Most law concerned with white-collar crime dates back less than 100 years. This is remarkable considering that the date the first written code back to the period of Hammurabi 2100-1750 B.C. But it is not so remarkable if one keeps in mind the context of occupational and organizational crime. White-collar crime is embedded within market economies centered on exchange relationships. These relationships have only been central to social life for a relatively short period of time. Exchange relations and market relations did exist earlier were a part of social life for a very long time. As for holding a central place in social relations, this does not happen until the decline of feudalism. This decline has been examined on a number of different grounds by a number of different authors, yet it appears that changing class relations more than anything account for the dramatic social, political, and economic change. And dramatic it was! In 1848, Marx wrote in the Communist Manifesto (224):

The bourgeoisie, wherever it has got the upper hand, has put an end to all feudal, patriarchal, idyllic relations. It has pitilessly torn asunder the motley feudal ties that bound man to his ‘natural superiors,’ and has left remaining no other nexus between man and man than naked self-interest, than callous ‘cash payment.’ It has drowned the most heavenly ecstasies of religious fervour, of chivalrous enthusiasm, of philistine sentimentalism, I the icy water of egotistical calculation. It has resolved personal worth into exchange value, and in place of the number less indefeasible chartered freedoms, has set up that single, unconscionable freedom – Free Trade. In one word, for exploitation, veiled by religious and political illusions, it has substituted naked shameless, direct, brutal exploitation.

Within the context of rapidly changing social, political, religious, and economic relations develops the possibility of white-collar crime. Clearly distinct class relations did exist prior to the growth of capitalism, but the essence of the relations did not allow for such unadulterated and unmasked exploitation of all contending classes. It did allow for exploitation of some but then it has been argued that even slaves and bonded serfs in some since fared better than the free worker. It is questionable where women fit into the exploitation scheme. In part, the blatant patriarchal relations of feudal society did provide for some security, even if little freedom did exist. Under capitalism there is no assurance of either.
Law during the feudal period was designed to maintain the social order, such is the essence of law, but the nature of the social order was quite different. Reciprocity was the norm even in the workings of the criminal justice system. Much of law was based on tradition, enforced by community members as a whole, and judged by local nobility. It is during the decline of these relations and the rise of the powerful merchant class that a significant law for white-collar crime developed, the law against embezzlement and pilferage (Colman 1985:124-126). This developed in common law what is referred to as larceny. What is of importance is the way in which the law becomes rewritten in the process of deciding one particular case, the law of theft. The Carrier’s case (Hall 1952), as it has been dubbed, is critical in understanding the legal foundation for prohibiting crimes against corporations by employees.

Larceny had been limited to the act of carrying away property, mostly cattle, or money without the consent of the owner and with the intent of depriving the owner of its use (Coleman 1985:124). Most misappropriation of another’s property was covered under civil law (it is still that way in relations between business and for the most part the public and business). The growth in the woolen trade business with its increasingly dependence on the burgeoning merchant class, lead to a necessary change in long-standing law to reflect their new importance of the merchant. The case takes place in 1473 where an employee, a shipper, broke open the bales of wool and took the contents. The legal dilemma presented was; the person did not take the bales without permission, on the contrary, he was given possession to take the bales to transport, thus trespass, a critical element of larceny, was not there. If the law continued to be interpreted in the manner in which it had in the past, employee theft would be virtually impossible to stop, at least to criminally prosecute. On the other hand, to find this person guilty of felony would clearly violate the spirit of the law. What a predicament! The ultimate ruling makes for an acceptable transition from a system of landed property, the basis of feudalism, to cash exchange, the basis of capitalism. The decision stated (Hall 1952:36):

I think that where a man has goods in his possession by reason of a bailment he cannot take them feloniously, being in possession; but still it seems here that it is felony, for here the things which were within the bales were not bailed to him, only the bales as an entire thing were bailed ut supra to carry; in which case if he had given the bales or sold them etc., it is not felony, but when he broke them and took out of them what was within he did that without warrant, as if one bailed tun of wine to carry, if the bailee sell the tun it is not felony not trespass, but if he took some out it is felony; and here the twenty pounds were not bailed to him, and peradventure he knew not of them at the time of the bailment. So is it if I bail
the key to chamber to one to guard my chamber and takes my goods within this chamber, it is felony, for they are not bailed to him.

The conclusion of the case pleases both sides. On the one hand tradition has not been dismantled wholesale yet on the other hand theft fitting a new capitalist order was in the making.

According to Hall, legislation designed to govern relations of servants, which could be construed to more accurately represent employer – employee relations, was created in 1339 but disregarded by 1344-1345. The case stated (1952:35):

If a traverner serve a man with a piece, and he take it away, it is felony, for he had not possession of this piece; for it was put on the table but to serve him to drink; and so it is of my butler or cook in my house; they are but ministers to serve me, and if they carry it away it is felony, for they had not possession, but the possession was all the while in me; but otherwise peradventure if it were bailed to the servants, so that they are in possession of it.

The cases are clearly different given the intent to transport the contents in one’s possession, while in the other case there is no intent to leave the property. Not until 1506 does a clear distinction get made between master’s property and the servant’s custody of that property. And in 1529 a statute was enacted which made such a theft by a servant criminal. This did not govern third party transitions, that is, property given over to a servant that did not belong to the master. Thus the growth in occupations like clerks and bookkeepers were automatically excluded from prosecution. Laws designed to expand the meaning of these early theft cases came about in 1742 when a cashier for the Bank of England took bonds of the East India Company, a very powerful company both economically and politically. The bank employee could not be convicted of any crime. This resulted in a law passed later that year. When elite interests are threatened the gears of justice speed up considerably. The law only applied to employees of that bank. After another case of the same nature occurring with a different bank a general law oriented towards embezzlement was finally created, the year was 1799. The speed of such change in law seems to run counter to Blackstone’s insistence that the rule of law ought to be resistant to such change since it reflects some long standing tradition. It just further supports the nature of law is really one that reflects ruling class interests. The change from mercantilism to capitalism marked as it were with the advent of the industrial revolution occurs gradually but is clearly noticeable after 1750. Capital, money transactions, exchange between
parties with little personal knowledge of each other, and the growth in labor as a commodity is evident. When it is essential to sell your only possession to obtain subsistence it becomes necessary to regulate those relations.

Of interest is the way those relations become regulated. Who becomes the watchdog of inherently unequal transactions? Locke and other contract theorists as well, put that power in the hands of the state as an outcome of the social contract. With the conception of the state as an arbitrator of the social contract, unequal traders will be treated equitably. There emerge at least three viable solutions. The first is for some organization or recognized body representing the least powerful to be in control of unequal exchange situations, such as a union or guild. The second alternative is for some type of joint venture between the contending parties, as used in potentially contentious situations such as nuclear watch programs. The way guidelines may be set up and monitored and particular situations can be dealt with on case-by-case bases so disputes get mediated given the special circumstances surrounding the situation. The third and least desirable situation is to have a more powerful group - the employer – regulate employer/employee relations. The question must be asked with genuine seriousness and real consideration; why does the social class that is in position of power to create and enforce the law regulate laws governing employer – employee relations? Chambliss gives a direction to look at why this relationship emerges with those in control creating and enforcing the rules and Grimsci’s notion of hegemony helps to explain why the vast majority of those being manipulated by elite rule accept this method. I would suggest here the better model of mediating employer – employee relations including white-collar behavior might be through a modified syndicalist approach. In many ways restorative justice models have the potential to create a sense of justice in this classic area of dispute.

Marx, Karl. 1848. The Communist Manifesto.


Locke, John. 1690. An Essay concerning the true original, extent and end of civil Government.