2005, with additional manpower and equipments allocated to strengthen its capability in eradicating white-collar crimes. The police have also established a Forensic Computer Laboratory to assist investigating officers in computer crime cases.

Over the years, the police have successfully investigated, arrested and prosecuted most of the criminals involved in the cases reported to them. The police have also succeeded in confiscating significant amount of the ill-gotten gains of these criminals which ran into millions of ringgit. On proactive measures, the police have prevented further loss of billions of ringgit by mounting numerous operations against criminal syndicates of credit card fraud, land fraud, bank fraud, computer fraud, product piracy and money laundering.

On corporate fraud, the Securities Commission has since its inception in 1993 prosecuted 110 people for various offences - from fraud and provision of misleading information to insider trading. Under the Amendments (2004) of the Securities Commission Act and Securities Industry Act, the Securities Commission can take pre-emptive action against company directors and chief executive officers even before a securities offence is committed (*The Sun*, 6/2/2004). Recently, a top official of Fountain View Development Berhad, a properties development company listed on the main board of Bursa Malaysia, was arrested and charged under the Securities Industries Act for shares rigging, or what is referred to as "rolling" by stock market players. (*The Sun*, 27/6/2005).

Corporate initiatives

Companies, banks and financial institutions should play a vital role in fighting white-collar crime. Bank Negara has directed commercial banks to enhance the security characteristics of cheques to prevent fake cheque scams. The characteristics include the paper which is sensitive to chemical substances, the "watermark", ultra-violet ink and ink that dissolves when it touches water. Cheques are pre-printed with "Account Payee Only" to protect customers from fraudulent withdrawal by third parties. The use of electronic payment as an alternative to cheques is also a good measure. For instance, account holders are encouraged to use payment methods through desktop banking prepared by the bank. On-the-job training is essential to ensure that the staffs are competent to detect fraud.

To curb credit card fraud, banks and credit card issuers should review the procedures from time to time. Prudent measures must be observed when approving credit card applications. Prior to granting an approval, they should ensure that the applicant appears at the bank in person. Cards should not be issued or posted to "faceless people".

The General Insurance Association of Malaysia (PIAM) has embarked on a dual mission - further promoting information sharing related to fraud between its members, and compiling a comprehensive anti-fraud data base to combat the widespread menace in the industry. Once the association has sufficient evidence that fraud had been committed, it would advise the member or members concerned to report the matter to the police or the Anti-Corruption Agency.

To fight computer crime or e-fraud, KPMG Malaysia has set up its own super sleuths under a new department called Forensic Technology Services (FTS). In business for the last three years and backed by its own computer gizmos, the FTS team can turn a blank monitor into a picture of incriminating evidence, which is vital in criminal proceedings. KPMG analysts use the latest techniques, including data extraction, data storage, data mining and visualization, password cracking and de-encryption, to provide a cost-efficient resolution to data investigation. They have also worked closely with the police. (*New Straits Times*, 3/6/2005).

Ethics

A lot of white-collar crimes are committed by persons at managerial and executive levels. Hence, the root of the matter would be that ethics should be observed by those in these positions of trust as they are more prone to committing such crimes because of the opportunities available to them by virtue of their positions. In a capitalist society, management and corporate subjects do not give emphasis to the questions of ethics. Career development of employees is based more on their job performance rather than high ethical standards. The capitalist framework which demands profit maximization and the corporate structure that emphasizes on production deadlines and quota have often created an arena for unethical business practices. To arrest this problem, corporate leaders and top level management should be exemplary examples of ethics and integrity. An explicit code of conduct and business ethics should be adopted that managers and executives are required to read, sign and follow. Apart from this, companies must develop a corporate climate that places ethical values above others.

Other preventive measures

These include reducing opportunities to commit fraud and designing audit and fraud detection systems in companies or organizations (Joseph Eby Ruin, 1996). The idea of reducing opportunities is to make it more difficult to hide or commit fraud by:

- a) maintaining accurate and complete internal accounting and financial records;
- b) developing strong leadership and cohesive work groups;

- c) monitoring the business and operational transactions and interpersonal relationships of vendors, buyers, debtors, creditors, purchasing agents, representatives and others who interface in the transactions between financial units;
- d) establishing some form of physical security system to secure organizational assets, especially cash, goods, tools, equipment and other fungible assets with easily realizable or interchangeable values in the market place;
- e) not relying solely on one person to perform an important function or critical task;
- f) recognizing that segregation of duties and dual control of strategic functions are good internal control systems to deter fraud attempts; and
- g) keeping accurate personal background and current financial activities of employees.

On audit and fraud detection, auditors should be able to recognize fraud if they come across irregularities during their audits, though fraud detection is not the prime reason for their routine audits. In the long term, proper response by the auditor and the organization may not only build professional credibility, but also help organizations to sidestep dangers and avert significant losses.

CONCLUSION

Unlike conventional or street crime, white-collar crime is characterized by the high status of offenders (crime of the powerful). White-collar criminal behaviours are motivated by greed rather than need, a motivation supported by selfishness and individualism inherent in the values of capitalist society. The capitalist framework which demands material success and profit maximization, coupled with the existence of certain loopholes in the corporate and legal structures, have led to a widespread of white-collar criminalities in the last two decades.

Although its extent and implications are serious, white-collar crime has not been fully appreciated by the public. This, according to criminologists, can be attributed to the fact that unlike "clear cut" conventional crime such as murder, robbery and kidnapping, white-collar crime is seen as less harmful and not violent. There is some evidence that in the past, the public were indifferent to white-collar crime. However, drastic rise of cases over recent years have prompted growing public and government concern about this menace.

To combat white-collar crime effectively, an integrated approach is needed. The responsibility should be shared by the government, corporations, industry and public. The police have always been playing a leading role in enforcement and have embarked on a broad-based strategy, including mutual cooperation with regional enforcement agencies in exchanging information and establishing networking and smart partnerships. On the other hand, in view of the growing number and seriousness of white collar criminalities, which maybe attributed to leniency of sanctions, a tough and punitive policy is necessary. White-collar offences should be treated as “serious crime”, and that more prosecution and public punishment are required, to provide greater deterrence and to satisfy the interest of justice.

Criminological research on white-collar crime challenges simple explanations of criminality that look to poverty and social factors as causes and tells us a great deal about contemporary issues of enforcement and public policy. If criminology is to provide a firm understanding of crime and criminal justice system, the image of lower-class offenders (conventional criminals) must give way to a less reassuring view of criminality as a diversified form of behaviour that is found at all class levels, including white-collar offenders.

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