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Robbing the Revenue: Accounting for Deviant Behaviour

It is one of the paradoxes of the study of crime that most delinquents and criminals are in fact generally very law abiding. They subscribe to the same set of standards and conventions as the rest of us do in that they are in agreement with fundamental laws on murder, assault and property rights. In deed one writer has suggested that in Britain at least most criminals vote Tory, hardly the action of anarchic law-breakers.

This raises the question posed by David Matza (1964:27). How do people who claim allegiance to social norms and values engage in deviant behaviour? The answer, he argues, lies in the subculture to which many criminals subscribe. This comprises a set of beliefs or techniques of neutralisation that "function as the extenuating conditions under which delinquency is permissible". These beliefs enable delinquents to violate the norms and rules of society without surrendering allegiance to them". They enable them to be law-breaking conformists.

In this article I intend to develop the notion of the accounts provided by criminals and deviants for their behaviour. As will become clear this kind of analysis has only been applied to the study of juvenile delinquents. However the Dail Public Accounts Committee's investigation into the manner in which the banks and financial institutions facilitated the evasion of tax provides an opportunity to see how respectable deviants account for behaviour that is legally and socially problematic.

Matza and Sykes (1957) argue that five such beliefs enable delinquents and criminals to evade the moral bind of the law and the constraints of the norms of conventional behaviour. They allow deviants to argue that while the law is fundamental there are certain circumstances in which it does not apply to them. The point about these beliefs is that they are generally available in the culture and are recognised as socially legitimate in certain circumstances. Where delinquent behaviour is concerned they enable young men "to commit crimes without too many pangs of conscience" (Box, 1983: 54). They operate as "a sanitising prism …which softens criminal acts so that they assume the appearance of 'not really' being against the law". This means that they have a double significance. They weaken the bonds of social control and so enable delinquents to engage in deviant behaviour while at the same time they function after the act to provide defences and justifications for that behaviour.

One is the denial of responsibility. Here the deviant may accept what he did but does not see himself as responsible for this behaviour. Thus assault may be justified on the grounds that the individual was provoked by others, a common defence for street violence. A second technique is the denial of injury. This enables the offender to claim that, as no one was injured by his actions, no criminal offence is involved. Who, for example, is harmed by the vandalism of public property. Bus shelters do not cry when they are thrashed. This is somewhat similar to the third technique, which is the denial of the victim. This involves denying that one's criminal action had a victim either because the victim "deserved" it or because the action was "rightful

retaliation". The fourth technique is the condemnation of the condemners. This involves seeing those who condemn the delinquent as hypocrites, either because they are up to this kind of behaviour themselves or because they have some personal gains to be derived from such a condemnation. The final technique is the appeal to higher loyalties. Here the delinquent claims that his action is justified in terms of loyalties and allegiances that are higher and more binding than those of the legal system. Thus friendship, family ties or gang loyalty may justify the use of violence in specific situations without condoning it as a general principle.

As things stand these kinds of concepts have been used to understand the behaviour of delinquents, categorised by Matza and Box, as lower-class adolescent males. But the commission of crime is not limited to such people. An extensive literature shows that white-collar crime is, as both Edwin Sutherland (1949) and John Braithwaite (1985) acknowledge, a frequent, widespread and routine feature of the business world. Given that the kind of people who work there see themselves as the epitome of law-abiding citizens and indeed may be both the formulators and defenders of conventional morality, how then do they engage in behaviour that either is or can be construed as criminal? The capacity to construct justifying accounts is not limited to deviant or delinquent individuals. Organisations can also construct them. It is therefore of interest to see what kinds of accounts are provided by organisations to which deviant behaviour has been imputed.

An opportunity to explore this issue was presented by the Parliamentary Inquiry into Deposit Interest Retention Tax held between August and October 1999. At the heart of the hearings was the degree to which DIRT was evaded, the extent to which "deposit-holders knowingly facilitated the practice" and the actions that financial institutions took to deal with the problem. Their report concluded that the evasion of DIRT was "pervasive" in the banking sector and that "the relevant authorities were very well aware of the problem". Thus the Inquiry represented an invitation to banks and financial institutions to account for problematic behaviour (2).

The actual evasion was not exactly rocket science. In 1986 the government introduced a new tax, Deposit Interest Retention Tax or as it was more familiarly known, DIRT. It was a tax on interest earned on deposits in banks and financial institutions. It was the responsibility of these institutions to calculate the amount of DIRT for which its depositors were liable, pay it to the revenue and deduct the relevant amount from depositors' accounts. However this tax did not apply to accounts held in Irish banks by people who were not resident in the state. To open a non-resident account it was merely necessary to fill in a form declaring that one was indeed non-resident. The financial institutions either encouraged residents in the state to open such accounts or else did not check too rigorously whether all such account-holders were non-resident.

It was also possible to avoid tax by the practice of deposit splitting. Under existing tax law financial institutions could pay interest of up to £70 on deposit accounts without the deduction of tax. As the evidence to the Committee

showed, the banks facilitated and encouraged depositors to spread their money over a number of different branches and accounts. This enabled depositors to keep their money in a series of different deposit accounts, none of which individually would be liable for tax. This purpose of this strategy was like that of "bogus" non-resident accounts simple and straightforward. It was for tax evasion.

So what justifications or accounts did banks and financial institutions come up with? It is important to establish a relevant context with such justifications, As the Committee report (2000) points out, "non-compliance with the law on DIRT by depositors and deposit-takers is a Revenue Offence. As such it is also a criminal offence. This was established in a landmark judgement in 1945 (State versus Fawsett). Hence it does seem, to the outsider at least, to be the kind of behaviour that needs to be accounted for.

What is interesting about the proceeding of the Committee was the degree to which those coming before it did not fell the need to offer extensive justifications for the tax evasion that went on in their institutions. To the extent that such justifications were offered they were largely seen as technical matters and there was no real sense in the presentations that the banks and other financial institutions had done anything wrong.

One of the justifications offered was to see the problem as one of paperwork or to blame the complicated nature of the relevant form. To establish a non-resident account it was necessary for a depositor to fill in Form 37 declaring that he or she was non-resident. According to the bankers, it was either too complicated or else if it had been filled in by the depositor there was little need or incentive to check it. One banker told the Committee that "the feeling was that once the declarations were complete or once the declarations were there, and in some instances even if they weren't, that once the depositor said "I am a non-resident", then that was almost taken as good enough". Another banker told the Committee that the issue "in so far as it existed at all, was merely documentary".

The second justification was to blame someone else, in this case those lower down the organisational food chain. Senior officials in the banks said that they relied on Branch and Regional Managers to ensure legal compliance but these failed in that task. This mystified some senior officials. The former Chief Executive Officer of the Bank of Ireland told the Committee that "I really find it very hard to understand how any member of our staff would have accommodated - knowingly accommodated - a bogus non-resident account. I find this very hard to understand". Where another bank was concerned, in this case, Ulster Bank, "a scrupulous adherence to formal compliance seems to have been dictated from the top" but "this was at variance with the practice discovered by Internal Audit in parts of the Branch network". Another banker said (of his bank) the failure of branches to comply with direct instructions on the issue and the fact that written assurances by Branch managers…were found to be materially untrue" was the source of the difficulty.

Others were less mystified by the problem. They cited the pressures of competition for deposits at local level branch level. One official told the Committee that " the imposition of withholding tax was going to have a negative effect on its business and it was seeking to investigate methodologies whereby that negative effect might be lessened". The Chairman of the Committee replied this " is a very troubling sentence". Another banker told the Committee that a Branch Manager told his Regional Manager that his branch was loosing deposits through not opening bogus non-resident accounts. The branch continued to open them even after an internal audit had insisted on a mass reclassification of bogus accounts. The problem for them was the loss of business. Their competitors were doing it. If they did not behave in a similar fashion their customers would take their money elsewhere.

The final justification was that the Board of Directors either didn't know or were not told. A number of statements to the Committee indicated that the matter was never discussed at Board level in the major banks. Beyond these, there is little evidence of any attempts or any need to attempt to offer justifications for the pervasive culture of non-compliance with tax laws in the banking sector. What is most striking about the accounts given by the Banks is the limited extent to which they felt the need to defend themselves or to explain why, as the Committee found, they encouraged and facilitated tax evasion.

This highlights an important difference between juvenile delinquents and white-collar deviants. The former use techniques of neutralisation to justify their behaviour when they are challenged about it either by having to explain it to probation officers, policemen or the courts. The latter seldom have their deviance or criminality dramatised for them in this way and so operate in some security from the threat of apprehension and public explanation. This was clearly the case with the facilitation of the evasion of DIRT tax. The regulating authorities knew about it but there was little indication of serious moves to deal with it. A Mr. Pat Molloy of the Bank of Ireland wrote to his Board of Directors in 1986. He concluded, "it was not at all certain that the Revenue Commissioners have the will or the capacity to effectively police the DIRT regime".

One auditor told the hearings that the tax regime was "lightly policed" by the Revenue. The Committee also found that Boards of Directors for banks and other financial institutions "betrayed an overly relaxed attitude towards discharging their statutory and fiduciary duties in respect of the operation of DIRT". In that sense the fact that the banks did not offer elaborate justifications for the behaviour of their institutions was simply because there was no established tradition of them having to. They existed in a situation where there was no need to justify their culture of non-compliance because there was no real desire by the relevant authorities to enforce the relevant legislation. This was despite the fact that the authorities were well aware of the problem. When one former senior official from the Revenue was asked what level of knowledge did the Commissioners have of the situation regarding the abuse of non-resident accounts, he replied "we all knew".

Similarly the Comptroller and Auditor General argued, "the relevant authorities were very well aware of the problem".

It is in this sense that consideration of the contexts of justification for white-collar deviants needs to move beyond the deviants and on to the policing agencies. White-collar deviants are seldom placed in public situations where they are required to defend their behaviour so the focus must move to the justifications offered by policing agencies for their failure to act. The source of non-enforcement of tax legislation can be found in what Matza has referred to as "higher loyalties". The matter was not treated within the confines of revenue law and its possibilities for criminal enforcement. It was considered within the confines of an economic theory. This was the theory of capital flight. This held that if the law on tax evasion was rigorously enforced it would lead depositors to take their money out of Irish banks, move it to foreign ones. In the process this would create a crisis in the banking system and undermine the value of the Irish currency on international financial markets. The Committee indicates that, "all of the relevant agencies of state bought into this theory as being relevant. It became the official view". The belief was that "over-enthusiastic action by anyone could lead to a flight of funds". As the Committee pointed out this proposition "sits somewhat uncomfortably alongside the law as enacted". The theory was also, as the Committee pointed out, untested and probably incorrect.

The belief in capital flight appears to have effectively paralysed the two major state agencies, the Revenue Commissioners and the Central Bank. It provided the context in which decisions were made and in which policy choices were made. The evidence from former officials of the Central Bank indicated that they were well aware of the problem of tax evasion generally and DIRT evasion in particular. They also discussed it with the Department of Finance. They failed to use the powers available to them and indeed opposed attempts to introduce "increased documentary evidence of non-residence", most notably in the form of a sworn affidavit of non-residency. The argument against this was that the "expense and inconvenience" that this would impose on non-residents "would cause over 50% of non-resident deposits to move abroad". Similarly officials from the Department of Finance relied on the argument about the fear of capital flight to avoid tightening up of the operation of DIRT. There was a loyalty higher than that to revenue law. This was to the laws of capitalist economics.

For David Matza (1964: 41) the one characteristic that convinced him that delinquents are committed to conventional rather than delinquent or criminal values was the fact that when they were apprehended and confronted with their behaviour they initially express indignation but they then proceed to "either contriteness or defensive explanations". The failure of those involved in the DIRT Inquiry to express either emotions indicates that unlike juvenile delinquents, white-collar offenders may be committed to a sub-culture in which such reactions are appropriate. There is after all a final "account" that deviants can offer. Erving Goffman (1971) called it "the apology". This involves explicitly confessing to ones errors and accepting that sanctions were expected and legitimate.

Speaking at the Annual meeting of the shareholders of Allied Irish Banks an din the aftermath of paying £30.5 million to the State in overdue DIRT, interest and penalties, the Chairman, said that the whole DIRT business was an "unhappy episode" and "a regrettable episode". It seems that in this context that power and status are a bit like love. They mean never having to say you are sorry.

One thing is clear from the D.I.R.T. hearings. Powerful financial institutions did not have to provide much by the way of explanation or justification to account for their facilitation of tax evasion. This was largely because nobody in authority really saw it as a serious problem. The institutions were allowed to see the issue of compliance with tax legislation as merely a technical matter to be sorted out between officials of like mind. This attitude was facilitated by the manner in which tax officials move from positions in the revenue service and the Department of Finance to senior positions in the financial institutions and in the Central Bank. If this kind of rotation of personnel is combined with the existence of a shared community of assumptions between banks, the revenue commissioners and the Central Bank, then this group has the necessary qualifications for being identified as a power elite.

Notes

1. Matza was writing in less gender sensitive times and so used the male personal pronoun "he" in all of his work. He may also have been reflecting the fact that most delinquents who come to the attention of the law are male.
2. The accounts presented here are drawn from the report of the Committee of Public Accounts on its Parliamentary Inquiry into DIRT. A fuller account would need to include the investigation by the Comptroller and Auditor General into DIRT evasion.

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