

Pink – Collar Crime: Women and Crime Committed at Work

JULIA MARGARET HAMMOND¹

The University of Portsmouth²

School of the Built Environment and Architecture, London South Bank

Abstract

The term 'pink – collar' was coined during the second wave of feminism (the 1960s – 1980s) by Knappe Howe (1977). She identified unique features of work experienced by women – segregation, underpayment and sexual harassment. During the same period, the feminists' school of criminology began studying the treatment of women as offenders and victims and how they were punished as both. Women had not been studied by criminologists as a distinct 'group' and established criminological theory failed to explain why women commit significantly fewer crimes than men. The feminist theorists studied women's offending, the victimisation of women, and women in the criminal justice system. This paper will make reference to problems with the definition of crime and white-collar crime, the origins of 'pink-collar' as a term associated with women and a discussion about women, colour and protest. It will argue that feminist criminology theory including (Smart, 1979), Daly and Chesney-Lind (1988) could be fully employed in the study of contemporary 'pink-collar crime' committed by women solicitors.

Introduction

The author is interested in solicitors in England and Wales as a discrete group of white-collar criminals. Although there is little theory about white-collar crime and/or solicitor crime, there are some established criminological theories around women and white-collar crime from the last century. Few studies have considered the unique position of women as white-collar criminals and none have studied women solicitors and white-collar crime.

Both the literature and the lack of it indicates that the discipline of lawyers is not well researched. Traditional theorists (from Sutherland (1948) to date) have not yet arrived at a satisfactory theory to explain why professionals commit white-collar crime. It has been established in research that white-collar crime is largely committed by employed middle class white men, who are usually well educated and begin their criminal careers between their 30s and 40s (Van Slyke et al 2016). Accordingly, criminologists have therefore largely focused on the study of male white-collar offending.

Some studies have looked at women and white-collar crime. According to Benson (2016) more than 30% of criminals are women, yet only 15% of women criminals are convicted of white-collar offences. There is a discrepancy, it

¹ Professional Doctorate candidate at The University of Portsmouth.

Senior Lecturer, School of the Built Environment and Architecture, London South Bank.

² This paper will form part of a Professional Doctorate examining crimes committed by women solicitors in England and Wales.

seems, both between the general population of criminal women and their white-collar criminal sisters, as well as between the criminal behaviour of men and women, known as the gender gap, and discussed in more detail below.

Treatment of women and crime in academic literature tends to focus on the treatment of women as victims of crime (Robb 2006). There is something 'different' about women and white-collar crime, different from how men in similar circumstances behave and seemingly different from the general population of women criminals. It may be that these discrepancies can be explained by how offences are described/recorded, detection rates or the exclusion of women from roles which might give rise to opportunities to commit white-collar crime. A new category of 'pink-collar' crime may produce different results.

White-collar crime and its beginnings

Sutherland (1939) first defined white-collar crime. There are well publicised debates about the accuracy of the Sutherland definition of white-collar crime as set out below:

That persons of the upper socio economic class engages in much criminal behaviour; that this criminal behaviour differs from the criminal behaviour of the lower socio-economic class principally in the administrative procedures which are used in dealing with the offenders and that variations in administrative procedures are not significant from the point of view of causation of crime" (Sutherland 1945: 9).

The 'crime' was therefore defined by the status of the offender, rather than the offence as it is defined by or in statute. A 'murderer', for example, commits the crime of 'murder', which is defined in guidance by the Crown Prosecution Service ('the CPS') in England and Wales as the unlawful killing of another person with intent³. Sutherland had an issue with the 'crimes' committed by the white-collar criminal, which explains the breadth of his definition. His issue was that not all acts that in his view were clearly 'injurious' to other persons were defined as 'crimes' and were therefore not subject to legal penalty, as were other injurious behaviours (Sutherland 1944).

It is therefore left unclear, from the Sutherland definition, which behaviours are covered by his definition and how to logically collect crimes under this general banner. Hall (1941) eloquently described the purpose of the criminal law as follows:

³ Explained further by the CPS with reference both to the common law and statute in its online guidance on violent crime (see later).

[The] ...Criminal law represents the major social effort to eliminate serious conflict, and to do so not arbitrarily, but in accordance with methods and directed toward ends that we are pleased to call 'rational' (p 550).

Aubert (1952) also argued that there was theoretical significance about the definition of white-collar offences and whether they were seen as 'crimes' at all, both by offenders and society in general. There is debate about whether white collar offences are 'crimes' in the true sense or ordinary meaning of the word⁴. Some have suggested that the essential feature of 'crime' is the lack of self control (Gottfredson and Hirschi 1990). Foucault (1982) suggests that 'governmentality', or the way we are controlled by government through the law is an historic construct (see also Beard (2017) later). One of the essential features of law in England and Wales is that it applies to all citizens equally - including those who make and apply the law, including the rich and powerful. No one is above the law⁵ but does the definition of white-collar crime include everybody equally?

The Sutherland definition, it has been argued, excludes women. Historically, women were prevented from entering higher economic classes by discrimination codified in legislation and confirmed in the common law. For example, in 1914, some women challenged their prohibition from entry into the profession of solicitor (*Bebb v Law Society* (1914) 1 Ch 286)⁶. They challenged legislation that prohibited women from becoming solicitors just because of their gender. Although women are no longer subject to direct discrimination at work on this scale, Croal (2001) has argued more recently that, 'the gendered nature of white collar, corporate, economic or business crime has...[been]... rarely been questioned' (p 69) nor has the impact of the 'liberation' of women on crimes committed at work. It would be interesting to discover if contemporary 'liberated' women commit white-collar crime like men do. If not, does the definition of white-collar crime need to change to include women?

Where does the term 'pink - collar' come from?

But what of pink as a colour often associated with women and used as a term to describe women workers as 'pink-collar' workers? Why has this colour been 'chosen' to describe women and by whom? What does use of this colour say about women and their work? The term blue - collar is thought to refer to protective clothing / overalls worn by manual labourers. Its use was first recorded in America in 1924 (Wickman 2012). The colour blue, has not always been associated with men or the lower orders. The Smithsonian magazine

⁴ See later for an extended discussion about 'what is crime'.

⁵ This is known as the Rule of law (England and Wales).

⁶ The Sex Disqualification (Removal) Act 1919 removed statutory discrimination against women entering some professions which would fall into the Sutherland definition of white-collar crime.

(online) reported results of extensive research by Paoletti (2011), who described the change from gender neutral clothing for children under 6, to gender specific baby colours after WW1.

Interestingly, the allocation of pastels was pink for boys and blue for girls. 1940s America saw the reverse allocation of baby colours, which apparently could have gone either way. The gendering of colours is therefore a recent phenomenon and perhaps not as 'loaded' as current thinkers might suggest.

The term 'pink – collar' was used by Knappe Howe as the title of her acclaimed book, to describe women workers in America. In her obituary in the New York Times (1984) it refers to her work as follows:

..."Pink Collar Workers," which was nominated for a National Book Award, claimed that the majority of American women, despite the women's movement, remain as segregated occupationally as they were at the turn of the century. It argued that women are still trapped in traditional jobs as waitresses and secretaries, in which pay is consistently inferior to men's.

Dodge (2007) states that 'Traditionally, and not surprisingly, white-collar crimes almost exclusively have been concocted and conducted by men' (p 379). Because of their position in society and the workforce, women workers lacked the opportunity⁷ to progress, described variously as the 'sticky floor' or 'pink collar ghettos'.

For the feminist school of criminology, it is self-evident that there is a reason why women are treated less well in society. That is reason is 'patriarchy' – the structural subordination and exploitation of women by men. Yet despite being treated less well by society, women generally behave better than men - gender is the strongest predictor of involvement in crime. But women (including the author) during the same period did not avoid controversy in protesting differently for peace, equal treatment under the law, promoting change. Peaceful direct action by women is 'deviant'⁸. Women, it seems, cannot be relied upon to remain silent.

Colour protest and power

On 7 January 2018, the Golden Globe awards were dominated by a mass protest. The BBC Online (2018) reported it as follows:

The 75th Golden Globes was the first major awards ceremony since the Hollywood sexual harassment scandals and the night was dominated by stars using their moment in the spotlight to pay tribute to women who had spoken out against sexual

⁷ Opportunity theory.

⁸ Examples include women in the peace movement - Greenham Common Women's Peace camp (1980s - 2000); women seeking to change the law - 'stop the clause' campaign (clause 28), and women campaigning for lesbian visibility - lesbian avengers (1990s).

harassment, call time on the Hollywood status quo or comment on gender pay disparity in the entertainment industry.

Women (and some supporting men) chose to wear black to protest about how women workers in the entertainment industry had been discriminated against – segregated into stereotypical and fewer significant roles, underpaid and subject to sexual harassment / assault. But they did not choose pink to identify the same issues as Knappe Howe did about women at work⁹.

But what is the significance of colour and the choice of colour in the context of mass or group protest? What we wear, how we look, and the choice of colour can be described as ‘communication by conduct’ - solidarity in the unanimity of protest. Black as a colour¹⁰ of choice has a long history. In Australia wearing a black armband is associated with revisiting the oppression of the indigenous aboriginal people on occasions like ‘Sorry Day’. Black was a colour associated with National Socialists in Europe and in western cultures, a symbol of mourning, respect and sympathy. But this is not true in all cultures. In a study of American college students (Kaya and Epps 2004) and their reactions to colour, found that black was ‘...associated ...[both]... with royalty, power, and wealth, ...[and]... also with death, mourning, and tragic events.’(p 396) There is some evidence that people ‘... usually associate the colour black with evil, aggression and badness’ (Vrij 1997, Abstract). Vrij’s research found that dressing offenders and suspects in black, influenced perception and anticipation of aggression from those wearing black.

Beard argues that women who do achieve power are forced to or willingly adopt elements of maleness in order to be accepted ‘Women who claim a public voice get treated as freakish androgynous...’ (p 22) referencing Margaret Thatcher’s voice training and other contemporary women politicians (Hilary Clinton) adopting traditional male trouser suits as the acceptable uniform of power. Perhaps the #WhyWeWearBlack protest was also a nod to the acceptability and simplicity of the uniform male ‘black tie’ dress code and the stark contrast with what women are usually expected to wear at red carpet events.

Award ceremonies in the movie industry began in 1928 with the first Academy Awards, complete with red carpet, described as ‘...the film industry’s own catwalk, a place where talent and style vie for attention.’ (Cosgrave 2007). Female beauty pageants or contests were thought to have

⁹ ‘Pink’ is association with a contemporary women’s liberation movement in America, which describes itself as ‘The Pussyhat Project™’. It is a social movement focused on raising awareness about women's issues and advancing human rights by promoting dialogue and innovation through the arts, education and intellectual discourse.’

¹⁰ Black can be described as the absence of light and therefore is not a colour. See Harkness (2006) for a discussion about how different disciplines ‘view’ colour.

been popularised by Hollywood also dating from the 1920s (Cohen et al 2013). Both female beauty competitions and the red-carpet date back to and are connected with ancient Greece mythology. The former in 'the Judgement of Paris' which led to the Trojan war. The latter, rolled out by Clytemnestra in celebration of her warrior husband returning from that same war. Both female beauty competitions and the red-carpets are associated with luxury, winning and celebrity. Both have been described '...as a live media event, a mediated ritual and as presenting glamorous stars as objects of identification' (Haastrup 2008: 127).

The difference between a 'uniform' and a 'costume' is significant. Just wearing the same colour is not the same as wearing a 'uniform'. Those wearing black at the Golden Globe awards were from the entertainment industry, where costume is both usual, essential and familiar. What we wear, on screen or not, is about visual appearance and it says something about us. It is a statement.

Uniforms ask to be taken seriously with suggestions of probity and virtue (clergy and nuns...), expertise (...airline pilots), trustworthiness (... Scouts...) ... [yet] frivolity and theatricality attend costumes... (Fussell 2003: 3-4).

Was this taken seriously as a protest or a theatrical 'puff' and so intended to mean nothing? The term 'mere puff' was famously discussed in the case of *Carlill v Carbolic Smoke Ball Company* [1892] EWCA Civ 1¹¹, in the context of a dispute about the effect of an advertisement as a contract or a mere invitation to treat¹². One of the criticisms of the Golden Globe protest was that it was *just* silent. The evidence of protest was *just* wearing clothes of the same colour. The first woman to accuse Harvey Weinstein of sexual assault tweeted, after the protest, that *silence by women* had been the problem all along, and repeated that *silence* in protest was ironic.

The black gowns worn by the women were said to be fabulously flamboyant, sexually provocative and created the same or a similar spin around the wearer, her figure, traditional expectations of female beauty and norms of feminine formal attire. In short, it was the usual display of flesh, but in silent monochrome. Beard argued that western culture has, over thousands of years, denied women access to power and claimed from women their public and private voice. Silence is what women do, even in protest. Even in black.

What women wear is, according to Woodward (2007), about how it makes them feel as women. How women look, he argued, is part of construction of female identity, through appearance. What is culturally acceptable, current

¹¹ See <http://www.bailii.org/ew/cases/EWCA/Civ/1892/1.html>

¹² A willingness to negotiate, not an intention to be legally bound.

and elegant also conform to media constructs of what 'real' women wear and what 'real' women look like (Wykes and Gunter 2004). Beard, for example, an older woman, was castigated by AA Gill (O'Reilly 2012) as being too ugly for television and experienced a very public 'trimming' of her appearance on the American version of 'Civilisation' (Cavell 2018). Beard explained her treatment as simply more of the same – the silencing of the unacceptable women and in this case, her replacement by a well known (and conventionally) attractive male voice over.¹³

Wolf (1990) explored the relationship between contemporary 'post liberation' women and female beauty.

The more legal and material hindrances women have broken through, the more strictly and heavily and cruelly images of female beauty have come to weigh upon us... thirty-three thousand American women told researchers that they would rather lose ten to fifteen pounds than achieve any other goal... More women have more money and power and scope and legal recognition than we have ever had before; but in terms of how we feel about ourselves physically, we may actually be worse off than our unliberated grandmothers." (p 10).

The beauty myth, as it became known, described by Wolf as a weapon by which women's advancement was curtailed, by women themselves, by conformity of and in behaviour, outward appearance and expectations of success. Fredan (1963) struck a cord, when she revealed the modern American housewife as dissatisfied, yearning for something more and questioning 'is this it? Fredan named the problem 'the Feminine Mystique' or the false idea that femininity equalled domesticity, as unpaid workers - home makers, mothers and wives. Fredan suggested that there should be new and different expectations for women, who could be so much more.

The second wave of feminism, which began in the 1960s, witnessed more radical agendas for change. For example, the ultra radical 'Redstockings' in America published the 'Bitch Manifesto' (Freedman 2000) in which they identified the effects of invisibility of women and the risks of not conforming:

Our society has defined humanity as male, and female as something other than male. In this way, females could be human only by living vicariously thru a male... This is the root of her own oppression as a woman. Bitches are not only oppressed as women, they are oppressed for not being like women... They must recognize that women are often less tolerant of other women than are men because they have been taught to view all women as their enemies.

The 1960s, it seems, was not dissimilar in reality to the position of women in England and Wales in 1914 (see also Bebb v The Law Society, earlier).

¹³ Liev Schreiber.

What is crime?

The wider question, 'what is law' has been persistently asked by scholars of many disciplines. Hart (1997) notes that far less has been written about, for example 'what is chemistry' than 'what is law'. Ordinary people (non-lawyers) are able to quote examples of law, are aware of the operation of similar legal systems internationally and have some understanding of how laws pervade (consumer law, family law, property law, road traffic offences and so on). Hart asks, if citizens have such a high level of 'common knowledge' about 'law', why the interest in what it is? We know what it is.

The distinction between the criminal law and civil law is that for a crime to be committed the action of the participant must be illegal (prohibited by law) rather than a civil wrong (which is not authorised or permitted). Crime is clearly that which is prohibited by the criminal law. The criminal law in England and Wales identifies behaviours by people which are prosecuted and punishable by the state. In the criminal courts the names of cases begin with the letter 'R', which names the head of state the King (Rex) or Queen (Regina) as the party bringing the prosecution. It is the State that prosecutes and punishes the criminal, not the victim of the crime.

Criminal statute defines the prohibited behaviour or outcome of behaviour (the *actus reus*) and may also require intention, recklessness or knowledge (the *mens rea*) as an additional element of a crime. Homicide, for example, in English law includes both murder (intentional killing another person) and manslaughter (unintentionally causing the death of another). Some offences only require the prohibited act to have occurred for liability to be established. These are called strict liability offences. An example of strict liability (although not necessarily a criminal offence) is where professional or occupational regulations are broken. For example, the rules of professional conduct prescribed by the Solicitors Regulatory Authority for the regulation of solicitors' and others providing legal services in England and Wales. It has been argued that breaking the criminal law or a prescribed professional rule with intent is not that dissimilar, it is only the range of punishments which differ. But this is not the case. The State cannot punish the professional by, for example, the removal from the roll of those permitted to practice. This is reserved for the professional body (by statute) and decisions of that body are subject to appeal through the courts.¹⁴ Its decisions must be made in accordance with the legislation which empowered it, the rules of 'natural justice' and the Human Rights Act 1998. Equally, a professional body cannot take away the liberty of the transgressor. This right is reserved to the State

¹⁴ For example, the discipline of solicitors by the SRA is permitted and regulated by the Solicitors Act 1974, the Administration of Justice Act 1985 and the Legal Services Act 2007.

by passing of laws and subject to review by its courts.¹⁵ The criminal law and regulation operate differently, but they connect in the context of white-collar crime, leading, in the case of solicitors in England and Wales, to punishment in both systems following conviction of a criminal offence.

The criminal law prohibits some behaviours of some people. Not all behaviours which might have been disapproved in the past and criminalised are now 'crimes' e.g.: adultery. Not all persons who carry out prohibited acts have always been liable to criminal prosecution. For example, until recently, rape within marriage (marriage of men and women) was not a crime because the husband was granted 'marital immunity'. Rape (by a man against a woman) outside of marriage was a crime. The Law Commission explained the context in which it was asked to review the law around rape in 1992.

...the status of women, and particularly of married women, has changed out of all recognition in various ways which are very familiar and upon which it is unnecessary to go into detail. Apart from property matters and the availability of matrimonial remedies, one of the most important changes is that marriage is in modern times regarded as a partnership of equals, and no longer one in which the wife must be the subservient chattel of the husband.¹⁶

Statute, just like the position of women in society, has changed over time. The Representation of the People Act 1918, for example, not a criminal statute, changed the law and permitted some women to vote (clause 4). Statute, it can be argued, is a barometer by which the improving position of women in society can be tracked. It is also how equal treatment could and should be enforced, by the rule of law.

The background to the question 'what is law' lies not in the question itself, but what the questioner hope to discover. That is, why are some types of human behaviour no longer optional and compliance backed up by threat? We understand more about society and how it treats its people by studying 'what is the law' and considering 'why is law' as it is. The study of the theory or the philosophy of law is known as jurisprudence - the examination of what is crime, why some actions are crimes and others are not. In relation to white collar crime, the same question has yet to be answered - 'what is it?'

Defining crime committed at work

Traditionally within criminology, white-collar crime has described work related crimes, committed by persons of a high status (see Sutherland, above). Those persons committing those crimes, being referred to as white-collar

¹⁵ Habeas corpus - an order of the court (by writ) to produce a prisoner and those holding them to justify that detention.

¹⁶ See more: The 1992 Law Commission Report 'Criminal law. Rape within marriage'.

offenders. But is it any or all work-related crime that can objectively be considered white-collar crime by a 'reasonable man'¹⁷?

The Sutherland definition is based unusually on the status of the offender rather than the crime committed. A murderer commits murder – the crime defines the offender. A rapist commits rape – the criminal offence provides the title allocated to the offender. A fraudster is convicted of an offence involving deception for gain. Clearly crimes are those defined as such by statute, but should white-collar crimes include only those defined as 'crimes' in this way or should it include other prohibited non-criminal acts too?

White collar crime, Sutherland suggested, should include a collection of behaviours, both criminal and administrative violations, which share these common features – prohibited acts, committed with intention and subject to sanction for breach. Bloch and Geis (1970) sought to establish a more scientific approach by creating units of analysis in order to identify which crimes should be defined as white-collar crimes and those which were not. Newman (1958) suggested that the definition of white-collar crime was so wide as to include any crimes committed while at work.

Not all theorists agree that white collar crime is different from other crime. General criminological theory has identified criminals (including white-collar criminals) as people who display anti-social conduct and do not conform to society's norms. Their behaviour can be explained by two causal principles¹⁸ (Gottfredson and Hirschi 1990¹⁹). This theory predicts that white-collar criminals are both criminally versatile (experienced) and as deviant as street criminals. It rejects 'motive' as a causal factor and the label 'white-collar crime' to distinguish these offenders from, for example: street criminals:

...The assumption that white collar criminals differ from other criminals is simply the assumption... They too are people of low self-control...people inclined to follow momentary impulse without consideration of the long-term cost... (p190).

Criminologists, amongst other scholars, have sought to grapple with different types of white – collar crime in order to better define types of white-collar crime. White-collar crime, this author suggests, can be divided into two categories of crime committed at work as follows:

Crime committed to benefit:

- (a) the employer, from which participants may achieve personal gain, or avoid personal loss; and,

¹⁷ Blyth v Birmingham Waterworks Co (1856) 11 Exch 781.

¹⁸ Opportunity and lack of personal control.

¹⁹ A general theory of crime.

(b) oneself, to achieve personal gain, or avoid personal loss.

Type (a) white-collar crime might be described as 'corporate crime'. An example of this type of crime would include securities fraud. Type (b) white collar crime might be described as 'self-interest occupation crime'. Examples of this type of crime, in the context of this study of members of the legal profession, would include mortgage fraud, inflated fee fraud or theft from client accounts. The essential common elements with type (a) and (b) white-collar crime are that these crimes are committed by people at or during their employment for gain. They could not be committed without being at work. The essential difference with 'street crime', which may also involve 'taking property from another' is location.

Edelhertz (1970) amended his definition of white-collar crime to refer to the prohibited act, or series of acts, as being non-physical, as distinct from crimes against a person which are of course 'physical' acts (eg: murder or rape). Further, he suggested the aim (or intention) in white-collar crime was simply to gain some advantage or avoid loss. There was no need, he felt, to quantify the gain or loss avoided. He avoided the reference to the status of the person and also removed the link with work or employment.

The gender gap

Women are different from men when it comes to crime because they are also treated differently in society. These gender differences and the relationship between economics, inequality and crime have been examined by criminologists over time. It has been generally accepted that women commit less crime than men. This difference has been described by Steffensmeier and Allan (1996) as the 'gender gap'. It is this difference, the gender difference, that has focused the debate about women and why they don't commit as much crime as men do. This deductive or positivist approach to research, the analysis of 'fact' and application of objective determinism, perhaps even a 'malestream' methodology has been criticised by Oakley (1974) and other feminists. It is known as the 'paradigm argument'. Löscher (2000) argued that:

'Crime' is constructed and negotiated in social discourses and processes of social interaction in and with institutions of social control. Therefore, only qualitative inquiries of 'crime' make sense' (abstract).

It is from this biased perspective that women and crime have been studied. DuBois (1983) identifies the effect as follows:

... the 'person' has been considered to be male, and the female, the woman, has been defined in terms, not of what she is, but of what she is not ... The androcentric perspective in social science has rendered women not only unknown, but virtually unknowable (p107).

It is interesting to note that this quote is not dissimilar to the section of 'The Bitch Manifesto' referred to above. Has nothing changed over time? The eminent classicist, Mary Beard, argued that the process of silencing women, making their stories and lives unknowable, has not changed from even further back in history. She refers to mythological tales as proof of the origins of this practice '... classical culture...[she argues]... is partly responsible for our starkly gendered assumptions about public speech...' (p41). Beard also discusses social media trolls, these contemporary messengers who besiege women who 'speak out' and 'refuse to be silenced' who use old and familiar methods to control '...public utterances and to silence the female of the species' (p4). As a recent high-profile victim of trolling, she should know.

In order to explore white-collar crimes committed by women, the qualitative method is seen as most appropriate or valid method of inquiry, to explain *why* women commit white collar crimes rather than *why* they commit *fewer crimes* than men. For example, Elliott (1952) suggested that women's sex role formation and socioeconomic factors might explain low crime rates among women. Ahuja (1969) supported a theory of 'family maladjustment' or 'role conflict within the family' as causes of female crime in India.

However, Klein (1973) summarised historical qualitative thinking around women and crime (by Lombroso, W.I. Thomas, Davis, and Pollak and others) as less than helpful. It focused simply on biological differences between men and women, perceived psychological characteristics (read weaknesses) of women combined with familiar assertions of the benefits norm. We can recognise these well publicised arguments, which are raised to justify different treatment of women in society. For example, biological or physical differences are still used as justification for gender discrimination in jobs that involve physical work. These ideas are well explained by Pollock (1950).

Criminal statistics which support the view of the lack of criminality in women are the least reliable of all statistics. For crimes to be reliably reported they must have three criteria, which women's crimes lack: (1) be highly injurious to society, (2) be of public nature, (3) have the co-operation of the victim with the law. Woman's crimes tend to be more specific than man's. Her victim is often her child, husband, lover, or family member. Her criminality starts later, comes to a peak later, and lasts longer than man's. The double standard, modern sales techniques, and social frustrations due to women's position in society contribute to her criminality (Abstract).

Concluding thoughts about pink – collar crime?

The value in studying white-collar criminals as a 'criminal group' is that they do not behave as other criminals do, as discussed above. Within both studies of white-collar criminals and criminal proceedings against those accused of

white-collar crimes, there is less focus on proving *who* has committed the crime and more emphasis on *why* they committed it. There is usually no issue as to whether the act has been committed, be it the hand in the till or the extensive paper trail, *res ipsa loquitur*²⁰. But it is necessary in criminal proceedings for white-collar offences such as fraud to establish both proof of the act and the 'guilty mind' of the accused to secure conviction. It is interesting that lack of guilt and unwillingness to acknowledge the criminality (as opposed to illegality) of the transgression by the white-collar criminal is often quoted as an accepted difference between this type of criminal and those committing 'street crime'²¹. But where is there any credible theory to explain *why* people commit white-collar crime?

There are some existing theories that attempt to explain women and white-collar crime. Adler (1975) identified liberation theory, a gender specific theory around women offending. It suggested that greater opportunities for women at work would lead to increasing participation in white-collar crime. Adler predicted that changing gender roles for women would lead to more masculine behaviour and a reduction in the gender gap generally. Simon (1975) also anticipated changing opportunities at work would lead to more women committing white-collar crime. There is also some established theory around how women are treated by and in the criminal justice system. 'Chivalry theory' suggests that women are treated more favourably than men, because men 'naturally' want to look after or protect women. 'Double deviance' theory in contrast, states that women are punished more harshly – once for the crime and the second time for departing from the standards women are expected to set, or perhaps departure from the normative women. These theories are based on observations of different treatment of women by men and surprisingly both describe contrasting outcomes for women within the same system.

The Corston Report (2007) looked into how women in prisons were treated and found that where women experienced a combination of vulnerabilities (domestic, personal and socio – economic), it was likely that a crisis point would lead them to crime and then to prison. Criminality was, for a lot of inmates, a reaction to crisis. This report concluded that 'Women commit a different range of offences from men. They commit more acquisitive crime and have a lower involvement in serious violence, criminal damage and professional crime...' (p6). Gottschalk (2012) found in his statistical analysis that in Norway, women made up only 4% of those convicted of white-collar crime. But is this the case in England and Wales?

²⁰ Latin for 'the thing speaks for itself'.

²¹ Crime that takes place in public e.g.: theft from a person, assault etc.

Some recent crime data – England and Wales

As part of anti-discrimination legislation, the government is required to publish data about the criminal justice system and those who are involved with it both as victims and offenders. Section 95 of The Criminal Justice Act 1991 states that:

The Secretary of State shall in each year publish such information as he considers expedient for the purpose... of facilitating the performance of those engaged in the administration of justice to avoid discriminating against any persons on the ground of race or sex or any other improper ground...

Data has been published since 1992, with the most recent statistics being reported in 2015 (the women and the criminal justice system statistics [‘the 2015 report’]). According to the 2015 report, the number of prosecutions of women over the previous decade increased by 6%, due to an increase in prosecutions for TV licence evasion. In the same period prosecutions of men fell by a third. For the 10 years prior to the 2015 report, the trend had been for ‘formal treatment’ of offenders (by court proceedings) to fall, and it was falling much quicker for women. It also found that women were more likely than men to be prosecuted for fraud and theft and much more likely to be prosecuted by a private body (e.g. a local authority) rather than the State. The main serious offences committed by women were thefts.

In the 2015 report, it found that women convicted of the more serious offences were more likely than men to avoid prison, with most women pleading mitigating factors such as mental illness or sole family responsibilities following conviction (see the Corston Report above). Most crimes committed by women were less serious and so were dealt with in the magistrates’ courts.

The table below shows the estimated proportion of each gender based on the population estimates from the 2011 Census, and the gender breakdown of different points of the criminal justice process in 2013.

Overview of Women and the Criminal Justice System: Proportion of individuals in the CJS by gender compared to general population

| | Female | Male |
|--|--------|------|
| Total Population aged 10 and over Mid-2013 | 51% | 49% |
| Arrests 2012/13 | 15% | 85% |
| Prison population 30 June 2014 | 5% | 95% |

(Statistics on Women and the Criminal Justice System 2013, ‘The 2013 Report’)

The gender gap clearly exists in this crime data. But how do we discover whether women commit less white-collar crime than men? Does white-collar

crime follow the 'gender gap'? Both the 2013 and 2015 reports include NO reference to white - collar crime, making more detailed analysis of these questions impossible, so where next?

Pollock (1950) observed that:

The criminality of women is a neglected field of research...The lack of scientific attention to the problems presented by women offenders is probably due to the ever recurrent observation that considerably smaller numbers of women come into contact with the law- enforcing agencies than do men...female criminality deserves more research interest than it has received, no matter how small its numerical importance may appear on the basis of criminal statistics taken at their face value (p73).

Lewis (2002) reported women white-collar criminals had fewer earlier convictions than male white-collar criminals, suggesting both genders have criminal careers before getting caught and are anti-social to a lesser extent perhaps than general criminals. Schwartz and Steffensmeier (2008) argued that female inequality and related economic vulnerability, rather than equality between the sexes, shapes female offending patterns. There are gender differences in terms of *how* opportunities are considered and acted upon, or not, which may explain why women do not commit crime generally and therefore commit proportionately less white-collar crime.

The elements of the white-collar criminal, as identified by Sutherland, are also true of women criminals. Women are treated and punished differently, rarely studied, and form a distinct group that does not follow the established theories around crime and criminality. The definitions triangulate. Using the term 'pink-collar crime' combines a crime-centred and person-centred typology. Constructed typologies have long been 'created' by theorists within criminology (as detailed above) to facilitate causal analysis - to explain *why*.

This study began as an earlier investigation into crimes committed by a sample of solicitors in England and Wales. Detailed analysis of its published decisions (of the SDT tribunal hearings) produced by the professional body who discipline solicitors (the SDT²²) revealed, among other findings, that very few women solicitors were struck off the roll for committing a crime. This together with the lack of credible theory to define or explain white-collar crime led the author to research women and white-collar crime. It led the author back to the feminist school and some theory around white - collar crime and some about women (discussed above).

The next study, a revival of the feminist school, as part of the fourth wave of feminism, will explore the scale of pink-collar crime amongst solicitors,

²² Solicitors Disciplinary Tribunal. All solicitors who are convicted of a crime are referred to their professional body for disciplinary action. The usual sanction is to be struck off the roll.

(whether it has increased as predicted), and if women solicitors are treated differently from men in the criminal and professional regulatory system. 'Like Broadway, the novel, and God, feminism has been declared dead many times' (Pollitt 1994) long may she live.

References

- Adler, F (1975) *Sisters in crime: The rise of the new female criminal*. McGraw-Hill: USA
- Ahuja, R (1969) *Female Offenders in India*. Meerut: Meenakshi Prakashan.
- Aubert, V. (1952) *White-Collar Crime and Social Structure*. *American Journal of Sociology* 58:3 (Nov.): 263-271.
- Beard, M (2017) *Women and power*. Profile Books: London.
- Bloch, H.A. and Geis, G. (1970) *Man, crime, and society*. Random House: London.
- Cavell L. Mary Beard cut from US version of *Civilisation*. In Royal Television Society [Online, 19th April 2018] Available at:
<https://rts.org.uk/article/mary-beard-cut-us-version-civilisation> [accessed: 15/09/2018]
- Cohen, C.B., Wilk, R. and Stoeltje, B. (2013) *Beauty queens on the global stage: Gender, contests, and power*. Routledge: London.
- Cosgrave, B. (2007) *Made for each other: fashion and the Academy Awards*. Bloomsbury Publishing: USA.
- Croall, H. (2001) *Understanding white collar crime*. McGraw-Hill Education: UK.
- Croall, H. (2008) Men's business'? Some gender questions about white collar crime. *Criminal Justice Matters*, 53:1, 26-27.
- Daly, K. and Chesney-Lind, M. (1988) *Feminism and criminology*. *Justice Quarterly*, 5(4). 497-538.
- Dodge, M. (2007) *From pink to white with various shades of embezzlement: Women who commit white-collar crimes*. In *International handbook of white-collar and corporate crime* Springer: Boston, MA. 379-404.
- DuBois, B (1983) *Passionate scholarship: notes on values, knowing and method in feminist social sciences*. In Gloria Bowles & Renate Duelli Klein (Eds.), *Theories of women's studies* London: Routledge and Kegan Paul. 105-117.
- Edelhertz, H. (1970) *The nature, impact and prosecution of white-collar crime*. National Institute of Law Enforcement and Criminal Justice: Washington, DC:
- Elliott, M.A.(1952) *Crime in modern society*. Harp: London.
- Freeman, J. (2000) *The bitch manifesto. Radical feminism: A documentary reader*. 226-32.

- Friedan, B. (1963) *Feminine mystique*. Penguin: Harmondsworth.
- Foucault, M. (1982) The subject and power. *Critical inquiry*, 8(4) .777-795.
- Foucault, M. (2010) *The Government of Self and Others: Lectures at the Collège de France 1982-1983*, edited by Arnold I. Davidson, translated by Graham Burchell. Palgrave Macmillan: New York.
- Fussell, P.(2003) *Uniforms: Why we are what we wear*. Houghton Mifflin Harcourt: USA.
- Gottfredson, M. R., and Hirschi, T. (1990). *A general theory of crime*. Stanford University Press: USA.
- Gottschalk, P. (2012) Gender and white-collar crime: only four percent female criminals. *Journal of Money Laundering Control*, Vol. 15 Issue: 3. 362-373.
- Greer, G. (1970) *The Female Eunuch*. Paladin; London.
- Hall, J. (1941) Prolegomena to a Science of Criminal Law. *University of Pennsylvania Law Review and American Law Register*, 89(5). 549-580.
- Harkness, N. (2006) The colour wheels of art, perception, science and physiology. *Optics & Laser Technology*, 38(4-6). 219-229.
- Hart, H.L.A. (1997) *The concept of law*. Oxford University Press: Oxford.
- Haastrup, H.K. (2008) One re-enchanted evening: the Academy Awards as a mediated ritual within celebrity culture. *Northern Lights: Film & Media Studies Yearbook*, 6(1), 127-142.
- Jones, T., Chapman, G., Cleese, J., Gilliam, T., Idle, E. and Palin, M. (1979) *Monty Python's life of Brian*. Hand Made Films.
- Kaya, N. and Epps, H (2004) Relationship between color and emotion: A study of college students. *College Student J*, 38(3). 396.
- Kapp Howe, L. (1977) *Pink Collar Workers: Inside the World of Women's Work*. New York: USA.
- Klein, D. (1973). The Etiology of Female Crime: A Review of the Literature. *Issues in Criminology*, 8(2), 3-30.
- Löschper, G (2000). Crime and Social Control as Fields of Qualitative Research in the Social Sciences. *Forum Qualitative Sozialforschung / Forum: Qualitative Social Research*, [S.l.], v. 1, n. 1, January. 2000.
- Available at: <http://www.qualitative-research.net/index.php/fqs/article/view/1119/2483>. [Accessed 15 September 2018]
- Maglaty, J. When Did Girls Start Wearing Pink? In *Smithsonian.com*.
- Available at:

<https://www.smithsonianmag.com/arts-culture/when-did-girls-start-wearing-pink-1370097/>

[accessed: 31/01/2018]

Newman, D.J. (1958) White-collar crime. *Law and contemporary problems*, 23(4).735-753.

Simon, R.J. (1975) *Women and crime*. Lexington Books: Lexington, MA.

Simon, R.J. and Ahn-Redding, H. (2005) *The crimes women commit: The punishments they receive*. Lexington Books: USA.

Smart, C. (1979) The new female criminal: Reality or myth? *The British Journal of Criminology*, 19(1).50-59.

Steffensmeier, D. and Allan, E. (1996) Gender and crime: Toward a gendered theory of female offending. *Annual review of sociology*, 22(1).459-487.

The Law Commission (1992). *Criminal law. Rape within marriage*. In Law Commission – official site. Available at

<http://www.lawcom.gov.uk/app/uploads/2015/06/lc205.pdf>

[accessed: 01/06/2018]

Oakley, A. (1974). *The sociology of housework*. Pantheon Books: New York.

Oakley, A. (1997). *The gendering of methodology: An experiment in knowing*. Seminar to Swedish Collegium for Advanced Study in the Social Sciences, Uppsala, Sweden, 10th April.

Oakley, A (1998). Science, gender, and women's liberation: An argument against postmodernism. *Women's Studies International Forum*, 21(2), 133-146.

O'Reilly, M (2012). AA Gill, drop the cheap jibes about Mary Beard – and learn something. In *The Guardian* [Online, 25/04/2012] Available at:

<https://www.theguardian.com/commentisfree/2012/apr/25/aa-gill-jibes-mary-beard>

[accessed: 15/09/2018]

Paoletti, J.B. (2012) *Pink and blue: Telling the girls from the boys in America*. Bloomington: IN.

Pollak, O. (1950) *The criminality of women*. University of Pennsylvania Press: USA

Pollitt, K. (1994). *Reasonable creatures: essays on women and feminism*. A. Knopf: New York.

Sutherland, E.H. (1939). White-Collar Criminality. Presidential Address to the American Sociological Society, Philadelphia, USA, 27 December.

Sutherland, E.H.(1945) Is 'White Collar Crime' Crime?. American sociological review, 10(2).132-139.

Unknown (1984). Louise Kapp Howe, 49, Dies; Wrote About Social Problems. In New York Times archive. Available at:

<http://www.nytimes.com/1984/01/17/obituaries/louise-kapp-howe-49-dies-wroteaboutsociaproblems.html>

[accessed: 30/01/2018]

Unknown (2018). Golden Globes 2018: Why stars wore black on the red carpet. In BBC News [Online, 8 Jan 2018] Available at:

<http://www.bbc.co.uk/news/av/entertainment-arts-42600041/golden-globes-2018-why-stars-wore-black-on-the-red-carpet>

[accessed: 08/01/2018]

Unknown (2018). Pussyhat Project home page. Available at:

<https://www.pussyhatproject.com/whats-next/>

[accessed: 21/05/2018]

Unknown (2018). CPS violent crime guidance. Homicide: Murder and Manslaughter. Available at:

<https://www.cps.gov.uk/legal-guidance/homicide-murder-and-manslaughter>

[accessed on 11/09/2018]

Unknown (2018). Ministry of Justice publication. Statistics on Women and the Criminal Justice System 2013 and 2015

Available at:

<https://www.gov.uk/government/statistics/women-and-the-criminal-justice-system-2013>

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/572043/women-and-the-criminal-justice-system-statistics-2015.pdf

[accessed on 04/06/2018]

Vrij, A. (1997) Wearing black clothes: the impact of offenders' and suspects' clothing on impression formation. Applied Cognitive Psychology: The Official Journal of the Society for Applied Research in Memory and Cognition, 11(1).47-53.

Wickman, F. (2012) Working Man's Blues: Why Do We Call Manual Laborers Blue Collar? In Slate.com. Available at: http://www.slate.com/articles/business/explainer/2012/05/blue_collar_white_collar_why_do_we_use_these_terms_.html

[accessed: 15.09.2018]

Wolf, N. (1990) *The beauty myth: How images of beauty are used against women.* Chatto & Windus: USA.

Woodward, S. (2007) *Why women wear what they wear.* Berg: Oxford.

Wykes, M. and Gunter, B. (2004) *The media and body image: If looks could kill.* Sage: London.