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**The American University in Cairo**

**School of Global Affairs and Public Policy**

**EGYPTIAN CRIMINALS IN SUITS  
ANALYTICAL STUDY ON THE CRIMINOLOGY OF WHITE-  
COLLAR CRIMES: SPECIAL FOCUS ON EGYPTIAN CASES**

**A Thesis Submitted to the**

**Department of Law**

**in partial fulfillment of the requirements for  
the LL.M. Degree in International and Comparative Law**

**By**

**Sue Ellen Hassouna**

**December 2012**

The American University in Cairo  
School of Global Affairs and Public Policy

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LL.M. Degree in International and Comparative Law  
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School of Global Affairs and Public Policy  
Department of Law

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Supervised by Professor Dr Thomas Skouteris

ABSTRACT

Criminology is the science of crime and until the year 1939 crimes were limited to street or conventional crimes committed by criminals of lower socio-economic segments in the society. After 1939 the American criminologist, Edwin Sutherland, has challenged this stereotype of crimes and criminals through his introduction of white-collar crimes that are perpetrated by elite offenders. However, the term has been introduced and utilized for more than seventy years across criminologists and law enforcement agencies it is still a foreign concept to the Egyptian legal system; hence the Criminal Law Code is predominately focused on mainstream criminalities. This absence of adequate regard for white-collar crimes in Egypt has caused the increase of it. Therefore, this thesis aims to take the initiative to highlight the importance and need for the criminology of white-collar crimes and fill this serious knowledge gap and demonstrate benefits to the scholarship of crime in Egypt and in specific to the Egyptian Criminal Law that seeks to generally serve the protection of higher social goods. This academic goal will be achieved by means of adopting a criminological perspective approach in analyzing two Egyptian cases of white-collar crimes that are regulated by the same applicable law Competition Law; the Cement Cartel case and Ezz Rebars Steel case. These two cases are characteristic of Egyptian white-collar criminality and also represent two different and distinctive types of white-collar crimes, corporate and state-corporate crimes. This study is also supported by a theoretical framework using the rational choice theory of white-collar crimes which decidedly represents the most comprehensive theoretical approach to investigate the underlying reasons of why and how the given elite criminals violated the law. Finally, investigating these cases from a criminological perspective triggers the question of whether the Egyptian legal system is in need of a new criminal legislation for white-collar crimes.

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## I. Introduction

The introduction of white-collar crimes by Edwin Sutherland in 1939 was throwing a stone into still waters of the criminology discipline. Traditional criminologists used to think that criminology should only examine offences that were covered by criminal law.<sup>1</sup> Besides, the most prevailing conceptions of crimes and criminals were limited to misconducts of lower socio-economic offenders who were already populating prisons and courts and their criminal behavior was assumed to, “*lie in the pathologies of individual offenders and in poverty and deprivation.*”<sup>2</sup> However, the essence of white-collar criminality challenges these deeply rooted views and introduces high social status perpetrators who are not deprived or underprivileged but on the contrary highly respectable with managerial positions in reputable firms, hence the name white-collar, where they commit their crimes; during the course of their occupation.<sup>3</sup> Therefore, Sutherland’s alternative thesis of criminology raised many fundamental issues regarding the mainstream definition of ‘*crime*’ by shifting the attention to non-violent crimes which can be equally harmful yet regulated by different laws and procedures. Additionally, the introduction of elite criminals has questioned the enduring focus on lower social standard offenders and whether criminal law is a biased legal instrument for prosecution and punishment only to the powerless lower socio-economic lawbreakers.<sup>4</sup> White-collar crimes are unconventional types of crimes and more complex than ordinary crimes however not yet been fully covered by the criminal law code. There are many specifics in white-collar criminality regarding the intent, responsibility, victimization and their equivocal criminal status which the orthodox criminal code still unequipped to detect, prosecute and punish.<sup>5</sup> The same situation is applied in Egyptian legal system where the occurrences of white-collar crimes and their distinctive features have raised issues about the existence of certain misconducts committed by high social status offenders which are not regulated by the Egyptian penal code yet considered deviance and in some cases

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<sup>1</sup> Tappan, Paul, *Who is the criminal?* Am.,12 Social. Rev.98, 96-102 (1947).

<sup>2</sup> HAZEL CROALL, UNDERSTANDING WHITE- COLLAR CRIME 3 Open University Press (2001).

<sup>3</sup> EDWIN SUTHERLAND, WHITE- COLLAR CRIME 272 Dryden Press (1949).

<sup>4</sup> PEARCE FRANK, THE CRIMES OF THE POWERFUL 10 Pluto Press (1976).

<sup>5</sup> Hazel, *supra note 2*, at 14- 16.

illegal and prohibited hence they violate provisions of other civil and administrative laws for instance, the Egyptian Competition Law on the Protection of Competition and Prohibition of Monopolistic Practices (hereinafter, Competition Law) and its violation of Articles 6 (a) and (d) in the Cement Cartel case, which will be thoroughly examined in this thesis. In view of that, white-collar criminality does not only encompass legally defined crimes by criminal law and criminologists are not only interested in legally convicted offenders but also white-collar criminals' behavior that are not legally criminalized by the state criminal code. Accordingly, Sutherland confirmed the importance of the acknowledgement of the social representations of crime alongside its criminal legal interpretations, as he stated, "*non-criminal forms of law also result in judgments of fault and liability and followed by the imposition of a penalty; thus the difference lies in procedures rather than in the 'wrongful' nature of activities.*"<sup>6</sup> In this context the Egyptian business climate has suffered damages and disorders from misconducts associated to white-collar criminality yet non-criminal acts hence not explicitly regulated by the Egyptian criminal code which somehow has opened windows for wrongful opportunities. According to the Administrative Control Authority, an Egyptian government agency that investigates and tracks white-collar offences primarily financial corruption, Egypt's state administration encounter more than seventy thousand corruption cases per year from which forty thousand cases were dealt with and less than two thousand cases were adjudicated upon.<sup>7</sup> It is conventional wisdom that these figures have increased post the January 25 revolution in 2011 that resulted in the dethrone of ex-president Mubarak's regime and followed by numerous corruption charges that actually sentenced many elite criminals and Mubarak himself to prison and imposed financial sanctions. This unprecedented rise of white-collar crimes in Egypt increases the importance of the study of white-collar criminology to provide deeper understanding of these high-class crimes benefiting from the multidisciplinary characteristic of the discipline that is not only restrictive to legal interpretations. In this thesis I adopt a

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<sup>6</sup> EDWIN SUTHERLAND, *WHITE-COLLAR CRIME: THE UNCUT VERSION* 291, Yale University Press (1983).

<sup>7</sup> MENA- OECD, *Business Climate Development Strategy, Phase 1 Policy Assessment*, available at <http://www.oecd.org/daf/privatesectordevelopment/46341460.pdf>.

criminological perspective in the analysis of two Egyptian white-collar case studies under the same applicable law, the Competition Law, in which the first case the Cement Cartel case the white-collar criminals were convicted guilty for violation of Competition Law provisions whereas the second case the Ezz Rebars Steel Case, its white-collar offender Ahmed Ezz was freed from all anticompetitive charges. The sheer adoption of a criminological angle adds a social depth of understanding for both presented cases in specific and Egyptian white-collar crimes in general which the latter has become an alarming social phenomenon. Thus it is no longer a question of law solely in the sense of rights, obligations and penalizations but rather an interwoven fabric of regulatory entities which ideally aim for the protection of societies. The criminological examination of the Cement Cartel and Ezz Rebars cases has realized various benefits to this thesis; understanding the socially constructed nature of white-collar crimes in a society like Egypt where social norms and legal norms are in certain occasions equally substantial and influential, recognizing the underlying differences between white-collar crimes and other conventional low-class crimes, noting the conceptual differences between key criminological terms that distinguishes between criminal and non-criminal; crime, deviance, legal and illegal. Also highlighting both the importance and incomprehensiveness of the Egyptian criminal law code in regulating all types of white-collar crimes, when white-collar wrongful activities are subject to criminal prosecution and not just legal adjudications of violations and responsibility via administrative or civil laws that adds more weight to the element of fear of punishment and crime deterrence. Thus emphasizes the significance of criminalization and law enforcement of white-collar crimes in the Egyptian penal code. In addition to the legal and social repercussions it will entail when an act or misconduct is defined as crime or civil offence.<sup>8</sup> Finally, adopting a criminological perspective to analyze these white-collar crimes cases has powered through the legal restrictive interpretations into deeper multidisciplinary explanations tapping into social sciences to explore perpetrators reasoning and specifics of white-collar criminality which also empowers the legal process of criminal law legislation with added value knowledge. In this integration, criminology participates in the law-making

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<sup>8</sup> SLAPPER, G. AND TOMBS, S. CORPORATE CRIME 4, Addison-Wesley Longman (1999).

process via the explorations of new areas and particulars of white-collar criminality. In contrast, without a criminological perspective white-collar crime cases will be dealt with from a legal point of view focusing only on acts of violations of provisions of the applicable law and ignores misconducts that are not criminalized however harmful to the society. In the following chapters the Cement Cartel and Ezz Rebars Steel cases will be firstly presented from a legal perspective then a criminological perspective will be adopted to dissect all aspects of the cases.

## II. Case Studies

### A. Case One: Cement Cartel Case

Egypt – Case No 2900/2008 Felonies of Madinit Nasr Awal (25/08/2008);

(Appeal No 22622/2008 East Cairo)

Prosecution vs. Suez Cement Group, La Farge

Titan Group, Al-Amreya Simpore Group, Simx

Egypt (Assyout Cement), Egyptian Cement, Sinai Cement,

Misr – Bani Suef for Cement, National Cement Company

On the 16<sup>th</sup> of July 2006 the Minister of Trade and Industry sent a formal request to the Authority of the Protection of Competition and the Prohibition of Monopolistic Practices (hereinafter, Egyptian Competition Authority or ECA) to execute a research inspection in the local cement market, particularly the Normal Portland Cement due to its rapid fluctuation of prices triggered by cement manufacturing and marketing companies. The purpose of inspection was to detect any anticompetitive infringements in the cement market with accordance to the Egyptian Competition Law which is the applicable law in this case. The ECA investigations concluded the existence of a cartel for price fixing and limiting production and marketing operations in the Egyptian local market among nine cement companies which according to the Competition Law a violation of Articles 6(a) and 6(d) that prohibits horizontal agreements of anticompetitive practices. The case was transferred to Prosecution and then to the competent Court and in 2008 the Court released its unique judgment and imposed ten million Egyptian Pounds fine on each of the twenty defendants; Directors and Chairmen, of the nine cement companies' participants in the cartel.<sup>9</sup> In May 2005 the Competition Law came into force to impose a code of conduct into the Egyptian economic realm thus promote a free market economy to ensure, *“free competition in the market and prohibit anticompetitive practices, in order to serve*

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<sup>9</sup> CEMENT CARTEL CASE. Prosecution vs. Suez Cement Group, La Farge Titan Group, Al-Amreya Simpore Group, Simx Egypt (Assyout Cement), Egyptian Cement, Sinai Cement, Misr – Bani Suef for Cement, National Cement Company, No 2900/2008. 26, 31 (2008).

*producer and consumer interests and enhance efficiency of national economy.*”<sup>10</sup> And it is within the competence of ECA<sup>11</sup> to investigate any of these anticompetitive practices plus identify and report any agreements whether verbal or written between competitors that carry out price fixing, market allocation, bid rigging or collusive tendering in the relevant product and same geographical market.<sup>12</sup> In the relevant market of Normal Portland Cement in the Arab Republic of Egypt the ECA conducted a market scrutiny for the period between 2002 till 2006 as response to the request of the Minister of Trade and Industry. However the Competition Law was enacted in 2005 the ECA included the years 2002, 2003 and 2004 in the study as a referral period to exhaustively identify trends of operations among the nine cement market players before and after the Law. The investigations carried out included both primary and secondary data analysis using quantitative and qualitative research methods such as Cement market dynamics research across fifteen Egyptian governorates and in-depth interviews, respectively, with Cement agents, distributors, real estate contractors as well as foreign experts’ opinions on how to use economic indicators and trends to identify antitrust violations in similar case studies.<sup>13</sup> The ECA inspection had evidenced that the following nine Cement market players; the Suez Cement Group, La Farge Titan Group, Al-Amreya Simpore Group, Simx Egypt, Egyptian Cement, Sinai Cement, Misr and Bani Suef for Cement (hereinafter, nine Cement companies), are participants of a cement cartel which is in violation with Article 6(a) that stipulates “*Agreements or contracts between competing Persons in any relevant market are prohibited if they are intended to Increasing, decreasing or fixing prices of sale or purchase of products subject matter of dealings.*”<sup>14</sup> And also Article 6(d) that provides “*Agreements or contracts between competing Persons in any relevant market are prohibited if they are intended to restricting the production, distribution or marketing operations, or limiting the distribution of services*

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<sup>10</sup> Egyptian Competition Authority, available at, <http://www.eca.org.eg/ECA/StaticContent/View.aspx?ID=4>.

<sup>11</sup> Article 11 of Law No. 3 of 2005 on the Protection of Protection of Competition and the Prohibition of Monopolistic Practices.

<sup>12</sup> Article 3 of Law No. 3 of 2005 on the Protection of Protection of Competition and the Prohibition of Monopolistic Practices.

<sup>13</sup> CEMENT CARTEL CASE. *supra* note 9, at 3.

<sup>14</sup> Article 6(a) of Law No. 3 of 2005 on the Protection of Protection of Competition and the Prohibition of Monopolistic Practices.

*in terms of its kind or volume or applying restrictions or conditions for their availability.*”<sup>15</sup> The nine Cement companies were collectively increasing prices regardless the costs of production or the capacity of production for these companies. It was also evident from the Egyptian Competition Authority economic analysis that such planned fluctuation in prices sustained predefined market shares for each of the nine players even though companies with lower prices and product costs did not compete to gain bigger market shares, the study shows that the maximum change of market shares was 1%. For instance the Suez Group albeit it’s increased production capacity from 63% in 2004 to 76% in 2007 it stabilized its market share in Egypt between 31.9% and 32.4% in the years 2004 and 2006 respectively.<sup>16</sup> However, the export shares of these nine Cement companies varied greatly which indicated two findings; first that the cartel was confined to national sales only and second the presence of competence of free competition between these Cement companies. Over and above the ECA investigation period included three years before the Antitrust Law came into force in 2005 thus in this historical context and specifically in the year 2003 the ECA retrieved the official agreement established between Cement manufacturing competitors under the auspices of the Minister of General Operations Sector. This agreement was called for by the Minister himself because the Cement market since 1999 had been witnessing unprecedented turbulences due to the privatization of Cement companies and economic recession which led to a cut throat competition where companies dramatically lowered their prices even below their production costs levels in order to compete and survive in the market. And in this price war the Minister intervened to stabilize prices according to 1999 price scale and also define market shares of national sales for every Cement competing company plus recognize a given percentage of production for market players with respect to their production capacity. In light of this agreement the ECA tracked the average price of Cement per ton for the nine suspected companies and discovered 96% increase in the

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<sup>15</sup>Article 6(d) of Law No. 3 of 2005 on the Protection of Protection of Competition and the Prohibition of Monopolistic Practices.

<sup>16</sup> MOHAMED EL FAR. Egypt - Case No 2900/2008 Felonies of Madinit Nasr Awal (25/08/2008); (Appeal No 22622/2008 East Cairo) 3 (2010), [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1407387](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1407387).

average price between 2002, 156EGP/ton and 2006, 305EGP/ton.<sup>17</sup> This agreement should have automatically discontinued after the enactment of Competition Law in 2005 but it did not and persisted unofficially among the nine Cement companies to harmonize both their price index and market shares of national sales irrespective to their production capacity and/or increasing levels of demand for Cement in the local market. The reason why I am referring to the cement cartel case in this thesis is because it is a characteristic case of white collar crimes in Egypt. It raises significant questions about the essence of criminology of white collar crimes with regards to the perpetual debate among criminologists about deviance and crime and under what circumstances deviations are criminalized or should or should not be criminalized and in the latter situation they can even be endorsed by the government to become legal behaviors. The case also presents a unique understanding of the definition of white collar crimes and particularly the type of corporate criminality within the antitrust offenses. Therefore, the Cement Cartel case is unique with a new category of violations that the Egyptian legal system has never witnessed before and it presents the first and only court judgment until today under the Egyptian Competition Law. So this case is interesting from a criminological point of view because it portrays a misconduct that has been legally prohibited as a corporate crime of white collar yet it is not stated in the criminal law code. Moreover, this case indicates that before the competition law was put into force the agreement between the Minister and nine Cement Companies has been prolonged after the enactment of Competition Law in 2005 but without the presence of Minister as supervisor of agreement and in this context the case draws attention to the unchanged conduct of cement companies before and after the law which highlights from a criminological point of view white collar criminals' behavior in pursuit of their targets. In addition to, the Egyptian authorities change of behavior in presence of the Law which triggers important questions; if the same market conditions and economic recession prevailed again in the Cement market how will the Minister of General Operations Sector react now in the presence of Competition Law; will he/she return to the old agreement and manipulate the

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<sup>17</sup> EGYPTIAN CENTER AUTHORITY CEMENT CARTEL CASE REPORT 16, <http://www.eca.org.eg/ECA/StaticContent/View.aspx?ID=4>.

Law? And the second more intriguing question this case poses; is the Egyptian local Cement market economy in itself criminogenic?

### **B. Case Two: Ezz Rebars Steel Case**

During the period of 1999 till 2008, the local Egyptian steel industry has witnessed significant twists and turns driven by the Steel tycoon and businessman Ahmed Ezz who was also the senior member of the ruling National Democratic Party of Egypt (hereinafter, NDP) as well as the head of Planning and Budgeting Committee at the party. The monopoly of Ezz Steel Rebares was expected as it possessed almost 67% market share over the Egyptian steel market after its consolidation in 1999 with Alexandria National Iron and Steel Company under the name of Ezz-Dekhila and Ahmed Ezz had become the Chairman of both companies.<sup>18</sup> Consequently, the price of steel in 2000 increased from 1036 LE per ton to 5100 LE a ton in 2008 which indicates 500% increase according Al Ahram Strategic and Political Studies Center statistics.<sup>19</sup> This immense increase of steel prices and dominate market shares of Ezz-Dekhila triggered several questions regarding the effectiveness of the Egyptian Competition Authority (hereinafter, ECA) to observe steel prices and protect the Egyptian local market from any anticompetitive practices. Therefore, the ECA and had to run an investigation to find out whether or not the Ezz-Dekhila committed anticompetitive practices that violate law No. 3 of 2005 on the Protection of Competition and the Prohibition of Monopolistic Practices (herein after, Competition Law) which is the applicable law in the case at hand. With reference to the Competition Law a dominant market position or monopoly does not violate provisions of the Law however the abuse of this the dominant position in the market is considered an anticompetitive practice and breaches the competitive obligations of corporations. Based on Article (4) of the Competition Law a clear definition of dominance is provided; *“In the application of the provisions of this Law, dominance in a*

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<sup>18</sup> HANY ABDEL MASSIH, COMPETITION LAW AND POLICY IN DEVELOPING COUNTRIES: THE CASE OF THE EGYPTIAN STEEL MONOPOLY 29, (2011), [https://docs.google.com/viewer.aucegypt.edu/bitstream/handle/10526/2257/ETD\\_2011-Spring\\_Hany-Abdel-MassihGhaly\\_Thesis.doc](https://docs.google.com/viewer.aucegypt.edu/bitstream/handle/10526/2257/ETD_2011-Spring_Hany-Abdel-MassihGhaly_Thesis.doc).

<sup>19</sup> *Id.*, at 31.

*relevant market is the ability of a Person, holding a market share exceeding 25% of the aforementioned market, to have an effective impact on prices or on the volume of supply on it, without his competitors having the ability to limit it.*<sup>20</sup> Accordingly, the Ezz-Dekhila holds 67% of the steel local market shares over and above steel prices have gone up tremendously over the past eight years to indicate 500% increase. But what signifies the violation is not the mere proof of dominance of Ezz-Dekhila but the abuse of dominance via anticompetitive practices. To answer this question, it is essential to review Article (8) of the Competition Law which defines all anticompetitive practices that might be committed thus evidences an abuse of dominance, the provisions of this Article stipulates; *“A Person holding a dominant position in a relevant market is prohibited from carrying out any of the following: (a) Undertaking an act that leads to the non-manufacturing, or non-production or the non-distribution of a product for a certain period or certain periods of time. (b) Refraining to enter into sale or purchase transactions regarding a product with any Person or totally ceasing to deal with him in a manner that results in restricting that Person’s freedom to access or exit the market at any time. (c) Undertaking an act that limits distribution of a specific product, on the basis of geographic areas, distribution centers, clients, seasons or periods of time among Persons with vertical relationships. (d) To impose as a condition, for the conclusion of a sale or purchase contract or agreement of a product, the acceptance of obligations or products unrelated by their very nature or by commercial custom to the original transaction or agreement. (e) Discriminating in selling or purchasing prices or in terms of transaction between sellers or buyers whose contractual positions are similar. (f) Refusing to produce or provide a product that is circumstantially scarce when its production or provision is economically possible. (g) Dictating on Persons dealing with him not to permit a competing person to have access to their utilities or services, despite this being economically viable. (h) Selling products below their marginal cost or average variable cost. (i) Obliging a supplier not to deal with a competitor.”*<sup>21</sup> In this context, the

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<sup>20</sup> Article 4 of Law No. 3 of 2005 Promulgating the Law on the Protection of Competition and the Prohibition of Monopolistic Practices.

<sup>21</sup> Article 8 of Law No. 3 of 2005 Promulgating the Law on the Protection of Competition and the Prohibition of Monopolistic Practices.

Egyptian Competition Law has no mention of excessive pricing as an anticompetitive behavior which was the exist clause in Mr. Ezz defense. Moreover, the acquisition in 1999 between Ezz Steel and Alexandria National Iron and Steel Company which resulted in market dominance could classify as a horizontal merger or agreement that is anticompetitive but it occurred before the Competition Law came into force not only this but also the applicable Law does not prohibit horizontal agreements for as long as they are not in abuse of dominance.<sup>22</sup> On the other hand, vertical agreements are considered anticompetitive misconduct and in violation with the Competition Law as clearly stated in Article (7), “*Agreements or contracts between a Person and any of its supplier or clients are prohibited if they are intended to restrict competition.*”<sup>23</sup> So Ezz-Dekhila and its distributors were in critical situation with regards to this provision hence in 2008, reporter in Sout El Oma newspaper, an oppositional newspaper during Mubarak’s regime, released a report that indicated; “*Ahmed Ezz has controlled the steel market through number of distributors all over Egypt... Ezz put his tough conditions (to own a minimum of 2,000,000 LE capital) to approve one of the steel merchants to be an agent to his factories, as Ezz does not permit his factories to deal directly with any merchant or construction company.*”<sup>24</sup> And the report further indicated that Ezz has a total of 87 agents’ i.e. vertical partners. Albeit the rationality of this allegation the burden of proof was substantial because it required thorough investigations and empirical evidences to prove the enactment of such vertical agreements which was very complicated and couldn’t be proven. Finally, the ECA investigations concluded in January 2009 that Ezz-Dekhila conduct in the local market was not in violation with provisions of the Egyptian Competition Law.<sup>25</sup> This case is characteristic of White-collar crime in Egypt particularly during the late period of President Mubarak’s regime. The case reveals white-collar

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<sup>22</sup> MEGHAWERY SHALABI ALI, COMPETITION PROTECTION AND PROHIBITION OF MONOPOLISTIC ACTIVITIES INTERNATIONAL EXPERIMENTS 212, Ahram Economic Monthly book (2005).

<sup>23</sup> Article 7 of Law No. 3 of 2005 promulgating the Law on the Protection of Competition and the Prohibition of Monopolistic Practices

<sup>24</sup> Ahmed Abo El Khair, *Ahmed Ezz sets monthly meetings with his distributors*, Sout El Oma Newspaper, March 10, 2008.

<sup>25</sup> Ahmed Farouk Ghoneim, *Competition Law and Competition Policy: What Des Egypt Really Need*, 7-8 (The Economic Research Forum for the Arab Countries, Iran and Turkey Working Paper Series, Paper No. 0239, 2002).

criminal behavior and its interaction between deviance and crime in a societal context where the line of distinction between both is blurry. The examination of the case at hand raises significant questions in the study of criminology of white-collar crimes, most importantly the functional interdependence between corporations and governments within private-productions structures. As presented in the previous case of Cement Cartel, corporate crime could arise from organizational deviance which was also Sutherland's main focus of attention, 'deviant organizational patterns' and not on deviant conduct of persons per se.<sup>26</sup> Thus Ezz Rebares Steel case represents new area for criminological investigation where the relationship between corporations and governmental entities is a strong and influential variable to the occurrence of corporate crimes. But under this circumstance criminologists could no longer call it corporate crime due to the role played by the government i.e. state in the crime so to express this joint liability these type of white-collar crimes are called, state-corporate crimes. This case is even more significant because it deals with a specific type of state-corporate crimes in which the state or government relationship with the suspect corporate was based on actions from the state sector to allow Ahmed Ezz, white-collar offender who is wearing both hats; government and corporate, to pursue a deviant conduct in the Egyptian Steel market which should be criminalized but was not.

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<sup>26</sup> MARSHALL B. AND PETER Y. CORPORATE CRIME 20, The Free Press (1980).

### III. Rational Choice Theory

#### Different Theories of White-Collar Crimes

##### *The Questions of Why and How*

A criminologist is someone, “*whose professional training, occupational role, and pecuniary reward are primarily concentrated on a specific approach to, study and analysis of, the phenomena of crime and criminal behavior,*”<sup>27</sup> so it is an indispensable section in a criminological study to delve into the causes of crimes and draw assumptions on why the crime has happened. Moreover, criminology is an interdisciplinary field in the social sciences, building upon research of sociologists particularly in the sociology of deviance, psychologists and psychiatrists, social anthropologists as well as writings in law.<sup>28</sup> In this context, different theories of white-collar crimes have been developed by criminologists to provide answers about the behavior of white-collar criminals and the underlying motives and explanations for their commitment of such unconventional type of crimes. There are five theories of white-collar crimes all tackling the same objective; social control, opportunity, general strain, differential association and rational choice.<sup>29</sup> However, according to my view the rational choice theory is the most competent and comprehensive theoretical attempt to explain the occurrence of white-collar crimes. Here below I shall present brief paragraphs to portray different analytical approaches of different theories to orient readers with different theoretical approaches then separately portray specifics of rational choice as my adopted school of thought. Furthermore apply the rational choice theory to the previously presented white-collar case studies; Cement Cartel case and Ezz-Dekhila Steel.

- ***Social Control theory;*** In the 1970s, philosophers of white-collar crime proven that certain markets were ‘*criminogenic*’ as they provided more opportunities and motivations for white-collar crimes. Social control theories state that the presence or absence of control or social bonds is the main cause of crime which motivates such law misconduct as people's commitments, norms, and beliefs encourage

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<sup>27</sup> MARVIN WOLFGANG & FRANCO FERRACUTI, THE SUBCULTURE OF VIOLENCE 20, Social Science Paperbacks (1967).

<sup>28</sup> LARY J. SIEGEL, CRIMINOLOGY 4, Wadsworth Gengage Learning (2012).

<sup>29</sup> *Id.*, at 114.

them either break the law or not. Thus, if moral codes are all adopted and individuals are tied into, they will voluntarily limit their propensity to commit deviant acts.<sup>30</sup>

- ***Opportunity Theory***; the theory states that the absence of social bonds and social control by law enforcement itself cannot be a source of explanation of criminal behavior as without the opportunity factor no crime can be committed. the opportunity to commit a crime could be found everywhere yet opportunities are not equivalent in its consequences and rewards and each opportunity play a specific and different role in guiding each individual's behavior as each opportunity could have a high or low level of attractiveness in whether its financial gain or punishment. For instance, bribery depends on the economic services that will be provided by the job holder in return of the corrupted money. Some of the occupations that are open to bribes high opportunities for bribes are police officers, government agents and politicians.<sup>31</sup>
- ***General Strain Theory***; The recent well-known companies of accounts of securities fraud such as Tyco and WorldCom claimed that pressures to achieve the target profits could led to using illegal and unethical methods strategies in order to gain the target profits and disguise the loses of their firm which this claim is surrounded around the General Strain Theory.<sup>32</sup> This GST supports that crimes are motivated by the work pressure to reach the target goal and profits because the normal and illegal paths to achieve these goals are blocked or inaccessible which create frustration. This theory main concept is that the financial goals sometime is contradicted with the acceptable methods and means to achieve them as when there is not legitimate or legal way to gain the objective profit, the firm could face and experienced '*Strain*' which motivate them to become deviance to reach the rejected goals by legal means.<sup>33</sup>

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<sup>30</sup> GILBERT GEIS & ROBERT MEIER, WHITE COLLAR CRIME 361-370, Free Press (2005).

<sup>31</sup> *Id.*, at 327.

<sup>32</sup> JURG GERBER AND ERIC JENSEN, ENCYCLOPEDIA OF WHITE COLLAR CRIME 272, Greenwood (2006).

<sup>33</sup> *Id.*, at 274-278.

- ***Differential Association Theory***; The father of white-collar crimes Edwin Sutherland who has invented the term white-collar crime proposed the differential association theory as stated that the interactions with others especially offenders, the individual learn the techniques, motives, attitudes and values of criminal behavior from them. This theory is focused on the deviance of the individual when he learns how to become a criminal due to the interactions with society and other deviants. This theory explains that peer influences on the individual criminal attitudes are the only cause to acquiring the criminal behavior. The values of this theory state that criminal behavior is learned by techniques in interaction with other deviant persons in a process of communication within intimate personal groups. This theory does not explain the methods that motivated such crime however it focused on how such individual become a criminal as it answers the question of how the individual become a criminal which is far from the previous theories concerns.<sup>34</sup>

### **Rational Choice Theory and White- Collar Criminology**

It is hard to understand why respectable people with great income in decent corporations with high profits are accused of white-collar crimes. This paradox has been scholars' and criminologists' challenge since decades.<sup>35</sup> The above listed theories attempt to answer questions as; does human have a free will of conduct and choosing their life style and path? Or each human's conduct needs different and certain ontological, psychological, or epistemological explanations? Does human's conduct has constructed the causation or it is objectively established as they do not have a free will as their behavior is functioned according to internal and external forces? Are humans are naturally greedy and tempted to do such illegal acts to accelerate the process of their leisure or they are altruistic? Criminologists and sociologist have embraced and tackled the answers of these questions by accurate assumptions and theories which explain not interpret human's activity. The following section will tackle the causation which makes individuals or organizations

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<sup>34</sup> *Id.*, at 35.

<sup>35</sup> HENRY N. PONTELL, INTERNATIONAL HANDBOOK OF WHITE COLLAR AND CORPORATE CRIME 30 (1998).

commit this type of crimes based on only the Rational Choice Theory which I totally support as it is the only theory that fits my perspectives and satisfy the raised questions above. In 2007, Michael Pickens has been pleaded guilty of securities fraud as he has committed a conspiracy in Florida Company which has earned him four hundred thousand dollars and has been sentenced to five years of probation and pays one million in restitution. Unexpectedly, Michael Pickens is the son of the Multi Billionaire T. Boone Pickens who is a multinational oil investor and owns British Petrol, BP.<sup>36</sup> Based on this case; some offenders plan their crimes early and avoid the detection by calculating their actions carefully which illustrate their rational decision prior committing the crime. Some criminologists believe that all offenders of violent, property, or enterprise crimes are based on rational decision making which has been planned due to some personal traits as anger, greed, need or revenge.<sup>37</sup> However, the decision is based on the potentiality of committing the crime after calculating the consequences and find that the benefit of the crime is greater. For instance, the drug dealer has calculated that the profit of the drug shipment is greater than the possibility of the arrest which motivate him to commit the crime which this behavior and interpretation is supported by the Rational Choice Theory.<sup>38</sup>

The rational choice theory is the most successful theory among criminologists as the majority of the criminology and criminal justice journals abound with the recent tests and results of the theory of offending.<sup>39</sup> This theory has influenced contemporary crimes reduction practices as it has been supported by many scholars and it is the only theory that represents efficiency to current crime problems.<sup>40</sup> This theory is focusing on human's behavior and illegal practices. Rational choice theory is the only theory that effectively serves white-collar crimes specifically economic crimes i.e. corporate crimes. The theory is focusing on individual behavior they have to maximize their goals and their self-

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<sup>36</sup> SIEGEL, *supra* note 28, at 102.

<sup>37</sup> Robert Apel, *Unpacking the Relationship Between Adolescent Employment and Antisocial Behavior: A Matched Samples Comparison*, 45 *Criminology* 71, 67-97 (2007).

<sup>38</sup> SIEGEL, *supra* note 28, at 110.

<sup>39</sup> Rawls, A.W., *Can Rational Choice Be a Foundation for Social Theory?* 21 *Theory and Society* 219, 219-241 (1992).

<sup>40</sup> *Id.*, at 225.

interest.<sup>41</sup> The scholar Beccaria is one of the oldest scholars of rational choice theory. Beccaria belief that those individuals owns freewill and make choices based on and rational manipulability as individuals pursue their own satisfaction which is the key issue between crime and law because individuals, corporations or even governmental units always look for their best interests and benefits which might motivate and entail the deviant behavior that might clash with the law.<sup>42</sup> In addition, Beccaria beliefs that human's actions are predictable as human's self-interest are shared and mostly common which could give the opportunity to law by the criminal justice to control it by the right punishments and threats.<sup>43</sup> The word '*rational*' is quite different from the most philosophical meaning of this term as the known for most people of the term rational is '*Sane*' in a clear headed.<sup>44</sup> However, in rational choice theory uses a specific definition of the term rational or rationality as scholars means by rational as individuals acts by balancing the costs against benefits to maximize their profits. For instance, the rational choice theory believes that actions are a property of pattern and individuals choices. Rational choice theory never focuses nor investigates the origins or validity of human's misconducts but it focuses to examine the inexplicable wants in specific social or economic environment. In fact, criminologists who support the rational choice theory believe that all criminal behaviors have been committed based on a rational decision albeit it seems randomly perpetrated.<sup>45</sup> According to the criminologist Cesare Beccaria, people who are the ones who choosing their criminal behavior to get them pleasure and decrease pain therefore they should be feared from severe punishment to control the criminal behavior.<sup>46</sup> Rational choice theorists believe that offenders are normal people who share the same ambitions of other citizens. However, they decided rationally to direct themselves to illegal behaviors to cut corners and achieve their needs. Offenders have chosen their illegal destination independently and rationally after evaluating the

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<sup>41</sup> Becker, G.S., *Crime and Punishment: An economic Approach*, 76 Journal of Political Economy 174, 169–217 (1968).

<sup>42</sup> CORNISH D. AND CLARKE, R. V., *THE REASONING CRIMINAL: RATIONAL CHOICE PERSPECTIVES IN OFFENDING* 14, Springer-Verlag (1986).

<sup>43</sup> BECKER G., *THE ECONOMIC APPROACH TO HUMAN BEHAVIOUR* 30 University of Chicago Press (1992).

<sup>44</sup> BECCARIA C., *ON CRIMES AND PUNISHMENTS* 10, Bobbs-Merrill (1963).

<sup>45</sup> *Id.*, at 17

<sup>46</sup> *Id.*, at 26

consequences without any economic or social pressure.<sup>47</sup> This theory view crime as 'Offense' and 'Offender-specific'. Offense and offender specific means that offenders are acting based on the characteristic of the target as they evaluate the target yield, the security devices and so on and they are not robots who are engaging in the criminal act inconsiderately or unplanned however they are conscious and aware of the act after calculating its benefits.<sup>48</sup> Criminals who make rational decisions based on 'strategic thinking' is that it rejects deterministic and pathological explanations for criminality in favor of explanations for criminal behavior, which give the goal oriented, rational and everyday aspects of human activity a central place. In this respect, the rational choice theory can be distinguished from traditional criminological theories that presuppose that criminals are different from 'normal' people and the most important characteristics of the theory are summarized in the following six statements; (1) the human's natural being is a rational performer, (2) Rationality involves an accurate calculation, (3) People choose their deviant behavior freely, (4) The central element of calculation involves Pleasure versus pain, (5) Choice, will be directed towards the maximization of individual pleasure, (6) Choice can be controlled by the understanding of the potential pain or punishment.<sup>49</sup> Regarding the rational choice of white-collar crimes, according to Sally Simpson, white-collar crimes in specific corporate crimes are decided by managers or employee's rational choice after the calculation of the cost and benefits of the offense.<sup>50</sup> Which been supported by the Routine Activities Theory as well. However, this theory focus in depth on crimes event as crime is a consequence of a motivated offender and easy victim with the absence of supervision. According to crime and everyday activity book by Felson, the work environment and employees' role is the main cause of white collar crimes as it give the opportunity to the employees to access in tangible and confidential information and commit illegal actions.<sup>51</sup> For instance, Bank employees know confidential and sensitive information about their clients that could motivates them to commit the white-collar

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<sup>47</sup> Cornish, D. B. and Clarke, R. V, *Situational prevention, displacement of crime and rational choice theory*, 25 *Criminology* 936, 933-948 (1987).

<sup>48</sup> *Id.*, at 940.

<sup>49</sup> SEIGAL. *Supra* note 28 at 88

<sup>50</sup> SALLY SIMPSON, *CRIMINOLOGY OF WHITE COLLAR CRIME* 41 (2001)

<sup>51</sup> KEEL RO, *RATIONAL CHOICE AND DETERRENCE THEORY* 6 (1997),  
<http://www.umsl.edu/~rkeel/200/ratchoc.html>

crime.<sup>52</sup> It has been concluded that Crime and choice is based on two criteria as, the offense has been committed after the offender has weighted the costs and benefits of crime in addition to the temptations which has been appeared in his daily routine work activity that motivated him to commit this crime. The rational choice could be based on two foundations;

- **Rational Choice and the Greedy**

When Robert Courtney the Pharmacist of Kansas City has been arrested, the investigator has asked him why he has substituted the drugs doses by other poor drugs which have cut down the medicine strength, he said out of Greed.<sup>53</sup> This previous example is not the only example of white collar crime based on greed, many enterprises and individuals commit white collar crimes on a rational choice based on greed as they want to shortcut the acquire wealth and believe that the profits will outweigh the punishment due to their power and connections with elites and government agencies.<sup>54</sup> Neal Shover has created the concept of lure which explain why some people tempting benefits from enterprise crimes. Lure is something that attracts something that it can turn the employees' heads which happened in the absence of capable and self-control.

- **Rational Choice and the Needy**

Need is also an element of rational choice theory as some white collar offenders commit the crime to fulfill whether their financial or psychological needs as executives could commit this type of crime to keep their jobs or egos. For instance, Boesky has stated that he carries scars from the needy financial problems in his life which could lead him to become needier for money and never reach satisfaction or security.<sup>55</sup>

Rational choice theory's concern is that crime is chosen for its future benefits and pain; if the benefits are high with low cost then the offender will be motivated to commit the crime however, if the costs of the crime are higher than the pleasure then crime will not occur. The profits of the committed crimes is measured by the rewards received minus the costs occurred as the scholar Homans argued that 'no exchange continues unless both

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<sup>52</sup> *Id.*, at 12.

<sup>53</sup> SIEGEL, *supra* note 28, at 466.

<sup>54</sup> *Id.* at 467.

<sup>55</sup> *Id.*, at 467.

parties are making a profit' which means that if the offender finds the crime tempting with its profits then the occurrence of crime will begin.<sup>56</sup> However, when the offender senses a harm or loss of the interaction thus will have the incentive to withdraw the idea. The scholars Cornish and Clarke stated that rational choice theory has three elements that should be met. First, the individuals are naturally prefer to commit criminal and deviant practices if they sensed that these acts could benefit their needs which require a rational decision making process with calculation the assessment of the cost and pain towards benefits. Second, the rational choice requires specific focus as it is necessary to capture the idiosyncrasies of different needs that were attached to a criminal act. This focus permitted for sensitivity to the differences in the information necessary for different crimes as Cornish and Clarke argued, “[T]o ignore these differences might well be to reduce significantly one’s ability to identify fruitful points of intervention . . .” third, a distinction should be made between criminal involvement and the criminal event as they identify decisions that the individual have made and the criminal involvement is the is the process that an individual used to become initially involved in a particular crime, to continue, and to desist which requires a lot of information from different stages in the decision making process.<sup>57</sup>

In sum, after presenting the several theories of criminology specifying the white collar crimes theories in general, it is clear that the rational choice theory is a combination of the social control theory, opportunity theory and general strain and differential theories. To put it in simpler words, I believe that the rational choice theory is the mother of all theories in white-collar criminality. Rational choice theory concern is the offender have committed the deviant act based on the calculation of costs and benefits which implicitly referring to the opportunity factor which comes from the benefits element as the theory believe that opportunity could have a high or low level of attractiveness in whether its financial gain or punishment which is the costs and benefits which is the main concern of the offender. Regarding the social control theory, its belief that Social control the

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<sup>56</sup> SIMPSON S. AND LEEPER PIQUERO AND PATERNOSTER R, RATIONALITY AND CORPORATE OFFENDING DECISIONS 27 Routledge (2002).

<sup>57</sup> CLARKE, R. V. G. AND FELSON, M., ROUTINE ACTIVITY AND RATIONAL CHOICE Transaction Publishers (1993).

presence or absence of control or social bonds is the main cause of crime which motivates such law misconduct as people's commitments, norms, and beliefs encourage them either break the law or not. This theory as well is implicitly a part of the rational choice theory as its main concern is about the punishment and social control which is the Costs element of the rational choice theory. Regarding the general strain theory, it focuses on the pressure of achieving profits which might lead to commit illegal conduct that as well linked and related to the rational choice as it focuses on the benefits and financial goals of the crime which might motivates the offender.

## IV. Criminological Assessment of Cases

In this section a criminological assessment of the two presented cases will be provided. After laying the legal explanations in the first chapter this section will dig deeper into a criminological depth of analysis to examine the following key issues; the conceptual meanings of crime, deviance and illegality with regards to cases current proceedings, definition of white-collar criminality and how it defines every case and the application of the respective type of white-collar crime to each case.

### A. Cement Cartel Case and White- Collar Criminality

#### 1. Crime, Deviance and Illegality

The official agreement in 2003 between the Egyptian Minister and the nine Cement companies was focused on three main actions; fix Cement prices to the same scale of year 1999, define market shares of national sales of Cement market players and limit a percentage of production of Cement companies with accordance to their production capacities.<sup>58</sup> However, the Minister purpose of these three actions was to allegedly stabilize the local Cement market turmoil yet from a criminological point of view such actions might be considered as deviations from the generally accepted norms of the free market economy. These norms are defined in criminology as, “*guidelines that define for members of a society the types of behaviors that are appropriate or inappropriate in certain situations,*”<sup>59</sup> thus in the arena of the Egyptian economy the situation supports an open door policy that encourages foreign investment as well as the private sector and it also operates via the adoption of market-based economic principles that thrives on free competition.<sup>60</sup> Moreover, deviance is the, “*nonconformity to social norms or expectations,*”<sup>61</sup> and in another literature, “*deviance involves breaking a norm and evoking a negative reaction from others.*”<sup>62</sup> Finally, Siegel in his most widely circulated

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<sup>58</sup> EGYPTIAN CENTER COMPETITION CEMENT REPORT, *supra* note 17, at 6

<sup>59</sup> *Criminology: theory research and policy*, available at [http://samples.jbpub.com/9780763766658/66658\\_CH01\\_002\\_029.pdf](http://samples.jbpub.com/9780763766658/66658_CH01_002_029.pdf)

<sup>60</sup> SUFYAN ALIISIA, *Carnegie papers, The political Economy of Reform in Egypt: Understanding the role of institutions*8 (2007) available at [http://carnegieendowment.org/files/cmec5\\_alissa\\_egypt\\_final.pdf](http://carnegieendowment.org/files/cmec5_alissa_egypt_final.pdf)

<sup>61</sup> GEORGE HIGGINS, *CRIME, DEVIANCE AND SOCIAL CONTROL* 3 Routledge (2000).

<sup>62</sup> *Id.*, at 26

book 'Criminology' stated that deviant behaviors are, "*those actions that depart from social norms, values, and beliefs,*"<sup>63</sup> and in this case the Minister's promoted behaviors in the agreement defied norms of conduct of the Egyptian free market economy that mainly denounces anticompetitive practices. The term anticompetitive practices is used in this sense to explicitly link the three actions of 2003 official agreement to legal norms which later the Competition Law in 2005 prohibited and even sanctioned the nine Cement companies for their violations. Proceedings in this case exemplify how deviant behaviors become legally prohibited and contribute in the area of law-making. The Competition Law came into force after ten years of deliberations and debates that started in 1994 and ended in 2005 due to resistance from beneficiaries of monopolistic practices plus the negligence of the government to antitrust laws, there are more reasons to procrastination but due to limitation of space and scope of analysis the mentioned reasons are the most important.<sup>64</sup> In this Cement Cartel case the articles of the Competition Law that had been violated are the very same (legal) norms which the deviant behavior of 2003 official agreement was based upon; fixing prices and limiting production. That means deviant behavior encompassed in the official agreement was legal and the Egyptian government was playing an active role in its execution. Paradoxically, Egyptian authorities were negotiating provisions of the Competition Law the same time the Minister of General Operations Sector striking the 2003 agreement that is based on the violations of articles 6(a) and (d) of the applicable law. But when Egyptian authorities decided to criminalize vertical agreements (fixing pricing and limiting production) this was when deviance was transformed into a crime and the actions of the nine Cement Companies which were only mere protractions of the old official agreement in 2003 had become illegal maneuvers and infractions of the Competition Law. Crime in the criminological sense means, "*deviance that breaks a law, which is a norm stipulated and enforced by government bodies,*"<sup>65</sup> so the government is the sole agent that has the authority to transform deviant acts to criminal acts susceptible to formal punishments i.e. financial penalties, prison

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<sup>63</sup> SIEGEL, *supra* note 28 at 4.

<sup>64</sup> BAHAA ALI EL DIN, Introducing Competition Law, in PRIVATISATION AND THE CREATION OF A MARKET -BASED LEGAL SYSTEM, THE CASE OF EGYPT P. 164-165.

<sup>65</sup> GEORGE HIGGINS, *supra* note 61, at 140.

sentence or even capital punishment in severe cases in Egypt. Accordingly, crime is a unique category of deviance that depends on government decision to enact a law and/or code of conduct whether to the criminal law code or any other type of law i.e. Competition Law hence bestow competence to public prosecution to bring criminal actions before the Court. In this vein, crime is relative because, “*what is considered criminal in some times and places is considered perfectly normal in other times and places,*”<sup>66</sup> and that what had precisely happened in the Cement Cartel case. The anticompetitive actions of the official agreement of 2003 was not considered criminal at this year simply because the government was the initiator and endorser of price fixing of Cement and limiting production of the nine companies and so the government procrastinated the enactment of Competition Law to criminalize such actions to a different year, 2005. And with reference to criminologist Edwin Sutherland in his definition on criminology, “*Criminology is the body of knowledge regarding crime as social phenomena. It includes within its scope the processes of making laws, of breaking laws and of reacting toward the breaking of laws,*”<sup>67</sup> so these proceedings of the case does not only depicts how deviance can lead to crime but also opens up a new area of study for criminologists which is, when the deviant behavior is legally prohibited. The introduction of the time variable is crucial in the equation of transformation hence the timing upon which the government decides to outlaw deviance is a result of prudent planning because based upon it sever repercussions would unfold i.e. criminal charges which would lead to formal punishments i.e. ten million Egyptian Pounds fine was imposed on each of the twenty defendants in the Cement Cartel case or the disclosure of past deviant conduct that the government was involved in and that might put government officials in jeopardy.

In 2005 the Egyptian Competition Law came into force and one of the main reasons that pushed the government was an external pressure on the Egyptian legal system from the Euro-Mediterranean treaty which Egypt was signatory of.<sup>68</sup> By this new legislation for Anti-Trust the government and more specifically the Minister of General Operations

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<sup>66</sup> *Id.*, at 141.

<sup>67</sup> SIEGEL, *supra* note 28, at 16

<sup>68</sup> BAHAA ALI EL DIN, *supra* note 64, at 166.

Sector has withdrawn himself from the official agreement of 2003 and so assumed that the Cement nine market players would be competitive and discontinue fixing Cement prices and market shares of sales, but they did not. In that sense, the nine companies were convicted guilty in violation to articles 6(a) and (d) of Competition Law and their market operations behavior was translated as criminal offences hence outlawed and sanctioned ten million Egyptian pounds for each defendant. Accordingly it is a crime in the standard legal definition of a crime as the violation of Criminal Law or any codified laws that sanction perpetrators. Moreover, from a juristic view crime is, “*an intentional act in violation of the criminal law (statutory and case law), committed without defense or excuse, and penalized by the state as a felony or misdemeanor.*”<sup>69</sup> The Egyptian Court in 2008 adjudicated in the Cement Cartel although violations of offenders were not in the Criminal Law code but still the Court categorized it as a crime and more specifically an economic crime that was intentionally committed by chairpersons and executives of the nine Cement companies without defense and must be penalized financially by the state of Egypt.<sup>70</sup> In view of that, the behavior is criminal and the act is an unconventional type of crime committed by unconventional criminals. Hence the Court’s judgment is unique because it’s the first to have adjudicated in such unusual proceedings that differ from the existing stereotypical interpretations about crimes and criminals. The consensus view of crime among main stream criminologists is that criminals belong to lower socio-economic standard in the society which imposes on them financial and social constraints hence crime rates are higher in underprivileged regions than upper class regions.<sup>71</sup> Moreover, criminologists’ view is that the rate of crimes by poor people unlike the richest people is due to the law enforcement practices by the police officers.<sup>72</sup> The circumspection of the police is essentially on the poor areas and their tendencies is to prosecute the lower class people and provide soft conduct to upper class people which has been proven by self-report data accordingly the high rate is established. In addition, as the criticized statement also supports the link between unemployed citizens and the

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<sup>69</sup> TAPPAN PAUL, *Supra* note 1 at 99.

<sup>70</sup> MOHAMED EL FAR, *supra* note 16, at 6.

<sup>71</sup> Victoria Brewer and M. Dwayne Smith, *Gender Inequality and Rates of Female Homicide Victimization across U.S. Cities*, RES CRIME 32 (1995).

<sup>72</sup> SIEGEL, *supra* note 28, at 50

high rate of crime, it has proven by class- crime associations that the weak relation between the number of unemployed citizens and high rate of crime proves it's inaccurate analysis. The clear evidence of the criminologist view is that the crime rate association has concluded four different relations between economy and crime as the following<sup>73</sup>;

- Bad economy could generate high rate of crimes as bad economy turns down unemployed citizens which motivate them to commit property crimes for resources.
- Good economy could generate play a role of the high rate of crimes as well as it requires more citizen to work like teenagers who are more likely to commit antisocial behaviors.
- Bad economy could decrease the crime rate as unemployed parents stay at home to guard their children and might sell some of their possessions and will purchase fewer and less supplies.
- Crime rate and economy are not linked as citizens in the middle and richest class nowadays commits property crimes as bank robbers, burglaries and shoplifting.

## **2. White- Collar Criminality**

The crime committed by the nine Cement Companies falls under a completely different category of crimes; a category which according to Lindgren in one of his most recent publications on general criminological issues of crime, "*a social problem with obstacles.*"<sup>74</sup> He further illustrated that these obstacles are related to the conceptual, theoretical and penal policy aspects of the crime; in other words, the H and two Ws of crimes, how the crime is defined? What are its causes? And what can authorities do to prevent it? It is apparent that these types of crimes fall into a grey area of the Criminal Law Code particularly in Egypt because of their unconventional nature which is not listed in the Penal Code. However, the Egyptian Court observed the market behavior of nine Cement Companies as deviance that should be criminalized and indeed in violation with provisions of Egyptian Competition Law yet there is no mention of their committed offences in the Criminal Law. Edwin Sutherland (1883- 1950) American sociologist and

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<sup>73</sup> ROBERT APEL, *supra note 37*, at 45.

<sup>74</sup> Sven-Åke Lindgren, *Social Constructionism and Criminology: Traditions, Problems, and Possibilities*, 6 Jr. of Scandinavian Studies in Criminology and Crime Prevention 10, 4-22 (2005).

criminologist was the first scholar attempted to explore this grey area in criminology and introduced a new type of crimes, white-collar crimes, to fill this understanding gap and it has become a turning point in criminological theory. He firstly introduced white collar-crimes in December 1939 in his presidential speech at the American Sociological Association and later provided a pivotal definition for white-collar crime as, *“a crime committed by a person of respectability and high social status in the course of his occupation.”*<sup>75</sup> In his definition of these new types of white-collar crimes he stated two conditions upon which the crime would be categorized as white collar; first the offender belongs to a high socio- economic status in the society and second he/she commits the crime in the capacity of their profession. Therefore, Sutherland’s provided social attributes, *“stress a specificity which we do not find among the so-called predatory crimes (crimes against persons and property) almost exclusively carried out by subjects belonging to the lower strata,”*<sup>76</sup> and that created a clear-cut distinction in the criminological classification of crimes. This distinction was interestingly articulated by an American professional robber and pimp called John Allen, *“some steal with a gun, others with a pen.”*<sup>77</sup> Years after Sutherland’s efforts to branch out white-collar criminality from the traditional criminology of crimes, criminologists have moved on and provided in consensus the following definition, *“white collar crimes are illegal or unethical acts that violates fiduciary responsibility of public trust committed by and individual or organization, usually during the course of legitimate occupational activity, by persons of high respectable social status for personal organizational gain.”*<sup>78</sup> In this descriptive framework of white-collar crimes the Cement Cartel case perfectly fit in this category of crimes. Hence the perpetrators of the crime are chairpersons and executives in their organizations which indicate that they are of high respectable social status and they committed their acts of breaching articles 6(a) and (d) of the Egyptian Competition Law, fixed Cement prices and limited its production, during the course of their legitimate occupational capacity. In white-collar crimes the socio-economic status of the offender is

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<sup>75</sup> EDWIN SUTHERLAND, *supra note 3*, at 9.

<sup>76</sup> COLIN SUMNER, *THE BLACKWELL COMPANION TO CRIMINOLOGY* 345 (2004).

<sup>77</sup> ALLEN J., *ASSAULT WITH A DEADLY WEAPON* 416, Pantheon Books (2001).

<sup>78</sup> DAVID FREIDRICH, *TRUSTED CRIMINALS* 7 Wadsworth Cengage Learning (2008).

more significant than the legal distinctiveness of the crime and that's why white-collar crimes for most criminologists are perceived to be more of a sociological entity rather than a legal one.<sup>79</sup> In addition, the Egyptian Court had decided that nine Cement companies misconduct was illegal and endorsed anticompetitive practices which violate their fiduciary responsibility of public trust in order to secure their personal organizational gains from the Cement local market.<sup>80</sup> Another characteristic of white-collar crime specified by the United States Department of Justice that distinguishes it from conventional crimes i.e. blue-collar crimes, is that it is, "*a nonviolent crime for financial gain committed by means of deception by persons whose occupational statute is entrepreneurial, professional or semi-professional and utilizing their special occupational skills and opportunities; also, non-violent crime for financial gain utilizing deception by anyone having special technical and professional knowledge of business and government, irrespective of the persons occupation,*"<sup>81</sup> hence those elite and privileged criminals do not steal with guns but with pens.<sup>82</sup>

### **3. White-Collar Typology**

In this vein, the Egyptian Cement cartel case is a white-collar crime because the nine Cement companies' misconduct was nonviolent as anticompetitive practices do not involve the use of any force or injury to another person as its seriousness is usually measured in terms of economic damage or loss to the victim who is the Egyptian cement consumer. The cartel agreement has prohibited other cement companies from entering the Cement market and slowed the much needed economic development in Egypt by stifling free and fair competition between cement companies and this is a nonviolent crime by definition. Having said that the Cement Cartel case is a white-collar crime per se leads to a more specialized discourse about the different types of white-collar crimes and which type does this case exemplify. There are four basic types of white-collars; corporate

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<sup>79</sup> Geis Gilbert, *Toward a Delineation of White-Collar Offenses*, 32 *Sociological Inquiry* 165,160-171 (2007).

<sup>80</sup> MOHAMED EL FAR, *supra note* 16, at 119.

<sup>81</sup> KELLY STRADER, UNDERSTANDING WHITE-COLLAR CRIME 1, <http://www.lexisnexis.com/lawschool/study/understanding/pdf/WhiteCollarCh1.pdf> (2011)

<sup>82</sup> *Id.*, at 5.

crime, occupational crime, state crime and state-corporate crime.<sup>83</sup> However, with respect to antitrust violation the Cement Cartel case is a corporate type of white-collar crime as it defines, “*a type of organizational crime committed in free enterprise economies and thus involves criminal activity on behalf of and for the benefit of a private business or corporation.*”<sup>84</sup> In corporate crimes there are two most significant types; corporate violence for instance in march 1998, Exxon has been pleaded guilty and paid one hundred and fifty million dollars as a fine to its criminal activity as has spilled eleven millions of oil gallons in Alaska’s sea which has resulted the death of thousands of wild life.<sup>85</sup> This example of such crime against the environment is an illustration of corporate violence crimes which has damaged the environment due to its policies and irrational actions which harm the products or substance or people. However, these actions are not intended rather than consequences. Most companies their main target is to satisfy their consumers to keep their reputation up. Nevertheless, these companies harm their consumers when it comes to maximizing the profit. According to the US Consumer Product safety, one hundred and fifty thousand Americans die from bad product whether in food or medicines i.e. more than five thousand babies in 1960 have been born with a deformation due Thalidomide medicine which was prescribed to their mothers.<sup>86</sup> The other type of corporate violence is the violence against workers; employers’ main target is to achieve profits over the concern of their employees’ health condition as according to the International Labor Organization; more than thirty thousands of employees suffer from occupational diseases or accidents.<sup>87</sup> The second type of corporate crimes is corporate abuse of power based on corporate fraud with economic consequences rather than violence such as patent/trademark fraud, unfair labor practice, price fixing or bribery. For instance, the department of defense in United States spends billions of dollars on weapons contractors. However, these contractors charge the defense department with extravagant prices as it is a life opportunity for fraud nevertheless the

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<sup>83</sup> FREIDRICH, *supra* note 78, at 65.

<sup>84</sup> MARSHALL, *supra* note 26, at 28.

<sup>85</sup> FREIDRICH, *supra* note 78, at 67.

<sup>86</sup> FREIDRICH, *supra* note 78, at 69.

<sup>87</sup> *Id.*, at 73.

weapons could contain defects.<sup>88</sup> Another type of corporate abuse of power is price fixing. Some market leaders companies agree to fix prices to impose their competitors to adjust their prices which are illegal based on Sherman Antitrust act of 1890. For instance, the heavy electrical equipment antitrust case in 1961 that involved seven of the high ranked executives from General Electric and Westinghouse who were sentenced to thirty days in jail and the former company was fined 437,500 US Dollars and the latter 372, 500 US Dollars. The conspiracy of price fixing involved the Tennessee Valley Authority equipment and the corporate price fixers were well aware of their illegal conduct hence they met under cover in hotel rooms using fictitious names and titled their meetings '*choir practice*' as for the meeting list of attendees it was identified as, '*the Christmas card list*'.<sup>89</sup> Also, crimes against employees are one of the significant types of corporate abuse of power. Various corporate owners decrease employees' wages and benefits as the more your decrease in the employees wags the more you increase profit. For instance, in 1980, the business man Wal-Mart has proved that he has gained one thousand million dollars by imposing his employees of working after hours without any extra hour's payments Therefore; he has been accused of ten million dollars as fine for his unfair labor practice.<sup>90</sup> The victims of corporate crimes are consumers, competitors, employees or clients and the nature of damage is committed in the corporate context by a primary corporate agent such as managers or supervisors and the various techniques of corporate crimes in general are; price fixing, multinational bribery, kickbacks, tax violations, manufacturing and sale of faulty or unsafe products and fraud against the government.<sup>91</sup> Conclusively, the Egyptian Cement Cartel is a white-collar crime that exemplifies corporate abuse of power via price fixing.

The most remarkable feature of the Cement cartel conspiracy was its blatant and deliberate nature. The Competition Law violators modes of operations proves clearly their awareness of their unlawful positions hence their meetings were carried out in secret and without record of meetings minutes. With reference to the criminal investigation, the

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<sup>88</sup> *Id.* at 80.

<sup>89</sup> GILBERT GEIS, ROBERT F. MEIER AND LAWRENCE M. SALINGER, WHITE- COLLAR CRIME: CLASSIC AND CONTEMPORARY VIEWS 152, The Free Press (1995).

<sup>90</sup> *Id.*, at 84.

<sup>91</sup> *Id.*, at 85.

chairman of the Federation of Egyptian Industries confirmed the existence of closed meetings of the Cement sector in the chamber and there were also unofficial meetings that the chamber was not notified of conducted without any meeting minutes which were dealt with strict confidentiality.<sup>92</sup> Moreover, as per the Egyptian Criminal Court reasoning on factors that encouraged the conspiracy, the following statements were provided; uniqueness of this particular type of Cement at its fixed product features and the inelasticity of Cement because there are no substitutes or alternatives for it in the market and there is no room for product enhancement to compete and attract sales. Few market players in the Cement market which comprise a total of only nine dominant players and that facilitates communication amongst them. The less there are market players the more the likelihood an agreement will be established amongst them. There is a great deal of transparency in the Cement market in terms of availability of corporates' data and market dynamics information via the monthly circulated report by the Egyptian Ministry of Investment in addition to the Cement pricing report released by the Federation of Chambers of Commerce that reflects Cement prices in all governorates. And last but not least the preexisting official agreement in 2003 under the auspices of the Minister of the Business Sector which was not terminated after the enactment of Competition Law.<sup>93</sup> Regarding the last factor the first defendant, chairman of National Cement Company confirmed in the ECA investigation report in January 2007 that, “ *the Cement manufacturing companies are still liable to the official agreement conducted in March 2003 by the Minister of Business Sector accordingly marketing managers meet on quarterly basis to concur the preset market shares of sales.*”<sup>94</sup> The Corporate abuse of power and its relationship with the Law depicts the white collar behavior in this case. White-collar criminals of the nine Cement Companies thought they would enjoy special immunity if they violated the Competition Law not only because they are highly ranked in both the social hierarchy and their organizations' status in the economic but also because they assumed their misconduct was still empowered by the Minister of the Business Sector. The offenders also used this false perception as neutralization

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<sup>92</sup> CEMENT CARTEL CASE, *supra* note 9, at 4.

<sup>93</sup> *Id.*, at 6

<sup>94</sup> CEMENT CARTEL CASE, *supra* note 9, at 29.

techniques to justify and legitimize their misconduct thus preserve their self-image as respectable and decent businessmen. That explains the interconnection between the structure of power relations in the society and the legal system in Egypt thus the former is perceived to be domineering and that was how the twenty defendants fall into the trap of their misperceptions that their power relations and impunity could supersede the Law. Furthermore, offenders' defenses were mainly focused on procedural claims such as the unconstitutionality of Article 6 of the Competition Law which embodies the core of the case. Their claim was that Article 6 prohibits the presence of contracts or agreements even if they are not enacted which is considered unconstitutional. However the court argued that in this case their claim is invalid because their agreement was indeed put into force so their claim is without a direct benefit which is a condition the Court should receive to accept constitutional related questions in the Egyptian legal system. Another procedural claim by defendants was that Article 25(2) of the Competition Law contravenes the personality of sanctions doctrine and also the unconstitutionality of Article 22(2) of the Competition Law.<sup>95</sup> Apparently defendants' focus on procedural claims is a distraction from the core criminal liability in which they were silent and unattended to their legal burden of proof and provide to the Court, "*sufficient evidence to prove lack of involvement or existence of a reason that would deny their responsibility,*"<sup>96</sup> and that confirms defendants' awareness that their conduct has become now in violation with the Competition Law. Unlike in the Heavy Electrical Equipment Antitrust case of 1961 where defendants claimed the essence of their stabilizing prices to recover costs in a market where 'dog-eat-dog' hence their conduct should not criminalized. It was well articulated by a Westinghouse executive (one of the defendants), "*illegal? Yes, but not criminal... I assumed that criminal action meant damaging someone, and we did not do that... I thought that were more or less working on a survival basis in order to try to make enough to keep our plant and our employees.*"<sup>97</sup> No such argument was made by defendants in the Cement Cartel case.

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<sup>95</sup> *Id.*, at 36.

<sup>96</sup> EL FAR, *supra* note 16, at 119.

<sup>97</sup> GEIS, *supra* note 89, at 155.

## **B. Ezz Rebars Case and White-Collar Criminality**

### **1. Crime, Deviance and Illegality**

According to criminologist's definition of crime, there is a theory called the interactionist view of crime which is based on the school of sociology which views that each person acts according to his beliefs and perspectives accordingly they interpret their behavior based on their principles and views.<sup>98</sup> For instance, some people view that the business of dog- fighting ring is a crime and some sees otherwise. Consequently, this theory supports the idea that the definition of crime depends on human's beliefs and perspectives as in Netherlands, having marijuana is legal however in some countries is forbidden as well as gay marriage. This theory could be applied on judges as well, as a judge could charge a person for a murder or justify a self-defense based on his interpretation of the events and law. Therefore, the theory views that crime is defined according to the reflection of people and their moral values that has power in legal jurisdiction. In this case, Ezz-Dekhila could have not considered that the excessive prices even though it is not drafted in the law as an unethical behavior based on its own perspectives and views which have motivated it to act such a conduct. However, being exempted from certain violations or illegal conducts does not exempt Ezz-Dekhila from their deviant behavior as stated previously. Some practices and behaviors are far from legality nevertheless these practices are not prohibited nor drafted in the law therefore it grants these practices the green card for committing these types of behavior without fearing of any punishments.<sup>99</sup> Durkheim states that deviance behavior give the opportunity to the deviant to have the choice of choosing between what is legal and what is moral or to legalize any misconduct as long as it is not criminalized by the law.<sup>100</sup> Nevertheless, crime is a behavior which has been committed in violations of the law. In this case, the Court adjudicated in favor of Ezz-Dekhila hence it did violate neither the Criminal Law nor the Competition Law. However, their practices are under the category of deviant behaviors as increasing prices to 500% during five years due to the companies' dominant position which has imposed

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<sup>98</sup> SIEGEL, *supra* note 28, at 4.

<sup>99</sup> *Defining Deviance*, available at <http://fasnafan.tripod.com/definingdeviance.pdf>.

<sup>100</sup> HIGGINS, *supra* note 61, at 9.

the consumers by these excessive prices because they don't have any other options for lower prices due to the dominance of Ezz-Dekhila is a deviant behavior. As stated before, deviant behaviors could be norms against society, religion, politics or consumers. The Ezz-Dekhila violated the norms and ethics of the consumer's rights by abusing its dominant position and increased excessively the steel prices knowingly that the consumer was obliged to buy as the company is dominating the market and excluded all the other steel competitors from competing in the market. Ezz-Dekhila deviant behavior is criminalized in all EU countries as According to Article 82(a) of the EC Treaty, a firm with market power abuses its dominant position if it "*directly or indirectly imposes unfair purchase or selling prices or other unfair trading conditions.*"<sup>101</sup> A dominant company violated the antitrust laws if it charged its consumers with unfair high prices as this misconduct is as well prohibited in the UK competition law of 1998 in Article (5) because this kind of practice is against the consumers' welfare and rights.<sup>102</sup> Describing and claiming that the practice of the excessive prices by Ezz-Dekhila as a deviant is supported by the previous articles of different laws which demonstrate that this practice is not exempted from being illegal because this misconduct abuses the consumer's rights. Regarding the second behavior of Ezz-Dekhila regarding the horizontal merger which resulted in 67% market share over the Egyptian steel market, this behavior as well is not prohibited by the Egyptian Competition Law which grants this misconduct legality. However, this practice is considered deviant as it is the same situation of the previous misconduct hence it represents a violation in the European Union countries because it presents a threat to competition thus reduce the number of competitors in the market. The horizontal merger may result in giving the merged party market power to limit competition in the relevant market by removing one of the merging parties as a potential entrant into that relevant market. In addition, Potential market entry may also constrain the behavior of the merging parties. For entry to be considered a sufficient competitive constraint on the merging parties, it must be shown that entry is likely to occur if prices

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<sup>101</sup> EC TREATY Article 82.

<sup>102</sup> See Case 27/76, United Brands Company and United Brands Continental BV v Commission of the European Communities, (1978) ERC 207.

move above competitive levels.<sup>103</sup> This case exemplifies the differences between legal systems and that a behavior could be legal in a country however illegal in another. The practices of the Ezz- Dekhila is considered a deviant behavior as it violates consumer's and competitors rights regarding fair treatment and free market which the Egyptian Competition Law has neglected to draft and that should be criminalized and stated in the Egyptian law to prevent and criminalize this particular deviance. Therefore, this case provides a thought-provoking material for criminological study of white collar deviance that should be criminalized but was not by Egyptian authorities. It also highlights fire escape doors that white collar criminals run through to protect themselves from being criminalized. For example Ahmed Ezz managed to convince the Court that his business operations were in not in violation with any laws and that's how this case is unique in portraying the debate between deviance and crime in the category of white collar crimes. In his defense he smartly stated that the reason for the increasing of prices was due to the increase of the steel raw materials as the Egyptian Steel industry was directly connected to the prices of the world's raw materials. In his second defense he pointed that Ezz-Dekhila Steel prices were less than other local producers' steel prices and the steel prices is far from being the reason for the increase of real estate's prices, as the cost of steel does not exceed 13.5% of the total cost of any real estate.<sup>104</sup> The Court was convinced by these defenses or in other words it was an easy get away for Ahmed Ezz hence "*when high-status people are involved in criminal proceedings, status, education and income play a central part all the way through the various instances of the process: from the initial contact with the police to the trial.*"<sup>105</sup> Yet from a criminological point of view, Ezz-Dekhila practices are white collar deviance that should be criminalized and are not just restricted to legally defined crimes. The misconduct encompasses unethical acts, consumer's rights and free competition violations but the Egyptian Competition Law did not criminalize which raises the question of whether the Competition Law was written in favor of the white-collar criminals.

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<sup>103</sup> *Strategic Economic Directions Report of 2007, Al Ahram Centre for Strategic and Political Studies, Al Ahram Daily Newspaper, March 7, 2007.*

<sup>104</sup> ABDEL MASSIH, *supra note* 18, at 28.

<sup>105</sup> COTTINO A. THE BIG THIEVES HANG THE SMALL ONES: EQUALITY BEFORE THE LAW IN AN UNEQUAL SOCIETY 140, Routledge (1988).

## 2. White-Collar Criminality

The previous argument indicates that the misconduct of Ezz-Dekhila is a deviant behavior but not a crime as per the Court judgment it didn't practically violate the Competition Law provisions or the Egyptian consumers' rights protection. However, criminology's interests are far from studying and investigating of whether an action is a crime or legal because this is the role of the prosecution and the judicial authority. Criminologists are concerned about deviance and its link to criminality as Sutherland described white collar crime as not a crime in the legal sense of the term.<sup>106</sup> In addition, Criminologists always have their own school of thoughts with its own perspectives unlike any other thinkers as they are somehow criticized by biologists, psychologist even economists. The multidisciplinary nature of the science leads them to always have their unique controversial views. Consequently, the definition of crime by the criminologists is based on their own choice of orientations and perspectives. Being a deviant or committing deviant behavior does not exclude it from being categorized in typologies of crimes. Looking at facts, circumstances and features of this case, this deviance is categorized indeed as a white-collar crime hence white-collar crimes can refer to both illegal and deviant conducts. When Sutherland introduced the term white-collar crimes and during his writings about this type of crime, much of the activities and crimes he was concerned of restraints of trade, violations of patent, unfair labor practices and misbranding of food and drugs which all were not subject to criminal sanctions by his time which was the main focus of Sutherland because these acts could be more harmful than the penalized practices.<sup>107</sup> The main significant definitions of white-collar crime as previously stated in the Cement Cartel case are; "*crimes committed by a person of respectability and high social status in the course of his occupation and crimes committed by corporations and other legal entities.*"<sup>108</sup> In addition to "*white-collar crime is nonviolent crime for financial gains committed by means of deception by persons whose occupational statute is entrepreneurial , professional or semi-professional and*

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<sup>106</sup> RONALD WEITZER AND BRYM, DEVIANCE, CRIME, AND SOCIAL CONTROL 141 (2001), [http://www.newtexts.com/newtexts/BrymLie/Brym\\_Brief\\_Ch06\\_138-169.pdf](http://www.newtexts.com/newtexts/BrymLie/Brym_Brief_Ch06_138-169.pdf)

<sup>107</sup> APEL, *supra* note 37, at 45.

<sup>108</sup> FREIDRICH, *supra* note 78, at 7.

*utilizing their special occupational skills and opportunities; also, non-violent crime for financial gain utilizing deception by anyone having special technical and professional knowledge of business and government, irrespective of the persons occupation.*”<sup>109</sup> These previous definitions conclude that white-collar crimes are distinguished from other types of crimes mainly in the following two elements; the offender should belong to a middle or wealth social class and has a position status at the workplace where the crime was committed and the crime should have caused to the victim a form of indirect harm economically in a legal classification context as antitrust or fraud. And the crime committed in the offender’s corporate, government or professional services under his occupational cover whether by individually or with group. In addition, Applying these definitions to the Ezz-Dekhila case, the company’s Chairman one of the most prestigious and powerful businessmen in Egypt Ahmed Ezz has committed a nonviolent crime by imposing excessive prices on the steel production empowered by his dominant position. The company committed this misconduct during its occupation for financial gain purposes as the company increased the prices of steel up to 500% by means of deception as it claimed that it was due to the increase of materials which proved wrong as the company was not importing any materials and was producing its own. In addition, the company used their special skills and opportunity of their dominant position to increase prices which gained from its professional and business knowledge of the law and given opportunities. Besides, this act is an unethical act as it is against consumers’ rights and as it is penalized in most of the developed countries law additional to its violations of public trust as this misconduct harmed the Egyptian market and economy as well. Finally, this type of deviant conduct committed by the corporate under the auspices of Ahmed Ezz is a white-collar crime that violated the public trust and consumer’s right using power and dominant position in the local steel market.

### **3. White-Collar Typology**

After categorizing such a conduct as a deviant behavior that should be criminalized and added into the Egyptian Competition Law, the type of white-collar crime should be determined to dig deeper into that area. The first answer that comes to our minds about

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<sup>109</sup> SUTHERLAND, *Supra note 3* at 68.

the type of this particular white-collar deviance is a corporate abuse of power type as the previous case, Cement Cartel. This is quite tricky because the deviant conduct was committed by a corporate entity Ezz-Dekhila; however, this case is a state corporate crime as the governmental units and political power implicitly participate and motivate this deviant behavior. And this unseen variable of influence is what makes this case significantly important to the study of white-collar criminology. Until the early nineteen nineties, criminologist's research was always separating between corporate and state crimes which academically provoked the criminologists Ronald Kramer and Ray Michalowski and imposed them to put it in their concern. As they believed that this separation is obscuring the fact that states and corporations are functionally interdependent, and the deviant behavior cannot be occurred without one of its assistance to another.<sup>110</sup> Thus, Michalowski and Kramer defined State Corporate Crime as; *“illegal or socially injurious actions that occur when one or more institutions of political governance pursue a goal in direct cooperation with one or more institutions of economic production and distribution.”*<sup>111</sup> And more specifically they provided the following definition; *“illegal or socially injurious actions that result from a mutually reinforcing interaction between 1) policies and/or practices in pursuit of the goals of one or more institutions of political governance and 2) policies and/or practices in pursuit of the goals of one or more institutions of economic production and distribution”*<sup>112</sup> Moreover, scholars have conducted theoretical innovations by stating a distinction between state-facilitated corporate crime and state-initiated corporate crime. State-initiated corporate crime is when corporations engage in organizational deviance at the direction of, or with the tacit approval of, the government. However, State-facilitated corporate crime occurs when government institutions fail to restrain deviant business activities, either because of direct collusion between business and government or because they adhere to shared goals whose attainment would be hampered by aggressive

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<sup>110</sup> CYNTHIA BARNETT, THE MEASUREMENT OF WHITE-COLLAR CRIME USING UNIFORM CRIME REPORTING DATA 12, available at [http://www.fbi.gov/about-us/cjis/ucr/nibrs/nibrs\\_wcc.pdf](http://www.fbi.gov/about-us/cjis/ucr/nibrs/nibrs_wcc.pdf)

<sup>111</sup> RONALD KARMER AND RAYMOND MICHALOWSKI, STATE- CORPORATE CRIME, Paper presented at the American Society of Criminology meetings (1990).

<sup>112</sup> Hegarty, W. H., and H. P. Sims, *Some Determinants of Unethical Decision Behavior: An Experiment*, 63 Journal of Applied Psychology 455, 451-457 (1978).

regulation or in other words when the government fail to alert the domestic community about such actions because these deviant practices directly/indirectly benefit the corporation.<sup>113</sup> In application to this case, the Chairman Ahmed Ezz, who was a parliamentary member in the Egyptian parliament and a member of the National Democratic Party and was one of the most influential candidates in the Egyptian parliament and Egyptian business society due to his closeness to the ex-president's son Gamal Mubarak who was the deputy secretary-general of the NDP. The position of Ahmed Ezz and his political background shift the misconduct of Ezz-Dekhila from classify it as a corporate crime to a State- Corporate Crime due to two reasons; Ahmed Ezz double positions of power in both the corporate and governmental sectors and government acts to facilitate the pursue of Ezz-Dekhila corporate goals which concurrently fulfills certain economic state goals. Ahmed Ezz posed two faces of the same coin; a face of a businessman who is chairman of Ezz- Dekhila and wants the maximum benefits of his company whether by legal or illegal means, and a second face of the powerful Egyptian politician and member of parliament who has the authority and immunity against any claims which motivated him from committing any wrongful act without getting caught. Ahmed Ezz's position motivated him to his deviant conduct for the purpose of financial gains based on his power and immunity as according to Robert Lane, *"Most businessmen and most responsible government officers, at least from the sample interviewed, believe that the businessmen run afoul of the law for economic reasons-they may want to make a fast buck"*<sup>114</sup> Based on the definition of State Corporate Crime, Ahmed Ezz has committed a deviant behavior against consumer's rights by applying excessive prices on steel products which have harmed the market and consumers empowered by his abuse of dominance. However, the abuse of dominance did not only the element that gave him the opportunity and motivated him to commit such crimes because as in the first case, the cement companies got caught and the court issued a harsh verdict towards them which illustrates that the government were aware of the competition practices and behaviors by the corporates. Ahmed Ezz has committed a

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<sup>113</sup> WEITZER, *supra note* 106, at 141.

<sup>114</sup> GEIS, *supra note* 89, at 361.

deviant behavior which is ‘socially injurious actions’ this behavior was with the interactions of his political power as he used to old dual political powers which is “*policies and/or practices in pursuit of the goals of one or more institutions of political governance*”<sup>115</sup> Ahmed Ezz had multiple personalities; economic, governmental and political, with different purposes and each personality was collaborating with the other for his own benefits which support that this type of white-collar crime is a state-corporate crime. However, the crime or the deviant behavior could have been committed whether by the facilitation of government or the initiative of government as stated in the definition. In Ezz case, the two elements are met in collaborating the deviant practice as the government represented by Gmaal Mubarak or Ahmed Ezz itself and gave a tacit approval of the actions because the action is not a crime itself which motivates the government to not to take such actions which is an initiative by the government. Furthermore, the government facilitated the deviant practice due to the direct collusion between Ahmed Ezz the Businessman and Ahmed Ezz the Politician with power and authorities and Gamal Mubarak. Thus, Ahmed Ezz used his political and governmental authority to assist and collaborate in his deviant practices. And it is also worthy to mention that Ezz-Dekhila case was adjudicated upon in 2009 which is two years before January 25 revolution against Mubarak regime. The Step down of Mubarak has been followed by numerous corruption charges directed to Mubarak and his supporters among which is Ahmed Ezz who has been sentenced to seven years in prison and fined more than three billion US Dollars.<sup>116</sup> These events highlight the interdependence between the state and corporates of high financial status in the Egyptian economic system and in state-corporate crimes in specific. Finally, this case represents a lucid material on the interaction between the pursuit of governmental and corporate goals in white-collar criminology.

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<sup>115</sup> GERBER, *supra note* 32, at 277.

<sup>116</sup> BBC News Middle East, *Egyptian Steel Magnate Ahmed Ezz convicted*, available at, <http://www.bbc.co.uk/news/world-middle-east-19830922>

## V. Application of Rational Choice Theory on Cases

According to the chapter on rational choice theory, white-collar crime is a calculated action and a choice purposively made by white-collar criminals who are self-interested. They utilize their mental capabilities in assessing the costs and benefits of their actions in terms of potential payoffs whether personal or professional and the possibility of arrest and punishments. In the two study cases Cement Cartel and Ezz- Rebars Steel the rational choice theory presumes that rational actors of the nine Cement companies and Ahmed Ezz respectively chose to, “*engage in crime rather than non-crime when the perceived net benefits of crime (i.e., benefit minus costs) are larger than the perceived net benefits of non-crime.*”<sup>117</sup> Both benefits and costs are calculated below in every case to highlight the decision making process that promoted the engagement of actors, nine Cement Companies and Ahmed Ezz, in white-collar criminality. Rational choice and the Greedy is applied in both cases hence perpetrators were motivated by greed to multiply their already well-established social and economic positions. The nine Cement companies as well as Ahmed Ezz were market leaders and dominating the Egyptian economic arena holding two vital industries in the infrastructure of the Egyptian economy; cement and steel respectively. Greed in rational choice is a motivating factor upon which the rational performer makes his/her calculation of pleasure versus pain; however, in certain circumstances it can mislead or even blind the perpetrator on the costs or potential pains and punishments he/she might suffer from violating the law. As presented below in the cost/ benefits analysis of the Cement cartel case greed overwhelmed the nine Cement companies and subjectively maximized the benefits over costs which swayed the accurate calculation and failed its rational objectivity. Therefore, greed can manipulate the rational choice of the rational performer and lure him/her into a crime that is a result of irrational reasoning and inaccurate calculation. Crimes for rational choice theorists is a calculated action that seeks to maximize self-interested pleasures and gains. The application of costs and benefits below also presents the selfishness and egocentricity of offenders’ whose actions clearly ignore the higher common good and welfare of their Egyptian society.

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<sup>117</sup> MICHAEL L. BENSON AND SALLY S. SIMPSON, WHITE-COLLAR CRIME: AN OPPORTUNITY PERSPECTIVE 66, Routledge (2009).

## **A. Cement Cartel Case and Rational Choice**

### **Costs vs. Benefits**

The cement case was the only case in the Egyptian Competition Law that had a verdict against defendants. However, the explanation of their behavior is still ambiguous as it is not clear the motives that led these tycoon companies to commit such crimes. Applying the rational choice theory the following costs and benefits were the basis of the rationalization process of nine Cement companies in attempt to realize self/corporate-interests.

### **Costs**

As stated in the case facts, the cement companies settled an official agreement with the Egyptian Minister of Business Sector as to allegedly stabilize the local Cement market turmoil which gives the nine cement companies the immunity and courage to do such crime. The executive authority itself has granted, allowed, initiated, and participated in the crime which motivated the Cement companies from committing the crime knowing that the government was behind their backs and participated in this misconduct which exempt any punishment or cost of this deviant practice which is the main concern of any potential offender. In addition, as the agreement was between mostly by the majority of the cement companies in Egypt, therefore, the company's inner plans and assumptions that no harmful effects or punishment could affect them as the control the entire Egyptian Cement market. Based on the previous statements, it is clear that the cement companies were aware and settled a good plan to protect themselves from any legal questions. However, the Court had different reasoning and adjudicated against their assumptions and imposed an expensive fine on defendants which according to the rational choice theory is an uncalculated cost that white-collar criminals had to pay for due to their subjective calculation of formal legal sanctions and false assumptions. Also the cost of compliance with regulatory provisions of the Competition Law involved greater expenses to break the cartel and unleash market uncertainties and price wars.

### **Benefits**

Regarding the benefits of the Cartel, via the price fixing act the nine Cement companies protect themselves from competition which grant them the security of the coming profits

as it increases each company's profits and the share of each Cement company is secured and protected which economically empower each company's in terms of market power and profits. Additionally, the benefit of the cartel via controlling the local production of the Cement industry by the cartel will open opportunities to export the cement and lock any import from outside the country which will impose the consumers to buy from these cement company's and that will secure profits. Furthermore, profits and controlling your competitors will empower the company with prestige and power. On the other hand, assessed benefits of compliance to the Competition Law are minimal and subjective benefits related to the feelings of guilt free and elimination of fear of formal punishment but these benefits were eliminated via neutralization techniques. Finally, it is crystal clear that the cement companies' were secured by the government which consequently immune the nine Cement companies from any legal questions regarding the cartel conduct. They allegedly thought they were exempted from all/any costs and damages and at the same time evaluated the benefits the cartel in terms of profits, power and security as overwhelming.

## **B. Ezz Rebars Steel Case and Rational Choice**

### **Costs vs. Benefits**

After presenting Ezz-Dekhila merits of the case and explanations of the committed deviant practices the rational choice theory lucidly interprets the costs and benefits upon which the white-collar behavior has been committed;

### **Costs**

The cost of the deviant conduct committed by Ezz-Dekhila was clearly absent as per the rationalization of Ahmed Ezz accordingly the deviant misconduct was committed. His rationality was based upon the mere fact that he is the Chairman of Ezz-Dekhila, Egypt's biggest corporation in manufacturing steel which is one of the country's most vital products, and harm that might affect his business will have negative repercussions on the Egyptian economy as whole. So it was a farfetched idea for Ahmed Ezz that the Egyptian Competition Authority would file a report against his business operations. In addition to his effective presence in different governmental units particularly the People's Assembly

i.e. Parliament which granted him the opportunity to get exposed to various laws and regulations and even more participate in their legislations particularly laws to regulate the Egyptian economic system. Therefore, he was well aware of the Egyptian Competition Law and its provisions so before committing the deviant conduct he has investigated thoroughly the Egyptian version of antitrust laws knowing that it did not include clauses regarding the abuse of dominance from the angle of excessive prices and horizontal mergers. The only cost that any offender's first concern is the punishment of the law and the future deterrence which is absent in this current case and that has motivated even more the deviant conduct. Moreover, as it has been alleged that Ezz-Dekhila conducted vertical agreements with the steel suppliers the ECA could not prove the illegality of this conduct because of the heavy burden of prove for such agreements since it requires comprehensive investigations and complicated tools of law enforcement. As a result, the ECA withdrew its investigations and closed the case of Ezz-Dekhila which is rather a questionable act that might be interpreted that Ahmed Ezz exercised his political/economic pressures on the ECA. Finally, I consider this case is costless and if there had to be any costs listed then it would be a mental effort exerted by Ahmed Ezz which was later translated into benefit.

### **Benefits**

However, the benefits of the deviant conduct was enormously tempting as due to the consolidation of Ezz Steel with the other competing steel Company Alexandria National Iron Company presented a golden opportunity for Ahmed Ezz and Ezz-Dekhila to become the only dominant and market leader in the steel market with 67% of market share. In this horizontal merger there were great benefits on both the personal and professional/corporate fronts. Regarding the former in the self-interest of Ahmed Ezz, he has dramatically boosted his social status as well as empowered his financial position thus become a more influential political figure and closer to the Egyptian president circle of trustees. On the professional or corporate level Ezz-Dekhila dominance in the steel market will benefit the corporate on the business and financial domains. At the same time, the dominant position has granted Ezz Dekhila to increase the prices of the steel 500% and the consumers are imposed to buy it which motivated the offender to commit

such crime as the financial gain has overcomes the costs. In addition, the position of Ahmed Ezz the chairman as an significant member at the National Democratic Party that was been rules by the son of the ex-Egyptian president Gamal Mubarak gave him the power and authority to be far from any legal claims via his immunity and political power. In this case the benefits overwhelmed the costs of the deviant behavior as the costs of the offense did not exist and the offense was fully protected by the lack of the Egyptian Competition Law which should have prohibited such actions and the political power of the chairman of the company. Regarding the subjective benefits it is related to the excitement to break the law and not being caught plus thrill of taking greater risks than ordinary lawbreakers.<sup>118</sup> It is clear that the deviant behavior has been committed based on the calculation of benefits and costs of the behavior as the costs was with zero damages and the benefits were unlimited. This action could be committed by another company with different people and strategies due to the present lack of law regarding the excessive prices by the dominant position holders.

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<sup>118</sup> BENSON, *supra* note 117, available at 67.

## **VI. Conclusion**

This thesis has presented two Egyptian antitrust cases, Cement Cartel and Ezz Rebars Steel, in a criminological perspective to pull out underlying issues of white-collar crimes that the traditional legal analysis fails to explore. Both cases are characteristic of white-collar crimes in Egypt and they present different types of crimes; corporate and state-corporate crime respectively. In the Cement Cartel case, corporate crime, the Court's judgment was the first and only, until today, decision under the Competition Law. The nine Cement Companies' offenders were convicted guilty and their deviant behavior was subjected to criminal investigation and prosecution however their violations were not regulated by the Egyptian Criminal Law code but the Competition Law. In the Ezz Rebars Steel case, state-corporate crime, the situation of Ahmed Ezz was different hence his alleged violations of provisions in the Competition Law did not reach the Court and the investigations were conducted under the auspices of the Egyptian Center of Authority which could not prove acts of violations particularly, the abuse of dominance and vertical agreements. In the first chapter, the two cases were presented in limitation to the legal perspective to demonstrate the problem, analyze and examine its facts referring to provisions in the Competition Law that have been violated or allegedly violated and finally how did Egyptian authorities deal with each case. To demonstrate the cases from a legal angle only in this chapter without the criminological perspective signifies what is lost in understanding by not having a criminological perspective that complements the analysis. Chapter two was dedicated to a theoretical presentation of the rational choice theory which has been selected among several other theories in criminology hence based on the author's research and personal opinion is the most adequate theoretical framework to scrutinize the occurrences of white-collar crimes. The demographic representation of white-collar criminals is distinctive from ordinary criminals; they belong to a unique socio-economic class and privileged with high levels of education and also they hold well-paid jobs in reputable firms. Therefore, the rational choice theory successfully answers the questions of why and how these elite criminals engage in criminal behavior taking into consideration the mental power and rationalization of such smart criminals. Chapter three presents a criminological assessment of cases adopting the criminological

perspective of white-collar crimes. This chapter is the core of the thesis hence it demonstrates an alternative framework of analysis of cases other than the conventional legal structure of analysis. Every case is separately analyzed exploring areas in the criminology of white-collar crimes in Egypt; differentiate between crime and deviance under Antitrust Laws, examine the definitions of white-collar crimes and apply it on both cases hence this type of crimes is relatively new and is not tackled or presented nor in the Egyptian legal or judiciary systems which could have weakened the law enforcement regarding this type of crime. Furthermore, classify each case on the bases of typologies of white-collar crimes where the Cement Cartel case is corporate crime and Ezz Rebars Steel case is state-corporate crime and investigate respectively the specifics of every type with reference to the relevant facts presented in chapter one. Finally, chapter four is the application of rational choice theory to the cases along the elements previously presented in chapter two. This approach of case analysis is somehow new towards the Egyptian legal system as it focus on the causes of such crimes which has been tackled by introducing the rational choice theory in both theoretical and applicable methods which highlighted the issue of on what basis white collar crimes are committed arguing that these crimes occurred on reasonable calculations of costs and benefits. In this context, the criminological perspective benefits the scholarship of crime and the legal analysis of cases hence it opens up new areas for explorations with respect to the multidisciplinary nature of the criminology discipline. It examines crimes from various angles and provide a social depth of understanding to why and how white-collar crimes under Egyptian Antitrust laws occur. After summarizing the body of this paper regarding its structures and content, I will present the urgency and benefits of the thesis regarding the criminological perspective adopted to present antitrust cases in Egypt. The criminological analysis of each case has focused on the nature of the crime and cracked deeper the elements of the crime as the criminological analysis extract the nature of the crime as it determined the type of this economic crime whether it is a conventional, white-collar or blue-collar crime. After determining that each case falls under the white collar crimes, it excavated deeper on what category of white collar crime as it settled the differences between corporate and state corporate crime in addition to the differences between crime

and deviance. However, the cases analysis known as a legal analysis which is focused on only analysis the issue and rules to conclude whether such case has violated the law or not unlike the criminological analysis which do not focus on the violations of the law nevertheless it focus on the causes and nature of the crime/deviance to extract the methods to prevent such crimes and participate in the law-making process. For instance, regarding Ezz Steel case, if the legal analysis has been conducted, the conclusion would be that the Ezz Rebars did not violate the antitrust laws due to the non-existence of such article that violated this excessive or prices by dominant company. However, when this case has been conducted based on a criminological analysis, this analysis divided the case into four parts as it determined the action as a deviant behavior that should be criminalized which highlighted the weakness of the antitrust laws, it stressed on the concept of white collar crimes which is mostly unfamiliar by the Egyptian legal entities, it differentiate between the state corporate crime and corporate crime and finally presented a theory which explains on what bases such crime has been committed to provide a strategic methods to prevent such crime by pointing the motivation and causes of such crime. the criminological analysis of such important cases in Egypt highlighted the urgent need of a new legislation of drafting a white collar crimes section in the Criminal Code which collect all white-collar crimes with criminal sanctions not only fine charges as what happened in the cement cartel case to aware the public and private sectors in addition to legal entities such as prosecution of this type of crime because this type of crime is the most crime that could harm the economy of the Egyptian society as its consequences could reach to billions of lose as in the Criminal Code of the United States sentences for white-collar crimes may include a combination of imprisonment, fines, restitution, community service, disgorgement, probation, or other alternative punishment and in China, white-collar criminals can be given the death penalty due to its serious harm that may be caused.<sup>119</sup>

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<sup>119</sup> Podger, Prof. Ellen S., *Throwing Away the Key* (21 February 2007), *available at*, <http://yalelawjournal.org/the-yale-law-journal-pocket-part/criminal-law-and-sentencing/throwing-away-the-key>.