

BOOK REVIEW

*David Plater*¹

Sarah Wilson, *The Origins of Modern Financial Crime: Historical Foundations and Current Problems in Britain* London: Routledge SOLON Explorations in Crime and Criminal Justice Histories, 2014 257pp. from £27.00 PB, HB and Kindle. ISBN 978-0-415-62763-4

I recall once as a prosecutor with the Crown Prosecution Service in England being confronted at a typical suburban court by an unusually erudite but otherwise typical offender. This man was enquiring in court about an outstanding warrant. The man was a prolific shoplifter and burglar who was accustomed to his regular periods as a reluctant guest of Her Majesty in the less than comfortable surroundings of the typical English prison. For his latest crimes, the offender had been placed for the first time in the comfortable and relaxed surroundings of Ford Open prison amidst dishonest lawyers, bankers, stockbrokers, accountants and company directors who were serving their sentences for large scale commercial fraud. The offender had been released from Ford Prison for the day to attend court to sort out his outstanding warrant.

The day visitor from Ford Open Prison was vexed by the perceived leniency, even indulgence, with which society seemingly treated 'white collar' commercial offenders. He politely asked me as a representative of the 'system' why was he, for relatively minor crimes, usually placed in a grim typical prison, whilst 'white collar' criminals whose crimes in financial terms far exceeded his, enjoyed the comparatively luxurious surroundings of Ford Open Prison? I was unable to offer a persuasive answer.

It is with this background in mind that I approached Sarah Wilson's insightful and timely 2014 work, *The Origins of Modern Financial Crime: Historical Foundations and Current Problems in Britain*. This book offers a considered, welcome and overdue contribution to an important and topical area of interest. An area with a multidisciplinary audience, namely lawyers, historians, criminologists, accountants and others with an interest in the historical and modern issues of financial crime.

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As we have seen in recent times, in the aftermath of the Global Financial Crisis and assorted banking scandals, public concern about financial excesses is aggravated during times of financial crisis. Yet there is often a perception (mistaken that it is) that financial or commercial crime is somehow 'different' to other forms of crime. White collar criminals are not 'real' criminals. Judge Woodward when sentencing the 'respectable' officials of the H O and Stone Company, a Chicago real estate firm, who has been convicted in 1933 of the use of the mail to defraud remarked: 'You are men of affairs, of experience, of refinement and culture of excellent reputation and standing in the business and social world.'² As Wilson highlights, such views are far from unique, and were also expressed in the context of sentencing 'respectable' commercial offenders in the nineteenth century.

Judge Woodward's statement might indeed be used as a general statement of 'white collar' criminals. Such offenders are not typically perceived, whether by themselves, other business figures, criminologists or even the public, as 'real criminals'. Any such view is wrong as Wilson examines. Sutherland stated the majority position when he said:

White-collar crime is real crime. It is not ordinarily called crime, and calling it by this name does not make it worse, just as refraining from calling it crime does not make it better than it otherwise would be. It is called crime here in order to bring it within the scope of criminology, which is justified because it is in violation of the criminal law. The crucial question in this analysis is the criterion of violation of the criminal law. Conviction in the criminal court, which is sometimes suggested as the criterion, is not adequate because a large proportion of those who commit crimes are not convicted in criminal courts.³

In drawing the distinction between 'white-collar crime' and 'street crime', Sutherland sought to expose to the unsuspecting public a long obscured issue that continues to this day, namely crimes committed by the rich and powerful. Sutherland wanted to bring to justice the 'elite' criminals who prove able to avoid the reach of the criminal law with impunity because of their lofty social status, high political office and or powerful economic connections.⁴

Sarah Wilson considers these issues and provides a detailed theoretical framework, drawing together the disciplines of law, history and criminology through her analysis of the impact of white collar crime in the nineteenth century and its modern application and implications. She offers an insightful and thoughtful multi-disciplinary analysis of how financial or white collar crime is perceived in twenty-first century society post the excesses that led in large measure

² Edwin Sutherland, 'White Collar Criminality' in Gilbert Geis (ed.), *White Collar Criminal: the Offender in Business and Professions* (Aldine Transactions, 1968) 40, 47.

³ Edwin Sutherland, 'White Collar Criminality' (1940) 5 *American Sociological Review* 1, 5.

⁴ Kam Wong, 'From White-Collar Crime to Organizational Crime: An Intellectual History' [2005] *Murdoch University Electronic Journal of Law* 14.

to the Global Financial Collapse (GFC). Her analysis aptly draws on the not dissimilar experience of the corporate and financial crimes of nineteenth century Britain amidst banking collapses such as the Bank of Glasgow and the unsustainable railway boom and ultimate collapse of the 1840s. In looking at the similarity between such events as the Railway Boom and collapse of the 1840s and the GFC, Abraham Lincoln's comments seem apt: 'What has once happened, will invariably happen again, when the same circumstances which combined to produce it, shall again combine in the same way'.⁵

The author examines the impact of financial crime upon society in both the nineteenth and twenty-first centuries and the responses to these crimes. The all too recent global financial crisis and the accompanying financial excesses have been characterised as a turning point in the way society and the criminal law responds to financial crime. Sarah Wilson considers the legal and economic dimensions of financial crime and its significance in twenty-first century Britain. She argues that the nineteenth century British experience of financial crime was important for modern post GFC British perceptions of such crime and its offenders, and has enduring application for public and legal responses today. The analysis examines how Victorian society perceived and responded to commercial crime and its offenders. It is argued that examining *how* financial misconduct became recognised as crime during the nineteenth century has important contemporary implications. It is significant that, as Wilson outlines, the authorities of the nineteenth century, clumsy and ineffectual as their efforts may have proved, did not overlook financial crime. Efforts were made both legislatively and in practice to deal with this kind of conduct. The author studies several representative criminal trials of the 1800s involving financial abuse and examines how these provide a valuable source of reference and sheds light on the current response to financial crime in the aftermath of the GFC. The study underlines that a solid historical context is vital to understand current issues raised by the post GFC effort against financial crime.

The author makes the powerful but often overlooked point that the recent financial excesses and public backlash of the GFC are historically recognisable. Financial crime and public concerns have a long history and the problems of financial crime are not new. Indeed, many of the harmful effects of financial crime have been acknowledged as social problems for centuries. As early as 1668, Joseph de la Vega, in his book, *Confusion of Confusions*, provides one of the earliest accounts of the operation of the modern stockmarket, including bubbles, crashes and misconduct. De la Vega describes such means involved as margin trading, short

⁵ Roy Basler (ed), *The Collected Works of Abraham Lincoln* (vol 1) (Abraham Lincoln Association, 1953) 165.

selling and misconduct. It is significant that this work was written between two notorious and spectacular incidents of fraud and folly that marked the early financial markets, the tulip mania in Holland of 1637 and the South Sea Bubble of 1720 (which claimed many victims including Sir Issac Newton).

Sarah Wilson provides excellent analysis and comparison between the nineteenth century and the current crisis. However, further historical context may assist the reader. For example, it would have been interesting to know a little more about the wider context and conduct of the leading commercial trials of the period that are discussed by the author, notably those relating to the Railway Boom. The Railway Boom of the 1840s provides an especially apt illustration of the various insightful themes that she discusses. The Bubble Act 1720 (6 Geo I, c 18), which forbade the creation of joint-stock companies without royal charter was designed to regulate the formation of new businesses and limit joint stock companies to a maximum of five separate investors, was promoted by the South Sea Bubble. The repeal of the Bubble Act in 1825 allowed the general public to buy shares of stock and allowed companies to actively promote themselves, abetted by the new media such as newspapers. This ultimately helped lead to the Railway Mania of the 1840s. This involved a railroad development frenzy and a speculative bubble in the shares of railroad companies. The consequences of the Railway Boom of the 1840s, like those of modern twenty-first century financial scandals, were severe. The railroad stock bubble, like that of the South Sea Bubble before it, spectacularly burst amidst revelations of widespread fraud and poor financial planning. A vast wave of railroad companies folded. Once-comfortable middle class and affluent investors who had sunk their life savings into railroad stocks were left financially ruined after the bubble popped.

These suggestions should not obscure the fact that this remains a valuable and timely contribution to an important area of study. The author takes an innovative and commendable multi-disciplinary approach and suggests that the impact of financial crime and society's response can be best viewed through the disciplines of law, history and criminology rather than viewing this area through a single prism as has too often proved the case.