### 14 Financial crises and financial crime: ‘conscious coupling’ and ‘transformative understandings’ of crime past, present and future

#### Sarah Wilson

The year 2017 will mark the tenth anniversary of the onset of the global financial crisis. During this decade, numerous accounts of the events leading to this have emerged, and with these, a multitude of different ways seeking to recount or actually understand this ‘once-in-a-lifetime’ crisis1 with its roots in the US sub- prime mortgage crisis, and which transcended into the ‘first crisis *of* globalisation’.2 These narrative threads all in some way tell the story of extensive impropriety associated with widespread debt finance, which became exposed initially by the US sub-prime mortgage crisis. The origins of the US crisis lay in cuts in interest rates during 2001–03, in response to concerns about an economic downturn.3 When combined with political support for democratising home ownership, this resulted in the aggressive pursuit of low-income groups by lenders, which was itself emboldened by historic house price patterns. This in turn attracted interest from investment banking, which, armed with statistics projecting continuing house price rises and relating to patterns of mortgage default, set about purchasing them and repackaging them into debt-based investment instruments/vehicles. In spring 2007, reports of significant losses being experienced in US investment banking started to ‘spill over’ to European institutions exposed to the now deeply troubled US sub-prime market. In September 2007, Bank of England Governor Mervyn King publicised that ‘lender of last resort’4 emergency assistance would be forthcoming for any bank experiencing short-term difficulties from extreme conditions, which first appeared likely to be short-lived. This provided a forecast



1. A. Haldane and V. Madouros, ‘The dog and the frisbee’ (Federal Bank of Kansas Economic Policy Symposium, Jackson Hole, Wyoming, 31 August 2012), 24.
2. G. Brown, *Beyond the Crash: Overcoming the First Crisis of Globalisation* (London: Simon & Schuster, 2010).
3. The policy pursued by Alan Greenspan, then head of the body responsible for setting interest rates, the US Federal Reserve Board.
4. Mervyn King’s letter to the Treasury, 12 September 2007, and to then Chancellor Alistair Darling MP, 13 September 2007, referencing the iconic construct developed by Walter Bagehot (1873): see also the Bank of England’s news release, ‘Liquidity support facility for Northern Rock plc’, 14 September 2007.

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for how UK lender Northern Rock’s request for Bank of England assistance – received on 13 September 2007 and announced the following day – marked the arrival of the global financial crisis in Britain.

##### Background and context

The difficulties experienced by Northern Rock flowed to a very significant degree from how the business of this (self-proclaimed) ‘specialised lender’ – and which lay in ‘the provision of UK residential mortgages’ – was funded by ‘both the retail and wholesale markets’,5 and had been sustained through borrowing from its wholesale business.6 Despite conscious expansion of its overseas market-base in order to manage this risk, the simultaneous seizure of all its key markets left it ‘absolutely unable to finance [. . .] wholly illiquid assets’, once the markets for mortgage-based securities closed.7 This set of events would lead in turn to the institution seeking Bank of England emergency liquidity assistance, and being placed in partial public ownership. This was the first of three major banking failures, with RBS (Royal Bank of Scotland) and HBOS (Halifax Bank of Scotland) seeking emergency assistance in 2008, and with highly profiled enquiries for the latter two being published respectively in 20118 and 2013,9 following the pattern of criticism set in 2008 by ‘the run on the Rock’. In between these dates, a Consultation Paper from the Bank of England captured a mood for regulatory reform:



The global financial crisis has demonstrated the need for fundamental reform of the financial system. The underlying structure of the international financial and monetary system is being re-evaluated. Whatever its structure, the pru- dential regulatory framework will need to be re-oriented to have a system-wide focus. And improvements need to be made to allow financial institutions to fail without imposing unacceptable costs on the rest of society10



It *is* the case that seven years have now passed since this statement was made, some two years following the onset of the crisis. And even in 2009, the pace of reform and actually the likelihood of achieving reform merited by a ‘once-in-a- lifetime’ crisis was attracting criticism and even cynicism about the prospects

1. Northern Rock, Community Report 2006, cited in The House of Commons Treasury Committee Report on Northern Rock: *The Run on the Rock*, HC 2007–8, 56–1, 9.
2. Ibid., 13, through expansion of its so-called ‘originate to distribute’ activity: terminology for securitising rather than holding (‘originate to hold’) assets/liabilities.
3. Ibid. 18.
4. FSA Board, *The Failure of the Royal Bank of Scotland* (London: FSA, 2011).
5. Parliamentary Commission on Banking Standards, *‘An accident waiting to happen’: The Failure of HBOS*, Fourth Report of Session 2012–13, HL Paper 144/ HC Paper 705.
6. Bank of England, *The Role of Macroprudential Policy: A Discussion Paper* (London: Bank of England, 2009), 3.

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of securing this. For some, humanity’s immense capacity for convincing (and actually deluding) ourselves that ‘this time is different’ would prevent us learning valuable lessons from our previous experiences of crisis.11 Further indication from this point in time that regulatory reform was unlikely to be either extensive and far-reaching or ‘fast paced’ arose from continuing economic downturn,12 and forces encouraging continuing ‘as usual’ rather than seeking radical change, as a financial services industry looked set to move from one ‘exhausted grazing pasture’ to the next.13 Notwithstanding this, and recent suggestion that ‘nothing has been learned’14 from the crisis, regulators continue to insist that extensive reform remains a priority. This is evident as part of a continuing sustained critique on the role played by banks in bringing about the crisis; for example, where as part of a stinging attack on short-termism in banking corporate governance, and the role played by this in bringing about the crisis, the Bank of England’s Chief Economist, Andy Haldane, insisted that the seeds of the financial crisis were sown by bankers ‘borrowing too much’ and doing so in many cases to chase ‘higher return to remit to shareholders’.15

Even if the pace of *substantive* change might seem to remain painfully slow, post-crisis discourse *does* point to important and identifiable change in other related regards. This is evident in reflections such as those insisting that a new and aggressive financial culture wholly privileging profit maximisation over all else ensured that this time *was* different, and required responses configured accord- ingly.16 This is also apparent in insistence that the crisis presents the opportunity and also the mandate for a fresh approach across the sweep of societal agendas, including the economy, and that human beings have the capacity to ‘change course’.17 This is readily apparent in new analytical directions which have emerged from the crisis, and which in distinctive ways can be regarded as responses to the assertion that that ‘the crisis and the wrongdoing associated with it can be under- stood in a sophisticated way only by drawing upon many different academic and



1. C. Reinhart and K. Rogoff, *This Time Is Different: Eight Centuries of Financial Folly*

(Princeton: Princeton University Press, 2009).

1. J. Stiglitz, *Freefall: Free Markets and the Sinking of the Global Economy* (London: Penguin, 2010).
2. Z. Bauman, *Living on Borrowed Time* (Cambridge: Polity, 2010).
3. See e.g. E. Dunkley, ‘Banker bashing draws to an end as watchdog scraps review’ *Financial Times* (London, 31 December 2015), reporting the views of John Mann MP.
4. Andy Haldane in an interview given to Duncan Weldon for BBC Newsnight, 24 July 2015: see <http://touchstoneblog.org.uk/2015/07/andy-haldane-shareholder-primacy-is-bad-> for-economic-growth.
5. D. O. Friedrichs, ‘The financial crisis as white collar or economic, crime and the criminogenic architecture of Wall Street’, *Economic Crime and the State in the Twentieth Century: A German–American Comparison*, German Institute of Historical Research, Washington DC, 14 April 2011, cited with permission.
6. R. Williams, speech accompanying the launch of R. Williams and L. Elliott (eds) *Crisis and Recovery: Ethics Economics and Justice* (Basingstoke: Palgrave, 2010), 28 September 2010, at <http://rowanwilliams.archbishopofcanterbury.org/articles.php/941/crisis-and-recovery-> book-launch-28th-september.

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approaches, which encourage examining these events and their impact using indices beyond traditional ones. In discourses for determining the onset and con- tinuation *of* and recovery *from* periods of ‘crisis’, macroeconomic analysis emphasising data relating to GDP, import and export figures and rates of inflation and unemployment etc. predominates, alongside increasing attention being paid to macroprudential assessments of financial system resilience through stress- testing and scenario analysis.19 Alongside this, it has been suggested, can now be seen discernible newer strands of analysis which have become identified with the onset and continuation of this ‘once-in-a-lifetime’ crisis.20

##### Identification of the significance of ‘transformation’: substantive and intellectual reactions to the global financial crisis

From this sweep of new analytical approach, two trends are particularly notable. The first of these in many ways provides the most direct critique of conventional, and primarily economics-focused analyses of periods of financial instability embodied in the parlance of ‘crisis’. This is built on a very specific recent assertion that financial markets are social spaces as well as economics ones,21 and of how periods of financial and wider instability impact hugely on social well-being and raise important issues for social justice.22 This direction grafts effectively onto longer-standing critical assertion that the impact of business upon society ensures that its operations within society cannot be seen merely in economic terms.23 In response also to how the global financial crisis is widely associated with failings in banking specifically, both in popular parlance24 and in the orientation of regulatory reform,25 socially focused analyses of the crisis are becoming attached to its impact



1. D. O. Friedrichs, ‘Wall Street: crime never sleeps’ in S. Will *et al*. (eds), *How They Got Away With It: White Collar Criminals and the Financial Meltdown* (New York: Columbia University Press, 2012), 4.
2. See e.g. Bank of England, *The Role of Macroprudential Policy: A Discussion Paper* (Macroprudential Discussion Paper, 2009). For general discussion, see E. Ferran *et al*. (eds) *The Regulatory Aftermath of the Global Financial Crisis* (Cambridge: Cambridge University Press, 2012); and E. Wymeersch *et al*. (eds) *Financial Regulation and Supervision: A Post- Crisis Analysis* (Oxford: Oxford University Press, 2012).
3. A. Haldane and V. Madouros, ‘The dog and the frisbee’, above n. 1. 21 R. Williams, speech, above n. 17.
4. As a pervading theme for Friedrichs, above n. 18; see also J. Welby, ‘Repair or replace: where do we start among the ruins?’ (Lecture for Finanzethikon, Zurich, 26 October 2012).
5. See e.g. L. E. Mitchell (ed.) *Progressive Corporate Law* (Oxford: Westview Press, 1995).
6. As evident in what has become known as ‘banker bashing’, widely to be found in the press; for example, the view that ‘Banks are the biggest scroungers of public money – solutions will not simply materialise if we don’t keep up the pressure’, as expressed in S. Hundal, ‘Why we need more banker bashing’, *Guardian* (London, 7 February 2012).
7. As evident in the summary of the essence of post-crisis reform set out in Bank of England,

*The Role of Macroprudential* Policy, above n. 10, 3.

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for the poorest in society,26 and even to assert that leading up to the crisis, banking had become ‘socially useless’,27 and demand that it must once again become ‘socially use*ful*’.28 It is the second identifiable strand of novel analysis of financial crises which pertains to this analysis. Here, it is argued that the global financial crisis has had a profound impact on how periods of crisis are analysed through the prism of ‘financial crime’. And, moreover, that a sizeable body of scholarship now testifies to increasing scholarly inclination to pursue enhanced understanding of financial crises – in terms of cause and effect – through analyses of financial *crime*.29 It is from this increasing, and increasingly identifiable, ‘financial crisis–financial crime’ nexus that the hypothesis of a ‘conscious coupling’ of these conceptualis- ations is now being advanced. As suggested, this is readily apparent in scholarly analysis of the financial crime, and where this can be found in legal scholarship from across a wide range of substantive interests, and also in cognate disciplines such as criminology/sociology,30 and increasingly history;31 and where ‘newer’ interest is also coming from anthropology32 and neuroscience.33 It is also the case that a ‘conscious coupling’ of the financial crisis with financial crime is also evident in policy calling for, and actually implementing, post-crisis regulatory reform. The latter can be found both in implicit references to the importance of the ‘wrongdoing’ associated with the crisis in the calibration of new responses: for example, in insistence that leading up to the crisis, within a financial services industry which served none but itself,34 and in assertions that in a wider context of rising inequality, bankers became ‘first among unequals’.35 It is also evident in



1. See e.g. Centre for Social Justice, *Maxed Out: Serious Personal Debt in Britain*, November 2013; and Centre for the Study of Financial Innovation North East Credit Unions Report, *Helping the Financially Excluded: Supporting Credit Unions*, November 2012.



1. Lord Turner (then FSA Chairman), Mansion House Speech (London, 22 September 2009). 28 See perspectives from Bank of England Executive Director (and then head of Financial Stability, and now Chief Economist and Executive Director Monetary Analysis & Statistics),

Andy Haldane; and Archbishop of Canterbury and subsequently Parliamentary Commission on Banking Standards member, Justin Welby: A. Haldane ‘A leaf being turned: Occupy Economics, “Socially useful banking”’ (Friends’ House, London, 29 October 2012); and

J. Welby, ‘Repair or replace’, above n. 22, and also ‘How do we fix this mess? Long-term solutions to the financial crisis’ (Westminster, 22 April 2013, accessible at [http://www.](http://www/) archbishopofcanterbury.org/articles.php/5050/how-do-we-fix-this-mess-archbishop-justin- on-restoring-trust-and-confidence-after-the-crash).

1. See S. Wilson, review of N. Ryder, *The Financial Crisis and White-collar Crime: The Perfect Storm*? (Abingdon: Routledge, 2014), Rutgers School of Law and School of Criminal Justice (2015) ‘Criminal law and criminal justice books’, [http://clcjbooks.rutgers.edu.](http://clcjbooks.rutgers.edu/)
2. E.g. D. O. Friedrichs, ‘Wall Street’, above n. 18.
3. E.g. S. Wilson, *The Origins of Modern Financial Crime: Historical Foundations and Current Problems in Britain* (Abingdon: Routledge, 2014).
4. J. Luyendijk, *Swimming with Sharks: My Journey into the World of the Bankers* (London: Guardian Faber, 2015).
5. J. Coates, *The Hour between Dog and Wolf: Risk-taking, Gut Feelings and the Biology of Boom and Bust* (London: Fourth Estate, 2012).
6. See J. Welby, ‘Repair or replace’, above n. 28.
7. A. Haldane, ‘A leaf being turned’, above n. 28, 4.

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direct references; for example, to ‘extremely risky deals’ in precipitating the onset of the crisis,36 and actually to laws being broken during it.37 It can also be located within narratives for new laws being put in place in the domestic sphere in order to punish wrongdoing and to prevent further infractions, such as new criminal liability for benchmark manipulation,38 and in connection with a decision by a senior officer causing a financial institution to fail.39

In this regard, the academic scholarship which has emerged from the crisis shows how ‘conscious couplings’ of financial crime with financial crisis fall on a wide spectrum of analytical viewpoints. Many academic works suggest that the crisis is likely to influence approaches to financial crime enforcement very signifi- cantly in terms of intensifying enforcement interest in and prioritisation of financial crime.40 A number of these perspectives point to distinct but clearly closely related views that the financial crisis is likely to affect very profoundly how financial crime is perceived and analysed.41 In other perspectives, the ‘conscious coupling’ of financial crime with ‘crisis’ subsists even more powerfully in assertions that the *causes* of the financial crisis can be located in the occurrence of financial crime.42 It is from this latter proposition of *causation* that the one of a further *consequences*-based relationship between financial crime and crisis arises, and one which is different again from those set out above. This posits that the crisis is capable of engendering ‘transformative understandings’ of crime.43 The trope of ‘transformation’ in societal understandings of crime is premised on the causes- based theory that financial crime can be seen at the heart of the ‘catastrophe’ of 2007–08.44 More is said about this, and also about the nuances of this basic premise shortly, and its relationships with consequences-based analyses set out above. What remains to be clarified at this stage is what is actually meant by ‘financial crime’.



##### Transformative understandings and fundamental conceptualisations: what is meant by ‘financial crime’?

The exploring ideas of causation between financial crime and the financial crisis, and also proposing the latter as a moment capable of marking transformations in understandings of crime, is likely to place Friedrichs’ work among the most

1. HM Treasury, *Sanctions for the Directors of Failed Banks* (London, July 2012), 5–6, para 2.2 and Box 2A.
2. See S. Rustin, ‘Andrew Tyrie: fresh from the HBOS debacle, now serious about reform’,

*Guardian* (London, 20 April 2013).

1. S.91 Financial Services Act 2012, as considered below in the main text.
2. S.36 Financial Services (Banking Reform) Act 2013, as considered below in the main text. 40 See e.g. R. Tomasic, ‘The financial crisis and the haphazard pursuit of financial crime’ (2011)

*Journal of Financial Crime*, 18 (1), 7.

41 See e.g. S. Wilson, *The Origins of Modern Financial Crime*, above n. 31. 42 See e.g. D. O. Friedrichs, ‘Wall Street’, above n. 18.

1. Ibid.
2. Ibid.

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influential to be generated by the crisis. Furthermore, Friedrichs’ work also illuminates how financial crime might usefully be defined for these purposes. The need for illumination itself flows from how the terminology of ‘financial crime’ can be found commonly used, but it is seldom explained.45 This, in turn, is problematic, because ‘financial crime’ is also a term which can be widely applied across a spectrum of wrongdoing. It is also the case that there is also no inter- nationally agreed definition of financial crime. In noting this in 2001, the IMF and World Bank set out some illustrative examples of what could be brought within the rubric of ‘financial crime’, considering the terminology of ‘financial abuse’. The latter, it was suggested, could be widely applied instead of ‘financial crime’ in many instances, and that doing so would also capture the spectrum of approaches to configuring financial ‘wrongdoing’ across different States.46 For analyses which speak of financial crime rather than financial abuse, there is a strong connection between financial crime and what is regarded as ‘white-collar crime’. The term ‘white-collar crime’ is an example of how a technical and intellectually focused construct has crossed over into popular consciousness and become a ‘public lexicon’.47 However, even as a construct of sociology/criminology, ‘white-collar crime’ was contentious from the moment Edwin Sutherland coined it as the unlawful activity of persons of high social status and respectability, and committed in the course of occupation,48 and has remained the subject of extensive criticism.49 Notwithstanding, academic interest in financial crime specifically can be traced to Sutherland’s classification of different species of white-collar crimes, where he included ‘misrepresentations of asset values’, approximating with ‘fraud’ and ‘swindling’.50



From this, what might be called a ‘white-collar crime–financial crime nexus’51 can be seen in academic social science scholarship in the domestic sphere. It can also be seen utilised by UK authorities, as evident in former FSA Director Margaret Cole’s insistence that the ‘financial crime’ of insider dealing was a very serious ‘white-collar crime’.52 This use of the terminology of ‘financial crime’ by the UK

1. See e.g. S. Wilson, ‘Embedding responses to financial crime in nineteenth-century Britain: conform[ing] to the popular stereotype of “the criminal”’ and challenging criminal and respectable identities’, in *Crime, Identity and Economics: New Research and Approaches* (London: Institute of Historical Research, 2015).
2. IMF and World Bank, *Financial System Abuse, Financial Crime and Money Laundering – Background Paper* (Washington DC: IMF, 2001), especially paras 5, 7 and 9.
3. S. Rosoff *et al., Profit without Honor: White-Collar Crime and the Looting of America* (Upper Saddle River, NJ: Prentice Hall, 2010), especially 3–5.
4. E. H. Sutherland, *White-Collar Crime* (New York: Dryden Press, 1949), 9.
5. See e.g. D. Nelken, ‘White-collar crime’, in M. Maguire *et al*. (eds) *The Oxford Handbook of Criminology* (Oxford: Oxford University Press, 1994), 355.
6. Alongside duplicity in the manipulation of power – the double cross: see E. H. Sutherland, ‘White-collar criminality’ (1940) *American Sociological Review* 5, 3.
7. See e.g. S. Wilson, review of N. Ryder, above n. 29.
8. M. Cole, ‘The FSA’s approach to insider dealing’, American Bar Association Speech, 4 October 2007.

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enforcement community can in turn be situated alongside definitions not only located in social science, but actually in law itself. Here, legislation, setting out the regulatory regime for UK financial services, and the role of the regulator has, since 2000, defined financial crime as ‘any offence involving (a) fraud or dishonesty,

1. misconduct in, or misuse of information relating to, a financial market,
2. handling proceeds of crime’.53 And in focusing on ‘crime in the commercial sphere’,54 this overview of the transformative effects of the financial crisis for financial crime suggests that much value lies in equating the conventional terminology of financial crime with Friedrichs’ definition of ‘finance crime’. This definition of ‘large-scale illegality that occurs in the world of finance and financial institutions’55 is capable of accommodating a range of individual research interests.56 Its reference to illegality also signposts a return to considering why and how financial crime might be considered to have caused the financial crisis and why, as a consequence of this, ‘transformative understandings’ of crime might now transpire.

In the spirit of insisting that it is only through drawing upon many different academic and professional perspectives that a sophisticated understanding of the crisis and the wrongdoing associated with it, Friedrichs’ analysis of the global financial crisis was likely to be nuanced. But he also proposed that ‘fraudulent misrepresentations in many different forms and on many different levels’ were clearly at its centre.57 This latter observation’s significance for this analysis flows from how, for Friedrichs, it pointed to the criminogenic architecture of high finance, and how this in turn both justified and also necessitated radical rethinking of the impact of crime on society.58 Friedrichs’ reference to ‘architecture’ sought to capture a milieu characterised by conditions ‘that promote criminal activities and actions’,59 while the challenges of communicating such a message is clearly readily apparent to him. The stress being placed on changing or transforming conceptions of crime in societal consciousness required greater attention to be paid to harm emanating from high finance, alongside activities traditionally thought of as being ‘socially injurious’.60 For Friedrichs, societal acceptance of this



1. This is set out in the Financial Services and Markets Act 2000; the Financial Services Act 2012 added to this ‘(and adding to this ‘(d) the financing of terrorism’).
2. Lord Irvine, then Lord Chancellor, Law Commission, *Fraud and Deception A Consultation Paper*, CP No. 155 (London: HMSO, 1999), para. 1.4.
3. D. O. Friedrichs, *Trusted Criminals: White Collar Crime in Contemporary Society* (Belmont: Thomson Wadsworth, 1996), 156.
4. See e.g. N. Ryder, *The Financial Crisis and White-collar Crime: The Perfect Storm?*, discussion of how this includes sub-prime mortgage lending (itself, alongside actual mortgage fraud) and predatory lending, alongside the flawed activities of Credit Rating Agencies, Ponzi schemes and the ‘Financial War on Terror’.
5. D. O. Friedrichs, ‘The financial crisis as white-collar or economic crime’, above n. 16. 58 D. O. Friedrichs, ‘Wall Street’, above n. 18, 17 *et seq*.

59 Ibid., 20, 15.

60 The parameters for the State’s interest in punishing and preventing socially injurious behaviour on the part of its citizens is classically expressed in G. Williams, *Textbook of Criminal Law* (London: Stevens and Son, 1983).

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unconventional ‘street crime’,61required – as it did for Sutherland – emphasis on defining crime sociologically, so as to include activities beyond those which violated criminal laws, and which should be criminalised on account of their injurious nature.62

##### Reactions to financial crime – in times of transformation and predating it?

The theme of transformation running through Sutherland’s work is evident in his aspiration for a ‘unified’ criminological theory,63 which would ensure that activities he termed white-collar crimes would be perceived and enforced in ways which reflected their qualitative nature, rather than the status of their perpetrator. For Sutherland, notwithstanding that the workloads of the criminal courts did not reflect this,64 white-collar crimes could be found distributed across a spectrum of *mala prohibita* and *mala in se*.65 In the non-observance of this, Sutherland identified ‘unorganised [societal] resentment’ rather than positive societal affirmation that white-collar crimes did not merit or necessitate greater perceptual or enforcement attention.66 Friedrichs’ message is very much that the financial crisis is capable of mobilising public resentment towards financial crime; and that recalibrations of perceived ‘harm’ emanating from financial dealings are required to bring about requisite changes in public consciousness concerning what is permissible in this setting and what is not so. Here, ‘transformative understandings of crime’ were required in order to redress the position whereby ‘activities with relatively mild harmful consequences for society are accorded much attention and treated harshly’, while ‘activities with demonstrably major harmful consequences for society are accorded little attention and only very selectively addressed’.67 From this, Friedrichs hypothesised that societal indifference for financial crime could break down and be replaced by levels of societal repugnance for the ‘millions of lost homes, jobs and savings, along with broad and devastating effects on the physical and mental well-being of millions of people’ being associated with the crisis and its aftermath.68



Friedrichs’ commentary on the crisis – as one on the absence of ‘collective consciousness’ about the nature of crime in relation to harm’69 – has strong echoes of Sutherland’s work generally, and specifically his hypothesis of ‘unorganised

1. D. O. Friedrichs ‘Wall Street’, above n. 18, 9.
2. Ibid., 15, with the most famous expression of this to be found in E. H. Sutherland, ‘Is “white collar crime” crime?’ (1945) *American Sociological Review*, 10, 132.
3. E. H. Sutherland, ‘Is “white-collar crime” crime?’, above n. 62, 132. 64 Ibid., 136–137.

65 Ibid., 139.

66 Ibid., 137–138.

67 D. O. Friedrichs, ‘Wall Street’, above n. 18, 20. 68 Ibid., 19–20.

69 Ibid., 20.

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resentment’. Friedrichs’ message, although clear and unequivocal, is located within a deeply divided branch of scholarship, characterised by a wide spectrum of views on what might be called white-collar crime’s ‘special nature’.70 These divisions are also longstanding and emerged from criticism of Sutherland’s work by his contemporary adversary Paul Tappan. In response to Sutherland’s proposition that defining crime sociologically would bring it within the framework of ‘crime’ activity which *should* be classed as criminal, alongside that which already is so, Tappan replied not only that the only proper definition of crime arises from its prohibition using criminal law and enforcement through criminal processes, but he also insisted that many of the activities, which Sutherland wished to classify as crimes, subsisted as part of the framework of accepted (and thereby legitimate) ‘business practice’.71 These divisions set in motion the ‘special nature’ of white- collar crimes, which has become a scholarly battleground for asserting that white-collar crimes are qualitatively different from ‘conventional’ crimes, because of several factors, including that they commonly arise as a secondary or ‘collateral’ consequence from prima facie lawful business activity,72 or that purported difference drawn between them and ‘ordinary’ crimes is a socially constructed ‘smoke screen’, applied to ‘explain’ differences in perception and enforcement which cannot otherwise be justified73 – and where the very latter proposition of ‘bias’ is itself highly contested.74

One area of scholarly agreement within this discourse is that ‘white-collar crime’ is one of the most highly contested sociological/criminological constructs ever. And while another of its rare qualities lies in how it has transcended intel- lectual interest and passed into public discourse, it is also the case that its location in public discourse mirrors divisions evident within academic scholarship.75 This is evident in Friedrichs’ regard for the financial crisis as a ‘game changer’ for societal attitudes towards financial crimes, and for how the magnitude of this global catastrophe would affect millions for many years to come.76 Here, a narra- tive for ‘banker blame’ for the crisis, which emerged swiftly and easily from more generalised criticisms of a financial services sector, which had served nothing and no one but itself, lies at the heart of Friedrichs’ hypothesis of the crisis as a time



1. See extensive discussion of this as a construct for analyses of white-collar crime, in S. Wilson,

*The Origins of Modern Financial Crime*, above n. 31.

1. P. Tappan, ‘Who is the criminal?’ (1947) *American Sociological Review*, 12, 96; see especially 96–100.
2. See e.g. D. Nelken, ‘White-collar crime’, above n. 49, 374.
3. Ibid., where Nelken considers this through discussion of ‘seven types of ambiguity’ associated with white-collar crime.
4. S. Wheeler *et al*., ‘Sentencing the white-collar offender: rhetoric and reality’ (1982) *American Sociological Review*, 47, 641.
5. An example of the former can be seen in R. Tomasic, ‘The haphazard pursuit of financial crime’, above n. 40; and the latter in J. Symington ‘Challenging the culture of market behaviour’, Speech, City and Financial Market Abuse Conference, 4 December 2012.
6. D. O. Friedrichs, ‘Wall Street’, above n. 18, evident in his references (e.g. at 20) to the harms, and themes of ‘transformative collective consciousness’ of crime.

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that will enable attitudes towards financial crime to transform. And echoes of Friedrichs’ views on the capability of the crisis for rethinking societal concerns about crime and its impact, and the importance of doing so, are evident in how UK regulators have linked banker blame with criminal liability.77

More is said shortly about how the financial crisis might now be influencing approaches being taken to financial crime in its aftermath. This is pursued through considering briefly whether there is evidence of such a ‘transformative movement’ taking hold, and also the complexities entailed in assessing this, and how the latter might be linked to difficulties raised by the ‘should’ question. Here, the trope of ‘transformation’, as it is being used by Friedrichs, appears to signal Friedrichs’ support for Sutherland’s normative approach, and where the tradition of critique surrounding Sutherland’s ideas and his legacy may raise questions about its cur- rency and value in the search for new narratives for reacting to and calibrating responses for financial crime. However, it is also the case that Sutherland’s ideas have endured across a timeframe now spanning seventy-five years, and they have arguably done more than simply endure. Indeed, there is evidence of a ‘Sutherland revival’ in more recent attempts to make sense of the perceptual and enforcement challenges presented by white-collar crime. Indeed, two of the most influential scholarly works to emerge during the last decade – in turn, theorising white-collar crime through prisms of ‘lying cheating and stealing’78 and ‘opportunity perspec- tive’79 – have posited that Sutherland is ‘rightly remembered and venerated’ for his critique of criminological theory and for stimulating criminologists’ interest in societal vulnerabilities arising from structural inequality in criminal justice responses,80 and how alternatives to this highly contested concept have failed to unite disciplinary and linguistic practices.81



##### The mechanics of ‘transformation’: new responses and ‘collective [societal] consciousness’

In utilising this current intellectual appetite for acknowledging Sutherland’s continuing importance generally, specifically in the context of financial crime, the importance which Friedrichs attaches to Sutherland’s work is manifest in the former’s entreaty for transformations in ‘collective consciousness’ of financial crime. Much can be learned from Sutherland’s original work about *how*

1. See Andy Haldane’s suggestion that there would be calls for bankers’ ‘heads on sticks’ in Haldane, ‘A leaf being turned’, above n. 28, 6; and Andrew Tyrie’s musings on bankers in ‘orange jumpsuits’ in S. Rustin, ‘Andrew Tyrie: fresh from the HBOS debacle, now serious about reform’, above n. 37.
2. S. P. Green, *Lying, Cheating and Stealing: A Moral Theory of White-Collar Crime* (Oxford: Oxford University Press, 2006); and M. L. Benson and S. S. Simpson, *White-Collar Crime: An Opportunity Perspective* (London: Routledge, 2009).
3. M. L. Benson and S. S. Simpson, *White-Collar Crime*, above n. 78. 80 Ibid., 87–88.

81 S. P. Green, *Lying, Cheating and Stealing*, above n. 78, 9–10.

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‘transformative understandings’ of crime can be achieved. This entails under- standing social processes involved in the recognition of behaviour as harmful and worthy of public rebuke and punishment by the State, and where Friedrichs’ ideas on arousing ‘community consciousness’ about financial crime, which is different from that traditionally subsisting,82 points to the value of Sutherland’s views on how such a ‘community consciousness’ might be built:

The relationship between the law and the mores tends to be circular. The mores are crystallized in the law and each act of enforcement of the laws tends to re-enforce the mores. The laws regarding white-collar crime, which conceal the criminality of the behaviour, have been less effective than others in re-enforcement of the *mores*.83

For Sutherland, effective criminal laws were ones which were extensively enforced, thereby giving them high visibility in society, where this helps to embed societal consensus around wrongdoing, and where, by contrast, ineffective laws do not generate this societal recognition. The long tradition of perception that financial crimes are under-enforced and unsuccessfully enforced within many jurisdictions would appear to evidence Sutherland’s thinking in this regard, and this has inspired numerous academic perspectives on in/visibility of activities from societal consciousness of crime and enforcement of it.84 In 1995, it was posited that ‘[n]o jurisdiction has had [. . .] great [. . .] success [using] criminal law in combating sophisticated abusive activity on its capital markets’,85 but a decade earlier, Lord Roskill had noted that the largest and most cleverly executed crimes remained unpunished within the legal system of England and Wales.86 And following the crisis, it has been suggested that financial crimes are ‘among the most difficult crimes for the legal system to deal with, let alone control’.87



The difficulties associated with apparent lack of effectiveness of criminal enforcement in this sphere, identified in 1995 by Barry Rider, were those flowing from ‘[t]he standards and procedures of the traditional criminal justice system, which are necessary to ensure general civil and human liberties’ presenting ‘almost insurmountable barriers to the effective prosecution of economic crime’.88 Applying Sutherland’s theory of circularity between law and social mores to these activities, it becomes possible to see how financial crime becomes concealed

1. D. O. Friedrichs, ‘Wall Street’, above n. 18, 20.
2. E. H. Sutherland, ‘Is “white-collar crime” crime?’, above n. 62, 139.
3. See e.g. P. Davies *et al.* (eds), *Invisible Crimes: Their Victims and Their Regulation* (Basingstoke: Macmillan, 1999), especially the excellent summary of this conceptualisation given in P. Davies *et al*., ‘The features of invisible crimes’, 3–28.
4. B. Rider, ‘Civilising the law – the use of civil proceedings to enforce financial services law in the United Kingdom’ (1995) *Journal of Financial Crime*, 3(1), 11, 13.
5. Lord Roskill, *Fraud Trials Committee Report* (London: HMSO, 1986), para. 1.6. 87 R. Tomasic, ‘The haphazard pursuit of financial crime’, above n. 40.

88 B. Rider, ‘Civilising the law’, above n. 85, 13.

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*from* and thereby concealed *within* societal consciousness. Aubert’s proposition in 1952 of the absence of harmony between law and social mores89 is clearly understood in the domestic context, and can be seen very plainly in the Treasury’s identification of difficulties associated with criminal enforcement in 2012. Without any reference being made to academic literature, this Consultation reiterated very closely the problems identified by Rider in 1995, while looking to assert very strongly the value and the essence of criminal enforcement in the sphere of financial misconduct.90 The Treasury was concerned with financial infractions of a highly specific nature, connected with ‘extremely risky’ conduct on the part of senior executives within financial institutions.91 But these difficulties have been identified by the FSA in the context of its enforcement of market abuse, where this comprises insider dealing and market manipulation.

While the FSA and now the FCA’s interfacings with financial crime arise directly from its regulatory objectives, and ensure that it is not a ‘mainstream prosecutor’ of financial crime,92 its then Director of Enforcement Margaret Cole opined in 2007 that its activities here were challenging, in ways which are identifiable with financial crime enforcement more broadly. Here, Ms Cole referred to the absence of a ‘smoking gun’, and the reality of being based on financial transacting, which is complex and not at all ‘jury friendly’.93 Furthermore, her insistence that market abuse is a financial crime which is a ‘very serious white-collar crime’, notwithstanding that it ‘may not attract the immediate moral outrage of a violent crime against a person’,94 also shows an understanding of the essence of Sutherland’s hypothesis of circularity between law enforcement and public consciousness of crime. This message is also clearly normatively configured, highlighting the importance of changing popular perceptions of these criminal activities, in ways which are identifiable with Friedrichs’ more recent rendition of Sutherland’s work. More recently still, Chancellor of the Exchequer George Osborne explained that those who ‘commit financial crime should be treated like the criminals they are – and they will be’.95 While it can be argued that the Chancellor glossed over far too much the complexity belying his ‘clear message’ that there is to be ‘no trade-off between high standards of conduct and competitiveness. Far from it’,96 his recognition of the need for transformation in this sphere is evident, alongside his allusion even to the transformative qualities of the financial crisis and its fall-out.



1. V. Aubert, ‘White-collar crime and social structure’ (1952) *American Journal of Sociology*, 58, 263, 266.
2. HM Treasury, *Sanctions for the Directors of Failed Banks*, above n. 36, 15, paras 4.14–4.17. 91 Ibid., 5–6, para. 2.2, and Box 2A
3. References made to this during the FSA’s lifetime include that of then CEO Hector Sants, in ‘ Delivering intensive supervision and credible deterrence’, Reuters Newsmakers Event Speech (London, 12 March 2009).
4. M. Cole, ‘The FSA’s approach to insider dealing’, above n. 52. 94 Ibid.
5. Rt Hon. George Osborne MP (then Chancellor of the Exchequer), Mansion House Speech (London, 10 June 2015).
6. Ibid.

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##### A new era of response to financial crime? And a time of ‘transformation’?

The importance of new era and time of transformation are readily apparent in how George Osborne’s speech also remarked that ‘[t]he public rightly asks why it is that after so many scandals, and such cost to the country, so few individuals have faced punishment in the courts’.97

At this point it is pertinent to reflect on whether current domestic approaches to financial crime enforcement can properly be termed ‘transformative’. In insisting that the financial crisis was capable of engendering transformations in community consciousness of crime, which would allow appropriate levels of societal recognition, that prima facie lawful financial dealings are capable of causing very significant harm for society, and also that this ‘transformation’ should occur, Friedrichs was also acutely conscious of how challenging achieving this would be. It would involve breaking down societal fixation with unlawful activities ‘with relatively mild harmful consequences for society’,98 and require re-education on the causes and consequences of harm for society. Clearly the visible nature of much low-level ‘street crime’ lends itself easy political ‘wins’ arising from publicly focused reassurances about being ‘tough on crime’,99 and it is not difficult to see how this becomes enmeshed in enforcement priorities, metrics and targets built on these. However, George Osborne’s message also speaks to the perceived need to challenge traditional equations of the ‘threat’ of crime with crime which has been termed ‘ordinary’, ‘traditional’ and ‘conventional’ in nature and origin,100 and to put in place responses which ensure that this happens.



In terms of whether there is any evidence of such a transformative movement occurring, the domestic context can reveal much about what indices of transfor- mation might actually be, and also the complexity and nuance required to ascertain this. Very shortly after the Chancellor’s 2015 Mansion House speech, CitiBank trader Tom Hayes became the first to be convicted of Libor manipulation, following the Libor-fixing scandal exposed in 2012.101 This is what Andrew Tyrie MP – who had chaired the Parliamentary Commission on Banking Standards appointed in the wake of the scandal – had forecast,102 and while the acquittal of ‘Lord Libor’ Colin Goodman occurred not long afterwards,103 this

1. Ibid.
2. D. O. Friedrichs, ‘Wall Street’, above n. 18, 20.
3. As has become associated with the policy of the New Labour administration from 1997 to 2010.
4. All these terms can be found used in the academic literature on white-collar crime to illustrate the contrasts drawn between white-collar crime and other types of unlawfulness bearing criminal penalty.
5. See ‘Trader jailed for 14 years over Libor rate-rigging’, BBC News (London, 3 August 2015).
6. See S. Rustin, ‘Andrew Tyrie: fresh from the HBOS debacle, now serious about reform’, above n. 37.
7. See ‘Not guilty verdict for Lord Libor’, 25 Bedford Row (London, 1 February 2016).

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was part of a highly profiled and highly publicised series of prosecutions for alleged Libor and Euribor manipulations,104 and for a time it looked as though prosecu- tions for Forex manipulations could also follow fines from US and UK regulators.105 Moreover, not only was Tom Hayes’ conviction upheld after his appeal against it, but the Court of Appeal took the opportunity to issue a stern warning that more criminal actions would follow, and so too would even sterner sentences, in order to reflect ‘the serious harm caused and the need for deterrence’ in response to those whose ‘dishonest action not only damages financial markets but actually the general prosperity of the state’.106 Tom Hayes has since been denied appeal to the Supreme Court,107 and within one day of this being reported, new criminal liability for those whose decisions cause the failure of a financial institution, where dishonesty is not required, came into force in domestic law; namely, liability pursuant to s.36 Financial Services (Banking Reform) Act 2013.108

Furthermore, in response to the Libor scandal, a new specific crime of bench- mark manipulation was created by virtue of s.91 Financial Services Act 2012. It was, of course, this legislation which created the new UK conduct regulator, the Financial Conduct Authority (FCA), as part of the new ‘twin peaks’109 regulatory regime, following the perceived failings of the Financial Services Authority exposed by the financial crisis.110 The FCA has already secured six con- victions for insider dealing in its short lifetime and is currently prosecuting a further six.111 Post-legislative scrutiny of the Fraud Act 2006, published in 2012, has pointed to how the legislation – and, particularly, a centrepiece general fraud offence – is delivering on its intended objective of assisting the prosecution of fraud very effectively; 112 interestingly, the new offence has been very successfully deployed in response to tax offending.113 Taken together, these occurrences could



1. See L. Fortado, ‘UK prosecutors charge 10 with Euribor manipulation’, *Financial Times*

(London 3 November 2015).

1. See T. Wallace, ‘Forex traders have been shocked into behaving themselves but it might not last, says BoE director’, *Telegraph* (London, 23 July 2015); and ‘SFO drops probe into price-rigging in foreign exchange’, BBC News (London, 15 March 2016).
2. *Hayes v R* [2015] EWCA Crim 1944; para. 98.
3. H. Wilson, ‘Libor-rigger Tom Hayes cannot go to Supreme Court’, *The Times* (9 March 2016).
4. ‘Offence relating to a decision causing a financial institution to fail’: see also Government News Story ‘Senior bankers to face jail for reckless decisions’ (London: HM Treasury, 7 March 2016).
5. See e.g. H. Sants, ‘Delivering “twin peaks” within the FSA’, speech at the British Bankers’ Association briefing, London 6 February 2012.
6. As evident in a torrent of highly profiled criticism, exemplified and arguably set in motion in the HM Treasury Report, *The Run on the Rock*, above n. 5: see especially 3 and para. 190 at 81.
7. As evident in FCA Press Release, ‘Two convicted of insider dealing in Operation Tabernula trial’ (9 May 2016).
8. Ministry of Justice Post-legislative assessment of the Fraud Act 2006: Memorandum to the Justice Select Committee (London, 2012).
9. Ibid., 6, para. 16.

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persuasively be regarded as indices of a hardening of response to financial crime. This could also plausibly make them part of what helps to establish a virtuous cycle, in which social mores both lend support to greater criminal enforcement and are in turn reinforced by this. In this light, these occurrences could be regarded as evidence of a ‘transformative movement’ taking hold in relation to financial crime. However, the current vista is more nuanced and more complex than this.

The theme of transformation which is explicit in Friedrichs’ work is also readily apparent in more implicit terms in Tomasic’s forecast that the global financial crisis was likely to signal a retreat from the ‘haphazard pursuit’ of financial crime, underpinned by a hardening of attitudes towards it,114 as a reaction to the per- ceived failings of ‘light touch’ regulation, alongside a stream of exposures of wrongdoing.115 These post-crisis occurrences could quite plausibly suggest that what is being witnessed is not a time of transformation, let alone a ‘trans- formative movement’, but a continuation of an ad hoc – if not ‘haphazard’

– approach, identifying and reacting to the most egregious instances of miscon- duct. And, in this regard, the HSBC-Suisse alleged tax evasion exposures of February 2015 point to egregious conduct of significant magnitude. Just under one year after the exposés had generated reactions from highly profiled UK stakeholders, centrally Her Majesty’s Revenue and Customs (HMRC), the Serious Fraud Office and the Financial Conduct Authority,116 it was announced that following a ‘deep dive’117 into its Swiss private bank, HSBC would not face formal action by the FCA.118 This was notwithstanding that these highly publicised accusations had followed others from 2013, implicating HSBC in money laundering in Mexico.119



##### Transformation of ‘collective consciousness’ or ‘business as usual’: concluding thoughts

Reactions to this outcome embraced both disappointment and surprise, especially so in the light of the severe rebuke received both by HSBC executives and HMRC at the hands of the Public Accounts Committee, led by the formida- ble Margaret Hodge MP.120 However, there are other occurrences which suggest

1. R. Tomasic, ‘The haphazard pursuit of financial crime’, above n. 40. 115 Ibid., especially 7–8.
2. See ‘[HSBC bank] helped clients dodge millions in tax’, BBC News (London, 10 February 2015).
3. See M. Kleinman, ‘FCA ends probe into HSBC Swiss tax affair’, Sky News (London, 4 January 2016).
4. J. Treanor, ‘HSBC escapes action by City regulator following Swiss tax scandal’, *Guardian*

(London, 4 January 2016).

1. J. Thompson, ‘HSBC “humbled” by magnitude of Mexico money laundering scandal’,

*Financial Times* (London, 24 May 2013).

1. See House of Commons Public Accounts Committee, ‘HMRC representatives questioned on tax avoidance and evasion: HSBC’, 23 March 2015.

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against discounting the presence of a transformative movement from the outcome of HSBC-Suisse, or even from the plethora of ‘settlements’, in which financial institutions might have been seen to escape criminal enforcement.121 This is on account of what might be regarded as a global ‘transformative movement’, and where current approaches to market abuse appear to support this. Here, it is the case that the UK’s refocusing on criminal enforcement, in preference to adminis- trative enforcement, in pursuit of the FSA/FCA policy of ‘credible deterrence’,122 will surprise few with any sense of Britain’s longstanding tradition of utilising criminal enforcement.123 The position of the European Union is more interesting on account of the very definite philosophy in favour of administrative enforcement at the heart of the Market Abuse Directive 2003.124

In contrast, the European Commission and European Parliament have both stressed that the new Directive on Criminal Sanctions for Market Abuse (CSMAD 2014) is premised on the belief that ‘Minimum rules on criminal offences and on criminal sanctions for market abuse are essential for ensuring the effectiveness of the EU policy on market integrity’,125 and fundamentally that criminal sanctions are considered to ‘demonstrate a stronger form of social disapproval compared to administrative penalties’.126 The recognition of high-frequency trading in the new Market Abuse Regulation (MAR) 2014127 definition of market abuse can be seen in the recent US criminalisation of ‘spoofing’.128 The first conviction for this was secured in November 2015 in the case of Michael Coscia.129 Furthermore, during 2016, US authorities successfully secured the extradition of UK ‘Flash Crash’ trader Narinder Singh Sarao to face spoofing charges pertaining to his alleged role in the fall of the Dow Jones Industrial Average in May 2010.130 It is



1. E.g. Friedrichs’ use of the ‘case study’ of Goldman Sachs, in D. O. Friedrichs, ‘Wall Street’, above n. 18.
2. See G. Wilson and S. Wilson, ‘The FSA, “credible deterrence”, and criminal enforcement

– a “haphazard pursuit”?’ (2014) *Journal of Financial Crime*, 21(1), 4.

1. See S. Wilson, *The Origins of Modern Financial Crime*, above n. 31.
2. Market Abuse Directive (MAD) 2003 (2003/6/EC), especially Article 14.
3. Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014: see European Commission Memo ‘European Parliament’s endorsement of the political agreement on Market Abuse Regulation’ Brussels, 10 September 2013 <http://europa.eu/> rapid/press-release\_MEMO-13-774\_en.htm?locale=en, incorporating Frequently Asked Questions, including one (Q15) on ‘Proposal for a Directive on Criminal Sanctions for Market Abuse’.
4. CSMAD 2014, Recital 6.
5. Regulation (EU) No. 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC.
6. The new crime of spoofing was added to the Commodity Exchange Act 1936 by the Dodd– Frank Wall Street Reform and Consumer Protection Act 2010.
7. See ‘US high-frequency trader convicted in first US “spoofing” case: Michael Coscia convicted of six counts of commodities fraud and six of “spoofing” in first criminal prosecution of banned trading practice’, *Guardian* (London, 4 November 2015).
8. M. Dakers, ‘Theresa May approves extradition of “flash crash” trader to the US’, *Telegraph*

(London, 28 May 2015).

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even the case that *US v Newman* and *US v Salman*131 suggest the US Government is attempting to make inroads into the extensive permissible use of non-public information traditionally subsisting under US securities law, and embodied in narrowly drawn insider trading prohibitions. Taken together, tough US approaches to securities violations do speak persuasively to the presence of a transformative movement relating to financial crime.

The language of ‘speaking persuasively’ has been chosen deliberately and advisedly in relation to the presence of a ‘transformative movement’. This has certainly been used in preference to language of ‘demonstrating conclusively’’. This is because, although it is the case that 2017 will mark the decade of the onset of the global financial crisis, it is too soon to determine whether it will set in motion a transformative movement, which will bring about marked changes in the way financial crimes are perceived, and responses to them pursued and calibrated. It is likely that the short term will be characterised by occurrences suggesting that this is happening, and others which question whether it is. This is partly because, at present, even almost ten years following its onset, it remains unclear how transformative the crisis will be *at* all, in terms of delivering extensive and far-reaching regulatory reform more generally, and in affecting how ordinary citizens view the lives which they lead, and the pressures and entitlements which characterise this. This is the complex matrix within which any transformative movement relating to financial crime will be located, and within which it must be analysed. And as more indices of post-crisis financial enforcement become available for analysis, this will provide a new context for focusing on whether financial crime *should* attract greater societal animosity and greater enforcement attention. The study of financial crime continues to reveal structural ambiguities about financial crime, which are captured highly effectively in Aubert’s seminal assertion for white-collar crime, that:



[it] is of prime importance to develop and apply concepts which preserve and emphasize the ambiguous nature of white-collar crimes and not to ‘solve’ the problem by classifying them either ‘crimes’ or ‘not crimes’. Their contro- versial nature is exactly what makes them so interesting from a sociological point of view.132

1. *US v Salman* [2015] United States Court of Appeals 9 Cir. No. 14–10204 DC No. 3:11-CR-00625-EMC-1) [2015]; and *US v Newman and Ors* [2014] United States Court of Appeals 2d Cir. Nos 13–1837-cr (L), 13–1917-cr (con)).
2. V. Aubert, ‘White-collar crime and social structure’, above n. 89, 266.

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