

White Collars, Dirty Hands and Clean Records

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How do the elites manage to commit crimes without being seen, or seeing themselves, as criminals? This overview by P. Lascoumes and C. Nagels shows the means deployed by the powerful to define, use, sidestep, or avoid criminal law according to their interests.

Reviewed: Pierre Lascoumes, Carla Nagels, *Sociologie des élites délinquantes, de la criminalité en col blanc à la corruption politique*, [Sociology of Delinquent Elites. From White-Collar Crime to Political Corruption]. Armand Colin, Paris, 2014. 304 p., 29 €.

A political party has to elect its leader. For years, those in charge have repeated that fighting crime is a priority. When in power, they pass numerous laws making repression more severe and more systematic. Prisons fill to the brim. When they are not in power and (slightly) different directions are taken, they complain about laxity. And yet among the leadership candidates is a figure who is the subject of several investigations, including into the funding of their last electoral campaign, to the extent that commentators – and indeed candidates themselves – explain that the inquiry is one of the reasons why he/she is running. Do they have the slightest chance? Actually, not only do they win hands down, but there was never any doubt that they would. How can such a ‘sociologically enigmatic situation’ (p.8) be explained? Do the party electors believe that the suspicions surrounding their favourite candidate are completely different from those weighing upon other perpetrators of crime? What is the difference between them? Does it simply come down to the social class of the suspects?

Many social science studies have considered the question of the ‘differential administration of illegalities’ to use Foucault’s terms. The sociology of deviance has shown why offences committed by the working classes are usually those where the perpetrators end up in prison. It has analysed how the criminal justice system is organised into ‘distinct sub-systems, each of which ultimately only addresses certain social classes through successive stages of classification that only appear to be autonomous’.¹ In different ways at different times, but with fairly stable results, the various stages in the criminal justice chain – from the work of the police to that of judges – tend to direct visible offences committed by young men from a working-class background towards arrests and quick sentences in which their criminal record weighs heavily.

A political and academic issue

The book *Sociologie des élites délinquantes* [Sociology of Elite Criminals], published by Carla Nagels and Pierre Lascoumes, takes stock of the research focusing on the other side of the question. It looks at the kind of offences that are committed by the elites, and how they

¹ Bruno Aubusson de Cavarlay, “Hommes, peines et infractions, la légalité de l’inégalité”, *L’Année sociologique*, 1985, 3, n° 35, p. 309.

are they dealt with - or not - by law enforcement institutions as a whole. The notion of elite is not easy to define: crimes linked to tax law or business law can also be committed by members of the middle classes or small business owners. The relationship between crimes and a managerial role, in economic or political spheres, is more decisive in this regard. The authors thus define the subject of their study as the ‘violation of specific norms relating to exercising a role of public or private responsibility, committed for individual or collective gain by a governing individual or body’ (p.15). The publication of this manual in manifesto form is particularly welcomed for two reasons.

The first reason is political. In a context of economic crisis, the increasing number of scandals and affairs linked to companies’ financial practices and tax havens, and to the corruption and clientelism of elected officials, testifies to action by militants, journalists, and judges seeking to bring white-collar crime to the forefront. This book describes actions taken by the authors’ predecessors, both near and far, such as Lincoln Steffens, the muckraker journalist who denounced corruption in the United States in the early 20th century, or Isidore Glard, the judge who defined himself as the ‘Saint Malo privateer’ of financial investigations in the inter-war period. The people who have followed in their wake are often linked to the scandals and affairs they provoked. Yet with hindsight, the authors explain, the results are poor: these ‘multiple affairs’ and ‘scandals’ never result in any ‘real effects’ (p.7). And all the more so because they give rise to ‘panic laws’ which do not take the time to understand the driving forces behind these practices and therefore end up missing the mark. The authors analyse the reform following the Cahuzac affair in these terms². It was also the case for Robert Badinter’s criminal policy, implemented after the 1981 political changeover, which ‘despite stating its priority was to fight economic and financial crime, did not clarify this area of public action any further’ (p.82). Reaching beyond occasional indignation, social sciences encourage us to look further than the repeated ‘discovery’ of criminal practices among the elites and to focus on how this is habitually broached both by the legal system and by citizens. For instance, to return to our first example, a survey conducted in the United States in the 1970s described the ‘reactions of the electorate faced with a candidate under investigation for “corruption”’: ‘a large part of the electorate continued to trust the candidate who embodied their fundamental values the most, even if he was accused of “corruption”. Partisan affiliation played an important role, particularly for Republicans.’ (p.249).

Bringing an affair to light does not suffice to make these political and social forces disappear. The history of elite criminals describes the contrast between periods when these issues were taken up by media and militant movements and periods when nothing emerged publically about such practices. This history also allows us to take the measure of how regular, and ultimately powerless, this alternation between silence and scandal really is, while also encouraging us to look at other ways of understanding these criminal practices in order to finally stop ‘the elites from making a mockery of the very rules they impose upon others’ to take up the book’s pithy concluding statement.

The second reason is linked to the structure of the field of academic research on these questions. Studies have been conducted in the French-speaking world for several decades now, as evidenced by Pierre Lascoumes’ work, in particular, which has been questioning the

² Jérôme Cahuzac (born 1952) was François Hollande’s Junior Minister for the Budget. Appointed in 2012, he resigned in March 2013 following tax fraud allegations. He later admitted to holding a secret bank account for several years, which led to his official exclusion from the French Socialist Party.

‘discreet management of business law’³ since the 1980s. But a more substantial body of work has taken shape in the English-speaking world, which remains much less well-known in France. *Sociologie des élites délinquantes* serves as a wonderful stepping stone towards this wealth of research and this is important because as long as it remains unknown, this fuels the mistaken belief that this field of academia is still in its infancy. The book shows how a body of work has built up based on the work of E. Sutherland, the founding father of the sociology of white-collar crime whose book, published in 1949, was censured by his publisher. The authors of the present book believe that ‘in its broad terms, [Sutherland’s] analysis remains valid today’ (p.135-137). The book offers a precious tool allowing research conducted in the French context to build on all these results, and outlines possible avenues to explore in its conclusion.

Economic criminality and corruption

The book is organised around two fields of research that correspond to two aspects of elite domination: the analysis of corporate crime and the analysis of corruption. These two sections progress in a similar manner. They present the most important contributions to the field, distinguishing approaches that focus on the offences committed (what leads to someone actually crossing the line and committing such crimes?) and those that focus on the social, penal, and political consequences of these offences (what is the social reaction to such acts?).

These two sections are prefaced by two cross-cutting chapters. The first one, ‘Controversies surrounding the definition of the topic’ has the drawback inherent to the qualities of a textbook. It offers an educational presentation of the theoretical options dividing researchers in the field and therefore usefully identifies the different positions, but without always providing convincing evidence that they constitute fruitful theoretical divides. The authors sometimes conclude by explaining that certain controversies are ‘largely artificial’ (p.32). The second chapter is devoted to the ‘ambiguous nature of social reactions’. It does not seem to really deal with ‘debates and controversies’, as the title of the section claims; its value rather lies in sketching out the main lines of thought which are then explored in more detail in the two large thematic sections of the book.

Crimes without criminals

It is not possible to provide an overview of all the different aspects of a book, when it aims precisely at offering an account of a wide range of studies. Every reader will find different analyses, examples, and references depending on his or her focus of interest. My reading will follow the intriguing question of how people manage to commit crimes without being seen, or seeing themselves, as criminals.

One of the reasons for the invisible nature of crimes committed by the elites is linked to the history of the body of knowledge on crime. At the end of the 19th century, Enrico Ferri, one of the founders of the Italian positivist school of criminology, divided society into different strata according to the belief that there was a class at the top ‘which commits no crimes, organically upright’ while at the bottom there were people ‘opposed to all sense of uprightness’. Justifications for the difference between different categories of crimes were based on a distinction between *mala in se* and *mala prohibita*, between real crimes and crimes created by law. Such a difference draws an apt distinction between what is considered the

³ Pierre Lascoumes, *Des erreurs, pas des fautes, la gestion discrète du droit des affaires* (Paris: CESDIP, Déviance et Contrôle Social, 1986).

eternal remit of crime – i.e. theft by the poor – and what results from the creation of variable norms that are less important. According to such a reading, the violation of the latter – i.e. the circumventing of accounting and tax regulations by the rich – could therefore be seen as less serious.

That being said, elite crime is not only less visible because researchers do not want to see it. The difficulty of researching the topic is also linked to the social characteristics of its subjects. If ‘the majority of social science research is conducted on dominated actors’ (p.121) this is no doubt also because it is harder to gain access to a manager’s office than to a youth being dealt with by social institutions. Working on dominant actors is all the more difficult if the intention is to examine their less acceptable practices. As we will see, one of the main characteristics of these violations is that they rarely end up being brought before court, so official sources and legal statistics are of little help in taking the measure of the phenomenon. It is therefore frequent for these affairs to retain some of their mystery, particularly when it comes to finding out where embezzled money ends up, despite scandals and criminal proceedings.

Nonetheless knowledge does exist, constructed by researchers but also whistle-blowers who make secret documents public, and the book uses these to debunk the myth of an ‘organically upright’ class. Studies have shown, for example, that ‘the people who most approve illegitimate means of gaining wealth (tax evasion, moonlighting, employing illegal workers, schemes) tend above all to be young people (18-24 years old), people with higher qualifications (A-levels and above), company directors, and professional people’ (p.32). The question at hand is understanding why these illegitimate means are so unlikely to be prosecuted. Analysing the social reaction to financial crime offers a way of piecing together how such crimes receive special treatment at every stage in the process, from when they are committed right through to conviction. These can be described by taking up three of the results from Sutherland’s pioneering work.

Sutherland first explained that violations by corporations were based on discreet mechanisms: creative accounting, false financial reports, secret deals, concealed valuations, and dangerous products. One of the reasons behind this invisibility is the absence of direct contact between the perpetrators and their ultimate victims. Unlike with physical offences against people or property, ‘few respondents define themselves as victims of financial fraud or clientelism’ (p.57). And yet, the authors explain, ‘research on the criminal justice system tells us that this system is mainly fuelled by victims’ (p.57). Moreover, the distance between the violations and the victims fosters a ‘situation of collective denial’. White-collar crime is not denounced, rarely prosecuted, and does not seem to be a priority for citizens. Between the ideology of an ‘organically upright’ class and the rare nature of prosecutions, we can see how the construction of ‘social learning, or even ideological indoctrination, has meant that for at least two centuries now a broad set of behaviours has escaped social disapproval; despite being objective violations, they are cognitively ignored, (p.63).

A second result shown by Sutherland is that public agencies very rarely provide information about any such violations that they have identified and are supposed to sanction. Here again, the book at hand shows just how fruitful such an idea can be in analysing the illegal behaviour of the elites. A fundamental point to be made is that these ‘public agencies’ tend to be distinct from the usual public institution in charge of dealing with crimes, i.e. the criminal justice system. Specialist organisations like the former *Commission des Opérations de Bourse* [Commission for Stock Exchange Operations], which became the *Autorité des*

Marchés Financiers [Financial Markets Authority], act as a powerful filter before the police or the legal system. They determine in particular which cases are handled discreetly, and which ones reach the criminal justice sphere. However, this power to classify cases is given to organisations where ‘those being regulated belong to the regulatory bodies’ (p.70). For this reason, they view their action much more in terms of discipline (warning, explaining, negotiating) than in terms of punishment. Calling on the criminal justice system involves high levels of uncertainty and high costs: for example, these authorities may weigh up the merits of punishing an offence against the value of preserving jobs in the company under scrutiny. A central stake in dealing with elite crime lies in removing the obstacles represented by these intermediate organisations. The fact that these obstacles remain explains the authors’ severe stance towards the law that followed the Cahuzac affair⁴: despite pressing demands in this direction, the reform did not put an end to the French Ministry of Finance’s monopoly over referring tax violations to the criminal justice system.

Studying social reactions to tax issues illustrates the consequences of the system functioning in this way. First, the ‘criminal route is the exception and the rule is transactional agreements’ (p.75). Second, repressive action mirrors inequalities: ‘tax payers with the highest income or the most complicated tax situation are inspected less than others’ (p. 76). Small construction businesses are frequent targets. Conversely, ‘the higher the level of responsibility of the people indicted in the company, the more they escape criminal proceedings’ (p.202). The economic actors investigated by the legal system are ‘the least powerful’ (p.185). Ultimately, ‘financial and tax litigations represent a minimal portion of the the criminal justice system’s workload’ (p.101).

For these reasons, the elites are rarely subject to criminal convictions, which speaks ‘just as much to the difficulty that regulatory agencies have in attaching stigma to them as it does to the actors’ ability to escape this stigma’ (p.186). When the elites are nonetheless subject to criminal proceedings, they do not lose their cool: ‘research conducted with people convicted of white-collar crimes is unanimous: the criminal conviction did not have a demeaning effect on them, they even reject the label “criminal”’ (p.182). They resist stigmatisation through a set of ‘restorative rituals’ (p.187) that call upon their ‘social, cultural, and economic capital’ (p.65). In particular, they avail themselves of all the possibilities afforded by the legal process to contest the judges’ actions, thus making the debates technical and lengthy enough for public attention to wane and for the serious nature of the facts to be minimised. Such strategies require ‘the existence and support of substantial networks, an optimal mastery of the law, of its channels and complexities, and the ability to impose a credible alternative reading of the situation under discussion’ (p.189).

Another result of Sutherland’s work that subsequent studies have explored in greater depth is the fact that fraudulent corporations often put in place preventive strategies against investigation. In particular, they intervene to prevent regulations that are too rigorous from being adopted. An empirical study has show that in the United States ‘the more a company engages in lobbying, the more chances it has of escaping regulators’ (p.45). In other words, ‘the social prestige of the elites, the reverential fear they inspire, the networks of influence and protection that they have at their disposal, are all obstacles to their violations being

⁴ Following the Cahuzac affair, François Hollande announced the creation of a [Haute Autorité de la Transparence de la Vie Publique](#) [High Authority for the Transparency of Public Life], to which all French politicians must submit a declaration listing their assets, to be made public on the Haute Autorité’s website. Parliament also adopted stricter laws on white-collar crime, tax fraud and tax havens.

categorised on a punitive register' (p.65). The elites are not only able to influence how offences are dealt with, they are also able to influence their very definition.

The need to be above the rules

The book discusses attempts at including the stakes of elite crime within broader theoretical areas. It presents analyses by authors from the main trends in criminology, such as proponents of 'rational choice theory' (p.158-168). On these points, it shows successfully that 'the idea of a general theory able to explain all violations in a coherent fashion has never been proved' (p.168). The authors demonstrate that sometimes 'researchers working on deviance and crime among the economic and political elites tend to oversimplify their subject, to make it fit within a pre-established theoretical framework at all costs, preferably one of the classic theoretical models in criminology' (p.54). The value of a specifically sociological approach is precisely that it always analyses the specificity of elite crime as a set of violations committed by social groups that also have substantial means at their disposal to fight against their acts being qualified as criminal.

One dimension that runs through the book without being framed as a theme as such – in keeping with the logical structure for presenting sociological theories – is the link between elite crime and the current historical context. The authors demonstrate that the attention focused on white-collar crime is linked to changes in both context and State interests: for example, it garnered much attention after the 1929 financial crisis and in the years of contestation that followed May 1968. The period that began in the 1980s, in particular with Thatcher and Reagan, was characterised by the opposite tendency: 'the neoliberal right [...] advocated and pushed forward the movement towards decriminalising financial activities and implemented concrete deregulation by drastically reducing both the budgets of regulatory authorities and their powers' (p.205). Similarly, according to the authors, in France a general movement towards 'decriminalising the business world' has been underway 'for almost a decade' (p.83).

These changes have had an impact on the violations committed by the elites themselves. 'Several studies have shown that the deregulation implemented during the "Reagan" years in the United States or the "Thatcher" years in the United Kingdom presented a set of new opportunities for violations in the business world' (p.142). Economic actors have seized these opportunities in various different ways: 'the more unevenly salaries are distributed within a company, the more that company seems to be implementing violation strategies' (p.143). There are sometimes 'real criminal sub-cultures where activities perceived as illegal in the outside world are completely trivialised within the sub-culture (the organisation of tax evasion in certain law firms, or agreements between competitors in public works and large-scale distribution).' (p.152) In this sense, the current sociology of the criminal elites is not so much the analysis of deviants within the elites than the analysis of the norms of action that are established in specific segments of capitalism, which manages deregulated financial flows, shields the capital of the powerful from tax administrations, and provides exorbitant salaries to the working rich. And between these untouchable elites and salaried workers, managers are caught between the regulations imposed by public authorities and the economic objectives dictated by their bosses.

In one of the book's epigraphs, the authors quote an interview with Luc Boltanski in the French daily newspaper *Libération*, where he invites sociologists to study those 'who hold positions of power and the apparatuses that allow them to both implement and dissimulate this

power'. In his book *On Critique*, Boltanski also explains that wanting to see 'the resumption of a sociology of social classes', means picking up the question of the illegalities of the dominant classes: 'What members of a dominant class implicitly share, in the form of a common knowledge that they cannot avow to others - which they can scarcely avow to themselves - is, on the one hand, that it is indispensable that there should be rules - law, procedures, norms, standards, regulations and so forth; and, on the other, that one can do nothing really profitable [...] that one simply cannot act, in an uncertain world, if one follows these rules.'⁵ The political challenges raised by *Sociologie des élites délinquantes* are none other than those that emerge from the renewal of a critical sociology of domination.

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⁵ Luc Boltanski, *On Critique. A Sociology of Emancipation* (Cambridge: Polity Press, Gallimard, 2011), p.150 and p.146.