The Handbook of White-Collar Crime
The Handbook of White-Collar Crime
Wiley Handbooks in Criminology and Criminal Justice

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The Handbook of White-Collar Crime
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Notes on Contributors

**Michael L. Benson** is a Fellow of the American Society of Criminology and Chair of the Division of White-Collar and Corporate Crime. In 2017, he received the Gilbert Geis Lifetime Achievement Award from the Division of White-Collar and Corporate Crime of the American Society of Criminology. The third edition of his book *White-Collar Crime: An Opportunity Perspective*, co-authored with Sally S. Simpson, was published in 2018.

**Ignasi Bernat** has been a lecturer at the University of Girona and the University of Surrey. His research and teaching interests are focused on corporate crime and colonial regimes of power. He is currently working at the Spanish National Distance University (UNED).

**Steven Bittle** is an Associate Professor of Criminology at the University of Ottawa, Canada. His research and teaching interests include crimes of the powerful, corporate crime, corporate criminal liability, safety crimes, and the sociology of law. He is the co-editor (with Laureen Snider, Steve Tombs, and David Whyte) of *Revisiting Crimes of the Powerful: Marxism, Crime and Deviance*.

**Ronald G. Burns** is a Professor of Criminal Justice at Texas Christian University (TCU). He has published over 75 articles and eight books in areas including white-collar crime, school violence, multiculturalism in the criminal justice system, and the criminal justice system. He graduated from Florida State University in 1997 and has been at TCU ever since.

**George W. Burruss** is an Associate Professor in the Department of Criminology at the University of South Florida. His main research interests focus on criminal justice organizations, cybercrime, and white-collar crime. He received his doctorate in criminology and criminal justice from the University of Missouri–St. Louis.

**Bryan Burton** is an Assistant Professor in the Department of Criminology and Criminal Justice Studies at Sonoma State University. His work covers white-collar and corporate crime, healthcare fraud and abuse (particularly in Medicare and Medicaid), healthcare regulation, and criminological theory.

**Fiona Chan** is a doctoral student and graduate research assistant in the School of Criminal Justice at Michigan State University. Formerly a public accountant specializing in external audit, her research interests focus on financial fraud and other forms of corporate and
white-collar crime. She currently holds a BS and MS in accountancy from Miami University and an MS in criminal justice from the University of Cincinnati.

**Hei Lam Chio** is a doctoral student in the School of Criminal Justice at the University of Cincinnati. Her research interests focus on white-collar crime, spatial analysis, and crime prevention.

**Cecilia Chouhy** is an Assistant Professor in the College of Criminology & Criminal Justice in Florida State University. She received her PhD in criminal justice from the University of Cincinnati in 2016. Her main research interests include national and international studies of criminological theories, assessing the effectiveness of correctional interventions, and exploring different sources of public opinion. Her writings have appeared in different edited books and peer-reviewed journals.

**Mark A. Cohen** is the Justin Potter Professor of American Competitive Enterprise and Professor of Law at Vanderbilt University. Much of his research focuses on the economics of crime and justice, including the cost of crime and understanding corporate criminal behavior and punishment. He previously served as senior research economist at the US Sentencing Commission and as Chairman of the American Statistical Association’s Committee on Law and Justice. He received his PhD in economics from Carnegie-Mellon University.

**Francis T. Cullen** is Distinguished Research Professor Emeritus and a Senior Research Associate in the School of Criminal Justice at the University of Cincinnati. He is author of *Corporate Crime Under Attack: The Fight to Criminalize Business Violence*, *Combating Corporate Crime: Local Prosecutors at Work*, and *The Oxford Handbook of White-Collar Crime*. He is a past President of both the American Society of Criminology and the Academy of Criminal Justice Sciences.

**Mary Dodge** earned her PhD in 1997 in criminology, law and society from the University of California, Irvine. She is a Professor at the University of Colorado Denver in the School of Public Affairs. Her research interests include women in the criminal justice system, white-collar crime, policing, prostitution, and courts. Along with Gilbert Geis, she co-edited the book *Lessons of Criminology* and wrote *Stealing Dreams: A Fertility Clinic Scandal*. She also authored the 2009 book *Women and White-Collar Crime*.

**Ifeanyi Ezeonu** is an Associate Professor of Sociology and Criminology at Brock University, Ontario, Canada. He has research interests in and has published on market criminology, organized crimes and violent armed groups (including youth gangs), the sociology of energy and natural resources, and market political economy in Sub-Saharan Africa. He's the author of *Market Criminology: State-Corporate Crime in the Petroleum Extraction Industry*. His research works cover both North America and Sub-Saharan Africa.

**Adam D. Fine** is an Assistant Professor of Criminology & Criminal Justice and Law & Behavioral Science at Arizona State University. He received his doctorate from the University of California, Irvine. His work focuses on perceptions of law and law enforcement, and the effects of justice system involvement. A recipient of the American Psychological Foundation’s Visionary Grant, his recent work appears in *Crime & Delinquency* and *Law and Human Behavior*.

**Gabrio Forti** is Full Professor of Criminal Law and Criminology in the Università Cattolica del Sacro Cuore, Milan, Italy, where he is also Director of ASGP – Graduate School on Criminal Justice. His scholarship focuses on criminal negligence, corruption,

**Angela Francis** is currently a senior Lecturer at UWE. She initially trained as a solicitor, but later qualified as a barrister. She practised in Criminal and Employment law. Angela specialized in employment law, dealing with unfair dismissal and discrimination cases. Angela has also held a door tenancy whilst teaching, practicing in criminal and employment law. Angela currently teaches at University of West England, and she is an ATC accredited advocacy trainer.

**Arie Freiberg** is an Emeritus Professor of Law at Monash University, Australia. He was Dean of the Faculty of Law, Monash University, between 2004 and 2012. He has over 150 publications in the fields of sentencing, non-adversarial justice, and regulation and is currently chair of both the Victorian and the Tasmanian Sentencing Advisory Councils.

**David O. Friedrichs** (retired) was Distinguished Professor of Sociology, Criminal Justice, and Criminology at the University of Scranton (Pennsylvania). He is the author of *Trusted Criminals: White Collar Crime in Contemporary Society* (4th edition); other books include (with Dawn L. Rothe) *Crimes of Globalization* and (with Isabel Schoultz and Aleksandra Jordanoska) *Edwin H. Sutherland*. He served as President of the White Collar Crime Research Consortium and received its Outstanding Publication Award.

**Miranda A. Galvin** received her PhD in criminology and criminal justice from the University of Maryland, College Park. Her primary research interests include white-collar crime, criminal justice processing, and the impact of policy. She served as a 2018 Mirzayan Fellow at the National Academies of the Sciences, Engineering, and Medicine, where she worked with the Committee on Law and Justice. Her work has been published in journals such as *Criminology & Public Policy* and *Justice Quarterly*.

**Adam K. Ghazi-Tehrani** is an Assistant Professor in the Department of Criminology & Criminal Justice at The University of Alabama. His work focuses on white-collar, corporate, state, and cybercrimes; his recent publications are comparative and cover the Asian sphere.

**Carole Gibbs** is an Associate Professor in the School of Criminal Justice at Michigan State. Her research interests include white-collar and corporate crime (particularly those with environmental impacts) and race, gender, and crime. She previously received the Young Scholar Award from the White-Collar Crime Research Consortium and is currently Vice-Chair of the Division of White-Collar and Corporate Crime. Recent publications have appeared in the *Journal of Criminal Law and Criminology* and *Law & Policy*.

**Petter Gottschalk** is Professor in the Department of Leadership and Organizational Behavior at BI Norwegian Business School in Oslo, Norway. He has been the CEO at several companies, including ABB Datacables and Norwegian Computing Center. Dr. Gottschalk has published extensively on internal investigations, knowledge management, and white-collar crime.

**Jasmine Hébert** is a PhD student in criminology at the University of Ottawa, Canada, where she studies the relationship between capitalist notions of sacrifice and corporate
violence. Her MA thesis critically examined corporate manslaughter legislation in the United Kingdom.

**Thomas J. Holt** is a Professor in the School of Criminal Justice at Michigan State University specializing in cybercrime, policing, and policy. He received his PhD in criminology and criminal justice from the University of Missouri-St. Louis in 2005. He has published extensively on cybercrime and cyberterror with over 35 peer-reviewed articles in outlets such as *Crime & Delinquency, Sexual Abuse, The Journal of Criminal Justice, Terrorism and Political Violence*, and *Deviant Behavior*.

**Wim Huisman** is Professor of Criminology at the Vrije Universiteit Amsterdam, Netherlands, and head of the VU School of Criminology. Also, Huisman is president of the Netherlands Society of Criminology and co-Editor in Chief of *Crime, Law and Social Change*. Huisman is co-founder of the European working group on Organizational Crime (EUROC), the white-collar crime working group of the European Society of Criminology. His research interests are organizational and white-collar crime, including fraud, corruption, environmental crime, and corporate involvement in atrocity crimes.

**Ben Hunter** is Associate Professor in Criminology in the School of Law at the University of Greenwich, UK. His research interests include white-collar and corporate crime and desistance from offending. His recent books include *White-Collar Offenders and Desistance from Crime* and (with Stephen Farrall, Gilly Sharpe, and Adam Calverley) *Criminal Careers in Transition*.

**Cheryl Lero Jonson** is an Assistant Professor in the Department of Criminal Justice at Xavier University. Her current research interests focus on the impact of prison on recidivism, incentivizing justice, the use of meta-analysis to organize criminological knowledge, prison conditions, and active shooter responses. She has published over 35 articles as well as the books *Correctional Theory: Context and Consequences, The American Prison: Imagining a Different Future*, and *The Origins of American Criminology*.

**Aleksandra Jordanoska** is Lecturer at the Dickson Poon School of Law, King’s College London. Her research focuses on misconduct and modes of governance in financial markets, regulation theory, and financial crime. She has published on complex fraud trials, policing bribery in financial markets, and white-collar crime theory.

**Tomomi Kawasaki** is Professor in Criminal Law and Criminology in the Faculty of Law of Doshisha University in Kyoto, Japan. He holds both an MA and a PhD in law from Doshisha University. His research primarily focuses on corporate crime and corporate criminal responsibility from comparative perspectives.

**Jay P. Kennedy** is an Assistant Professor at Michigan State University, jointly appointed to the School of Criminal Justice and the Center for Anti-Counterfeiting and Product Protection. He received his PhD in criminal justice from the University of Cincinnati in 2014. He has published over 20 peer-reviewed manuscripts in a wide variety of outlets, including (but not limited to) *Criminal Justice Review, Journal of Financial Crime, Maritime Economics & Logistics,* and *Organization Management Journal*.

**Zachery H. Kodatt** received his Master’s in criminology and criminal justice from Southern Illinois University Carbondale in 2016.

**Nicholas Lord** is Reader in Criminology at the University of Manchester, UK. His research focuses on white-collar and corporate crimes of a financial and economic nature.
and the organization of serious crimes for gain, such as fraud and corruption in business. Recent books include *Negotiated Justice and Corporate Crime* (with Colin King) and *Corruption in Commercial Enterprise: Law Theory and Practice* (with Liz Campbell).

**Corina Medley** is a Lecturer in Criminology in the School of Law, Criminology and Government at the University of Plymouth, UK. She is an early-career academic with research interests in the following areas: critical and cultural criminology, green criminology, capitalist realism and consumerism, sexuality, and animals and animality.

**Michele Bisaccia Meitl** is an Assistant Professor at Texas Christian University in the Department of Criminal Justice. She received her PhD from The University of Texas at Dallas in 2017 and is also a licensed attorney. Michele focuses her research on criminal law and procedure as well as the United States Supreme Court.

**Henry N. Pontell** is Distinguished Professor at John Jay College of Criminal Justice and the Graduate Center of the City University of New York, and Emeritus Professor at the University of California, Irvine. His writings span white-collar and corporate crime, punishment and social control, comparative criminology, identity theft, and cybercrime. His most recent book (with Robert Tillman and William Black) is *Financial Crime and Crises in the Era of False Profits*.

**Benjamin van Rooij** is Professor of Law and Society at the Faculty of Law, University of Amsterdam, Netherlands, and Global Professor of Law at the University of California, Irvine. He studies and teaches about the interaction between law and behavior. His current research focuses on individual differences in compliance, toxic corporate culture, and assumptions about behavioral change. His work has appeared in academic journals including *Law and Human Behavior* and *Regulation & Governance*. He has also written in popular outlets including *The New York Times* and *The Huffington Post*.

**Melissa L. Rorie** is an Associate Professor of Criminal Justice at the University of Nevada-Las Vegas (UNLV). Her research predominantly examines the impact of formal and informal controls on corporate and white-collar offending. She is currently involved in a variety of projects that examine regulation and corporate compliance in the gaming industry, theoretical explanations for elite white-collar and corporate crime, and quantitative research methodology. Her research has been published in Oxford Handbooks and Edward Elgar readers as well as a variety of peer-reviewed journals, including: *Crime, Law and Social Change*, *Criminology & Public Policy*, *Law & Policy*, and the *Journal of Quantitative Criminology*.

**Dawn L. Rothe** is a Director and Professor at Florida Atlantic University, School of Criminology and Criminal Justice. She is the author or co-author of 10 books including, most recently, *The Violence of Neoliberalism: Crime, Harm and Inequality* (2019), *Explorations in Critical Criminology: Essays in Honor of William J. Chambliss* (co-authored with Victoria E. Collins, 2019), *Crimes of the Powerful: An Introduction* (co-authored with David Kauzlarich, 2016), *Toward a Victimology of State Crime* (co-authored with David Kauzlarich, 2015), and over 100 articles and book chapters. Her overall focus remains on issues of power, inequality, and the harms and violence of the powerful.
Nicholas Ryder is Professor in Financial Crime. Nicholas has published four monographs, edited collections, over 80 papers, and is the series editor for Routledge's *The Law Relating to Financial Crime*. His research has been sponsored by LexisNexis Risk Solutions, the City of London Police Force, ICT Wilmington Risk & Compliance, Universities South West, the France Telecom Group, and the Economic and Social Research Council. Nicholas is an invited contributor to symposia at the Law Commission, the Royal United Services Institute, PricewaterhouseCoopers, NATO, and UK Finance.

Isabel Schoultz is a Associate Senior Lecturer at the Sociology of Law Department, Lund University, Sweden. Schoultz's main research interest lies within crimes of the powerful. She has – among other things – published on control of state crime and neutralizations of corporate crime, and has co-authored a book (with David O. Friedrichs and Aleksandra Jordanoska) on Edwin Sutherland (2017).

Rachel E. Severson is a current doctoral candidate at the University of South Florida. Her research interests include mental health issues in the criminal justice system and mental illness/substance abuse and crime.

Sally S. Simpson is Professor in the Department of Criminology and Criminal Justice and Director of the Center for the Study of Business Ethics, Regulation, & Crime at the University of Maryland, College Park. She is President-elect and honorary Fellow of the American Society of Criminology. Recipient of the 2018 American Society of Criminology Edwin Sutherland Award, Simpson’s research focuses on the etiology and prevention/control of corporate crime. Author of several books and edited volumes, her work also appears in a variety of criminology, law, sociology, and business journals.

Arianna Visconti is Assistant Professor of Criminal Law and Law and the Arts at the Università Cattolica del Sacro Cuore, Milan, Italy, and coordinator for its Graduate School on Criminal Justice (ASGP). Her research covers defamation law, theory of punishment, organizational crimes, crimes against cultural heritage, law, and literature. She jointly coordinated a European research project resulting in the book *Victims and Corporations. Legal Challenges and Empirical Findings*, published in 2018.

Christian Walburg is a Lecturer at the Institute of Criminal Law and Criminology at the University of Münster, Germany. He received his PhD with a thesis on immigration and juvenile delinquency. His main research interests include economic crime and its regulation, criminal procedure, juvenile delinquency, and immigration and crime.

April Wall-Parker is a former Research Associate with the National White Collar Crime Center (NW3C), where she worked from 2004 to 2018. Her work at NW3C spanned many research areas: the National Public Surveys on White Collar Crime, cybercrime, intellectual property crime, terrorism, and stress and trauma among cybercrime examiners, among others. She holds a Master of Science in criminal justice from Fairmont State University and currently works as a Research Coordinator with a regional non-profit agency.

David Whyte is Professor of Socio-legal Studies in the School of Law and Social Justice, University of Liverpool, UK. His research and teaching interests are focused on the connections between law and corporate power. He is currently a Leverhulme Major Research Fellow (2017–2019).
Karin van Wingerde is an Assistant Professor of Criminology at Erasmus School of Law, Erasmus University Rotterdam, Netherlands. Her research focuses on the interplay between regulation and enforcement and the behavior of and within business firms. Recent research topics include risk-based regulation in occupational health and safety, the misuse of corporate vehicles for gain, and effective means of punishment for organized crime.

Diego Zysman-Quirós is an Associate Professor of Criminal Law and Criminology, Faculty of Law, Universidad de Buenos Aires, Argentina, and he is Adjunct Professor of Queensland University of Technology, Australia. He has a Master's and PhD from Universidad de Barcelona, Spain, and is currently a criminal law attorney. He has served as a Judge and High Law Clerk of Criminal Court in Penal Economic Matters, Buenos Aires. He has authored two books, edited two books, and written numerous chapters and journal articles.
Philosopher Thomas Reid once wrote:

There is no greater impediment to the advancement of knowledge than the ambiguity of words.
To this chiefly it is owing that we find sects and parties in most branches of science, and
disputes, which are carried on from age to age, without being brought to an issue. (Reid et al.
1850, p. 1)

This quote succinctly encapsulates the motivation for organizing the *Handbook of White-
Collar Crime* in its current form. White-collar criminology has struggled with conceptual-
izing its primary outcome of interest since Sutherland coined the term “white-collar crime”
in 1939. Ultimately, I believe that a failure to define *any* concept results in confusion sur-
rounding how best to observe, record, understand, and improve that concept. This struggle
is not unique to white-collar crime, but the failure to clearly conceptualize the term has – in
my humble opinion – stymied research and practice in this domain.

Definitional ambiguity means that the behaviors considered “white-collar crimes” by
one person likely differ from another person’s imagery of the term. In other words, if
people consider white-collar crime to be “… a violation of criminal law by a person of the
upper socio-economic class in the course of his occupational activities” (Sutherland 1941,
p. 112), their recommendations for researching and preventing such crimes will diverge
from proposals by someone who defines such crimes as “… an illegal act or series of
illegal acts committed by nonphysical means and by concealment or guile, to obtain
money or property, to avoid the payment or loss of money or property, or to obtain
business or personal advantage” (Edelhertz 1970, p. 3). Adhering to the first definition
would promote closer monitoring and enforcement of behaviors by the elites in society,
while following the second definition would motivate the examination of common prop-
erty crimes like credit card fraud or welfare fraud as well as upperworld business frauds.
Some argue that the powerful in society use the latter (offense-based) type of definition
to their advantage; social control agents tout their efforts to combat white-collar crime,
yet such efforts have primarily targeted low-level individuals and fail to address systemic
violations and their widespread harms (Pontell 2016). Others argue that prioritizing an
offender’s status constitutes “antimiddle-class bias” and widens the criminological net to
include *immoral* but not necessarily *illegal* behaviors (Toby 1979, pp. 519–520). Ultimately,
in failing to decide what the focus should be, white-collar criminologists risk being ineffective in their recommendations for research and policy.

This handbook covers the usual topics found in discussions of white-collar crime – who the offenders are, who the victims are, how we punish these crimes, theoretical explanations, etc. However, most of the authors were encouraged to think about how the “usual” understanding of these topics is impacted by one’s conceptualization of white-collar crime, using Friedrichs’s (1992) typology (described in more detail in the following chapters) to delineate such knowledge. As reviewed early in the book, criminologists have spent the past 75 years or so debating about the most appropriate definition, but far less time has been dedicated to thinking about how the choice of one definition over another affects the knowledge that we have. As demonstrated in a recent meta-analysis on corporate crime deterrence (Rorie et al. 2018), the way one conceptualizes these crimes (not surprisingly) impacts the measurement choices one makes. Measurement decisions, in turn, obviously have implications for one’s findings and conclusions. Failing to find common ground on a definition means that disparate findings will continue to impede knowledge building. Breaking down crimes into different categories is a great first step, but even within those categories there are a wide variety of behaviors that constitute the domain of interest.

In addition to examining definitional issues, the current handbook is unique for a few other reasons. First, I specifically sought out non-Western perspectives on white-collar crime. In fact, in the section comprising international perspectives, research from all continents outside of Antarctica is discussed. There is also a chapter discussing the need for more comparative research on the topic. Second, I recruited a diverse group of authors with regards to career trajectory. There are world-renowned experts in the field as well as relatively new voices making contributions to this handbook. Third, the last section of this handbook discusses emerging topics in the field. By including this section, I hoped to orient future research endeavors toward “urgent matters” in the current political and social climate. Finally, the authors were encouraged to avoid jargon and make the book approachable for more junior scholars; that said, the topics addressed throughout make great contributions to the white-collar crime canon and are relevant to scholars at all stages of their careers.

I sincerely hope that this book’s approach further encourages an appreciation for the role of conceptualization in white-collar crime scholarship. I am incredibly indebted to the scholars who have written extensively on this topic beforehand – some agreeing that definitional ambiguity is a hindrance, others arguing that it is not problematic. These scholars stimulated my interest in definitional issues, in addition to impressing upon me the importance of studying these crimes more generally. Sally S. Simpson, David O. Friedrichs, John Braithwaite, Michael L. Benson, Wim Huisman, Mark A. Cohen, and Judith van Erp are some of the primary names that come to mind, although I’m sure I’m missing quite a few people. I’d also like to acknowledge the chapter authors, all of whom accepted my suggestions with aplomb and worked incredibly hard to achieve the primary objectives of the book. I’d like to recognize some of my “early-career” peers and University of Maryland colleagues (many of whom are chapter authors) for providing such great support throughout the years – Karin van Wingerde, Jay P. Kennedy, Aleksandra Jordanoska, Natalie Schell-Busey, Carole Gibbs, and Nicholas Lord. It has been wonderful to work with all of you, both formally and informally. Finally, I am so grateful to the series editor, Charles Wellford, who gave me the chance to work on this volume and provided invaluable guidance throughout the process. I have learned a tremendous amount and have met many incredible scholars, all of whom share a passion for research and practice that is unparalleled.
References


The White-Collar Crime Concept

In 1939 (published in 1940), Edwin Sutherland used his speech to the American Sociological Society to focus on crimes by upper-status offenders, bringing these crimes front and center in sociological and criminological research. He called such offending “white-collar crime” and – through such a concise, descriptive catchphrase – coalesced the sentiments of himself and others (e.g. Charles Henderson, E.A. Ross, muckrakers; see Geis 2016) that crimes are not simply the territory of the poor and disenfranchised. He later elaborated on the term in his 1949 book titled White-Collar Crime by defining it as “crime by a person of high social status and respectability in the course of his occupation.” He could not have predicted the everlasting impact of his word choice and his attempts to illustrate the types of crimes that fall under the purview of white-collar offender (Geis 2016). Sutherland’s decision to focus on the characteristics (i.e. status) of the offender and his use of regulatory, civil, and criminal corporate violations as the primary empirical support for his main points created fundamental schisms in scholarship that remain present, even 80 years after he coined the term.

Historical reviews of the definitional debates in this domain are provided in Section I of this handbook as well as elsewhere (see, e.g., Coleman 2005; Kramer 1984; Simpson 2013; Shover and Cullen 2008), but here it is important to note that white-collar crime can be thought of as an umbrella term that encompasses a wide variety of behaviors. Of most import for this volume, David O. Friedrichs (1992) developed a typology of white-collar offending in which violations can be classified as Corporate Crime, Occupational Crime, Governmental Crime, State-Corporate Crime, and “Residual” forms of white-collar crime (Friedrichs 2009). Much more detail on these is provided in his chapter in this volume (Chapter 2), but it is likely obvious from the Table of Contents that the current volume uses his approach as a framework for discussing the impact of definitional ambiguity. That said, one conspicuous variation in Friedrichs’s scholarship and others’ (including the present author’s) is that he omits the hyphen when employing the term “white collar crime.” As he states (2009, xxviii), the use of the hyphen “… suggests too literal a reading of the term, which is better thought of as a metaphor.” He also notes, however, that even Sutherland was inconsistent in the use of that punctuation mark.
The Need to Move Beyond Debating What We Mean and Examine How It Impacts What We Know

After decades of deliberation, white-collar crime scholars generally seem to have resigned themselves to choosing which definition or type of white-collar crime best fits each specific research question or study they are working on at the time. This is problematic because allowing scholars to simply pick which definition serves their specific purpose at one point in time removes the motivation to look critically at how definitional ambiguity impacts our ability to build knowledge about these unique offenses. One study of white-collar crime is likely to look very different from another study of white-collar crime because definitional choices impact the types of samples a researcher wants to study, the types of data a researcher needs to test their research questions, and ultimately the findings of their research endeavor (Rorie et al. 2018). For example, the Yale Studies on White-Collar Crime in the 1970s (see, e.g., Mann 1985; Shapiro 1987; Weisburd et al. 1995, 2001; Wheeler et al. 1988) relied on “offense-based” definitions that reflected their use of existing criminal justice data and criminal justice actors (see also Edelhertz 1970; Edelhertz and Overcast 1982). In taking an “offense-based” approach (similar to what Shover and Cullen have called a “Patrician” approach) that adheres to existing law enforcement agencies’ definitions of crime, scholars argue that those research efforts “trivialize” white-collar crimes and its impacts (Pontell 2016), ignore why certain behaviors (especially those of “elites” in society) are criminalized while others are not, and neglect the public opinion research indicating that citizens view white-collar crimes to be as serious as more traditional crimes (Shover and Cullen 2008). On the other hand, scholars in the “Populist” camp using mainly “offender-based” definitions tend to study crimes by entities seen as “respectable” in larger society, argue that people need to think about behaviors beyond those of focus to law enforcement agencies, and emphasize the public's desire to see white-collar crimes punished to the same extent as harmful traditional crimes (Shover and Cullen 2008). To the extent that a scholar's research questions are guided by their fundamental beliefs about the criminalization of behaviors, governmental capture by powerful interests, and the appropriate scope of criminological research, so too do these beliefs guide their choice of a white-collar crime definition.

To that end, current white-collar crime research papers generally begin with a description of what they mean by the term, but the authors of those manuscripts all too often fail to elaborate on how their definition impacted data collection efforts, analytical decisions, and – ultimately – their findings and conclusions (see Rorie et al. 2018). Furthermore, there is little discussion in the discipline as a whole about the impact of definitional ambiguity on research and knowledge building. If we continue to see the definition of white-collar crime simply as a choice made by the authors, we will be unable to build a body of science that meaningfully informs policy and theory – it is hard to prevent crime if you are unsure what crime it is that you are looking for. Specifically, Simpson (2019) notes that how we define white-collar crime impacts: how we think about it (e.g. the Patrician/Populist conflict discussed above); what we know about white-collar offenders' experiences in justice systems (e.g. Galvin 2018); what we know about how best to prevent or deter white-collar crime (Rorie et al. 2018); and – ultimately – the perceived urgency to make data accessible on all white-collar crimes beyond those listed in the Uniform Crime Reports. Thus, as part of an overview of the discipline, this handbook examines how the types of crime and/or offenders included in one's definition might impact typical topics in the white-collar crime domain. Specifically, we detail how failing to clearly conceptualize white-collar crime creates vagueness
in our knowledge of who commits crime, who is victimized by such crimes, and what we can do about them. In addition, we include an international perspective (with chapters focused on white-collar crime research in six continents) and examine “emerging issues” in the field.

We are both broad in scope and specific in this volume. We compile the major research topics in white-collar crime scholarship in one place while also encouraging some definitional clarity to the term “white-collar crime” by distinguishing between the four main types of crimes (occupational, corporate, government, state-corporate) falling under Friedrichs’s (2009) typology. There are other types of white-collar crimes, of course (see Black 2005; Brody and Kiehl 2010; Edelhertz 1970; Friedrichs 2017; Green 1990), but those are the four categories that seem to appear most often in the literature. The handbook provides an overview of the primary issues involved in understanding and teaching on the topic of white-collar crime. Topics covered in this handbook include the origins of white-collar crime study, definitional ambiguity surrounding the term white-collar crime, complications in research and measurement, the extent and harm caused by such crimes, who the offenders and victims are, theories of offending, prevention and intervention strategies, the study of white-collar crime internationally, and emerging issues in this field. What is unique about this volume, however, is that it encourages readers to think about important differences between those four types of white-collar crimes mentioned above.

This handbook provides a “one-stop shop” for readers who want an overview of research on white-collar crime. As such, a variety of perspectives and types of offending are represented here throughout. Specifically, we elicited chapters from authors relatively new to the field (as well as those firmly established as experts), located in countries around the world, and with different areas of expertise. We believe such a broad overview of the field can serve a variety of purposes. Although the authors almost exclusively hail from academia, they were charged with writing these chapters to be approachable for undergraduate students, practitioners, and the public – but to also contain information relevant for advanced academic scholars. It is our hope, therefore, that a wide variety of people and purposes are served by this book.

The Outline of the Book

The book is separated into six different sections. In Section I, three chapters provide a broad overview of white-collar crime and its study, introducing the reader to the origins of the field, the theme of definitional ambiguity, and the unique obstacles white-collar crime researchers face. In Chapter 1, Aleksandra Jordanoska and Isabel Schoultz discuss the importance of Edwin Sutherland’s work in carving out the white-collar crime niche and his criticisms of the young field of criminology. They also detail the enduring nature of his influence, drawing on their recent survey of current white-collar crime scholars who were asked about how Sutherland continues to influence criminology decades after his passing. Chapter 2 provides the template for the book’s attention to definitional issues – in this chapter, David O. Friedrichs reviews his well-known typology of white-collar and corporate crimes, as well as the various motives driving scholars’ choice of terms. He ultimately concludes that an attempt to derive a single definition is in vain – researchers would be best served by choosing the term that serves their purposes, while students of white-collar crime research must be cautious when consuming scholarship. In Chapter 3, April Wall-Parker discusses the difficulties facing white-collar crime researchers, including the definitional
ambiguity of the term as well as the lack of a systematic database. She provides many alternative data sources that might be fruitful for studying specific types of crimes but concludes that definitional ambiguity will continue to hurt data collection efforts and stymie policymaking.

Section II reviews what is known about the harms caused by white-collar crime, broken down by specific crime types. Petter Gottschalk discusses the harms caused by occupational crime in Chapter 4, paying special attention to cases in the Norway and explaining victimization using his “Convenience Theory.” In Chapter 5, Gabrio Forti and Arianna Visconti discuss the multifaceted nature of corporate crime victimization, detailing how corporate harms feed back into various nodes (e.g. social inequality, social morale, social disorganization) and emphasizing the interrelated nature of structural elements of society with corporate criminality. In Chapter 6, Dawn L. Rothe and Corina Medley discuss the harms caused by crimes of the powerful, including malfeasance by state actors as well as state-corporate crimes. They offer a critique of the terms “state crime” and “state-corporate crime,” noting that the relationships between the state, corporations, and consumers themselves are overlooked when creating typological definitions.

Section III moves our attention from victimization to offending, reviewing the literature describing white-collar offenders. Much previous research acknowledges that the demographics of offenders vary by the type of white-collar crime being studied (Klenowski and Dodson 2016; Weisburd et al. 2001); the chapters here elaborate on those differences. In Chapter 7, Michael L. Benson and Hei Lam Chio discuss what is known about the demographics of occupational offenders, using federal crime statistics. They find that demographic correlates for occupational offending have changed since the Yale Studies, and the criminal careers of these offenders are surprising. Mary Dodge describes corporate crime offenders in Chapter 8. She outlines major definitional and methodological obstacles in identifying who is responsible for these crimes, ultimately relying on case studies to explore offending motivations and potential prevention strategies. Ignasi Bernat and David Whyte attend to the individuals and organizations who commit state and state-corporate crimes in Chapter 9. They begin with a review of the history of state involvement in criminal enterprises as well as the use of such illegitimate organizations by states for their own “defense” purposes. They then review the state crime and state-corporate crime literature, but – like Rothe and Medley in Chapter 6 – argue that we must not oversimplify the nature of the private–public relationship. Bernat and Whyte posit that we must look beyond those obvious moments (i.e. crises) signifying that the relationship has gone wrong; we must instead recognize that corporate crimes are part of the normal business routines and relationships that flourish in state-sponsored capitalist economies. Of course, it must also be recognized that legitimate organizations (e.g. corporations and governments) continue to be complicit (if not directly involved) in crimes by illegitimate organizations (e.g. gangs or cartels). Wim Huisman discusses those relationships in Chapter 10, highlighting the “conceptual conflation” surrounding the study of corporate crime and organized crime as well as articulating the similarities and differences of the two research domains.

Also in Section III, we provide an overview of many theories explaining why white-collar crime occurs. As opposed to explicitly differentiating by types of crime, Chapters 11–13 instead break theories down by the unit of analysis. Chapter 11, by Rachel E. Severson, Zachary H. Kodatt, and George W. Burress, focuses on individual-level theories. They note that most theories at this level purport to explain both “traditional crimes” and white-collar crimes, and emphasize how definitional ambiguity and data limitations in the study of white-collar crime hamper our ability to establish the explanatory power of any theory. In
Chapter 12, Jay P. Kennedy reviews organizational and macro-level theories, emphasizing the importance of cross-level approaches and noting how globalization will impact our thinking on the reasons that corporations offend. Our final chapter on theories, by Fiona Chan and Carole Gibbs, elaborates on the primacy of cross-level theories in their discussion of theoretical integrations in the white-collar crime domain. In addition to the prevalence of cross-level integrations, they note that most integrated theories rely on rational choice and opportunity perspectives.

After the section explaining what we know about why white-collar crimes happen and who is responsible, a logical next step is thinking through how we prevent and punish such crimes. Section IV begins with a chapter by Francis T. Cullen, Cecilia Chouhy, and Cheryl Lero Jonson that examines how the general public perceives white-collar crimes, particularly in relation to traditional crimes. They also discuss what little is known about how the public perceives specific types of white-collar crimes. After that, Chapters 15–17 examine the prevention and intervention of white-collar crimes by various parties. Benjamin van Rooij and Adam Fine discuss how companies prevent noncompliance on the part of their employees in Chapter 15. Nicholas Lord and Karin van Wingerde discuss formal law enforcement efforts in Chapter 16, while in Chapter 17 Angela Francis and Nicholas Ryder talk about regulatory agencies and their roles/actions in the global financial meltdown of 2008. Chapters 18–20 discuss prosecution and punishment of both individual and corporate offenders. Ronald G. Burns and Michele Bisaccia Meitl review the literature on the prosecution, defense, and sentencing of white-collar crimes broadly in Chapter 18. They note how specialized prosecution and defense is in this area of law, while the judgment of white-collar offenders is often controversial. In Chapter 19, Ben Hunter reviews the scant literature on how individual white-collar offenders experience incarceration, especially the shock they experience upon entry into the correctional system and the role of shaming. Finally in Section IV, Mark A. Cohen discusses more specifically the punishment of corporate entities.

In addition to examining how definitional variation impacts the broad topics common to all books about white-collar crime, we felt that a more inclusive international perspective is very much needed in the contemporary white-collar crime literature. To that end, the seven chapters in Section V come from authors from every continent except for Antarctica – including often-neglected regions like Africa and Central/South America. Some of the chapters are reviews of the literature in their specific regions while other chapters examine a specific white-collar crime in that region.

In Chapter 21, Christian Walburg examines white-collar crime scholarship in Europe, beginning with a historical overview and concluding with recent issues and debates affecting such research. We then move to Asia in Chapter 22, where Henry N. Pontell, Adam K. Ghazi-Tehrani, and Bryan Burton discuss the reasons why white-collar crime flourishes in the People's Republic of China. They focus on the unique political structure and cultural norms associated with corruption in that country, but also discuss other types of crime occurring there. In Chapter 23, Diego Zysman-Quirós offers a compelling description of the “Laundry Room” investigation into South America’s largest corruption case – one that spanned many borders beyond that continent. In Chapter 24, Miranda A. Galvin and Sally S. Simpson update the seminal Yale Studies on White-Collar Crime as an example of North American white-collar crime research, while in Chapter 25 Ifeanyi Ezeonu critically examines the corporate appropriation of resources in the Nigeria Delta as an example of research in the emerging domain of “Market Criminology”. Our last regionally specific chapter
comes from Arie Freiberg in Chapter 26, who concisely reviews the voluminous work done by Australian white-collar crime scholars. Section V concludes with Tomomi Kawasaki's review of comparative studies, where he emphasizes the strengths of this methodology through a review of both domestic studies set outside of the United States and research explicitly using a comparative approach.

In the final section of the book, Section VI, we examine emerging issues in the white-collar crime research domain – those contemporary social and cultural changes that are likely to dramatically change how we look at white-collar crime. In Chapter 28, Tom J. Holt and Jay P. Kennedy take a close look at how rapidly changing and advancing technologies impact the commission of white-collar crimes as well as how such technologies help us prevent and punish such crimes. Karin van Wingerde and Nicholas Lord tackle the impact of globalization on white-collar crime in Chapter 29. Using three case studies on corporate tax evasion, corporate bribery, and illegal waste disposal, the authors detail how globalization has complicated efforts to regulate and enforce crimes committed in the pursuit of profit. Finally, Chapter 30, by Steven Bittle and Jasmine Hébert, discusses the particularly timely topic of de-regulation and re-regulation, discussing how it affects the control of white-collar crime. They describe how definitions of corporate crime impact how we think about and respond to such crimes, conclude that citizens’ inability to see corporations as something other than a force of good for society plays a large role in the unabated offending by corporations as well as lackluster policing efforts by the state, and provide helpful suggestions for inducing the changes needed to protect consumers, employees, and the welfare of global citizens.

**Conclusion**

It bears repeating that the primary premise of this handbook is the need to not merely discuss and debate definitional ambiguity, but also to think through how this ambiguity impacts what we know about who commits these crimes, how we handle these crimes, and what we think about these crimes. To set the stage for the remainder of the book, let’s turn to Chapter 1 and the origins of the study of white-collar crime. The “definitional quagmire” (Friedrichs 1992) is often attributed to Edwin Sutherland and his “failure” to clearly explain what he meant when he coined the term. It is Edwin Sutherland we turn to now before exploring the field of white-collar crime more broadly.

**References**


Section I

What Is White-Collar Crime?
1

The “Discovery” of White-Collar Crime: The Legacy of Edwin Sutherland

Aleksandra Jordanoska and Isabel Schoultz

Introduction

This chapter examines the very beginning of the criminology of white-collar and corporate crime by focusing on one of the most cited criminologists in the history of the discipline – Edwin Sutherland. Sutherland’s contributions to the criminology of white-collar crime, beginning with his 1939 American Sociological Society presidential address and culminating with the publication of his book *White Collar Crime* (Sutherland 1949), can hardly be exaggerated. He succeeded in putting white-collar crime permanently on the criminological agenda, with the term itself becoming part of common language across jurisdictions.

The first part of this chapter discusses the life and career of Sutherland as a prominent twentieth-century criminologist. We then move to analyzing the “discovery” of the concept of white-collar crime, its characteristics, and established criticisms. Finally, we address the inspirational legacy of Edwin Sutherland and how he is more relevant now than ever. Exactly 80 years since Sutherland introduced the concept of white-collar crime, and 70 years since his book *White-Collar Crime* was published, he remains a prime source of inspiration for scores of criminologists across generations and jurisdictions who venture into researching the crimes of the upper classes and corporate transgressions.

The Life of Edwin Sutherland and His Rise to His Position as a Leading Criminologist

Edwin Sutherland has been characterized as the single most important criminologist of the twentieth century by a number of prominent scholars (Vold 1951; Gibbons 1979; Cohen 1990; Laub and Sampson 1991). Sutherland began his engagement with the field of criminology in the early 1920s, and would later on establish himself as the leading criminologist of his time. The late nineteenth-century and early twentieth-century period, when Edwin Sutherland was born and came of age, coincided with the emergence of criminology as...
a field of study. Sociology as an autonomous discipline was pretty much in its infancy in the United States at the time of Sutherland's first encounter with the subject. Indeed, the American Sociological Society – of which Sutherland was ultimately elected president in 1939 – was founded in 1905, coincident with the period when Sutherland enrolled in a home study course on sociology (Hinkle and Hinkle 1954).

He began his career as a criminologist at the University of Illinois, where he spent six years (from 1919 to 1925). This came about when his department chair, Edward C. Hayes, invited him to produce a criminology textbook. The book, published in 1924, laid the foundation for Sutherland’s growing reputation as a leading criminologist over the course of the next 25 years. During the coming years, Sutherland revised his textbook while working at the University of Chicago, with its second edition published in 1934. He was later informed by his fellow criminologist and friend Henry McKay that he had set forth a theory (subsequently called Differential Association Theory) in a new edition of his book. Apparently, Sutherland then recognized that in identifying general susceptibility to training, failing to follow prescribed norms due to inconsistent influences, and conflict of cultures as core factors in engagement in criminal behavior, he had produced the foundation for a criminological theory. Sutherland’s crediting of McKay for having recognized that he had produced a theory of crime may reflect his personal modesty and generosity (Schuessler 1973, p. xv).

Simultaneously, he worked on a descriptive project with Harvey J. Locke that was to result in Twenty Thousand Homeless Men, published in 1936, and on the case study that led to the publication of The Professional Thief in 1937. During this period, Sutherland also wrote a paper, first published in 1956, on the Michael-Adler Report where he criticized their conclusions on the status of criminology as a science and rejected the development of an institute of criminology and criminal justice consisting of scholars outside of the field of criminology (Sutherland 1956). In addition, two more editions of his criminology textbook (with refinements of his Differential Association Theory) were published during 1936 and 1937.

By this time (as a consequence of his non-reappointment at the University of Chicago), Sutherland had settled at Indiana University, where his professional reputation was enhanced and he produced his immensely influential white-collar crime work. In 1949, near the end of his tenure at Indiana University as well as his life, he published what many regard as his crowning achievement, White Collar Crime. Thus, the final decade of Sutherland’s life was principally devoted to introducing and advancing the concept of white-collar crime, although he also published on other criminological topics during this time, such as issues relating to crime causation, the punishment of crime, and sexual psychopath laws. By the time Sutherland died in 1950 criminology had established itself as a recognizable academic field (Gibbons 1979, p. 77), and he has been credited for the sociological turn in the discipline – the dominant approach for about 30 years (Goff and Geis 2008). Sutherland was, arguably more than anyone else, responsible for establishing the dominance of a specifically sociological approach to the understanding of crime and its control. Yet, we believe that his most important contribution to criminology is the “discovery” and development of the concept of white-collar crime.

The Concept of White-Collar Crime

At the time when he first introduced the term “white-collar crime,” Sutherland was an already well-regarded criminologist and an author of the influential Differential Association Theory (Geis and Goff 1983) as well as the popular Principles of Criminology (Sutherland
1947) textbook. His work on white-collar crime, however, is arguably his most important and most enduring contribution to the field of criminology (Friedrichs et al. 2017) since it shifted the criminological paradigms on the types of crime, their causes, and responses to them.

Though various scholars had heretofore been writing about the crimes of the upper classes or of the higher socio-economic strata (e.g. Willem Bonger, Edwin Alsworth Ross), Edwin Sutherland is credited with coining and popularizing the term white-collar crime that has since become the most recognized and used label for this type of deviance. The term white-collar crime was first used on December 27, 1939, in the historic address that Sutherland – as then-President of the American Sociological Society (subsequently the American Sociological Association) – gave at its annual meeting in Philadelphia. The speech, titled “The white collar criminal” and later published as “White-collar criminality” (Sutherland 1940), opened with the criticism that “many sociologists are well acquainted with crime but not accustomed to consider it as expressed in business” (Sutherland 1940, p. 1). Sutherland then proceeded to give his initial definition of such crime as “crime in the upper or white-collar class, composed of respectable or at least respected business and professional men” (1940, p. 1), and provided various examples of such offenses, ranging from insider trading, financial misrepresentations, bribery, and embezzlement, to tax frauds. Specifically, Sutherland stated that the varied types of white-collar crimes in business and the professions can be reduced to two categories: misrepresentation of asset values and duplicity in the manipulation of power (Sutherland 1940, p. 3). Inherent to both of these is the notion of dishonest behavior and the betrayal of trust, though Sutherland makes the distinction between misrepresentation of assets as “the same as fraud or swindling” and duplicity in the manipulation of power as “similar to the double-cross” (Sutherland 1940, p. 3). The example he gives of the latter is self-dealing or the case of the corporate director who, on the basis of inside information, purchases a land of interest to his corporation to then resell it at a fantastic profit (Sutherland 1940, p. 3). In the speech he also made the crucial remark that these types of infringements are commonly remedied through the civil courts (via suits for compensation of damages) rather than through the criminal courts (e.g. Sutherland 1940, p. 7). Here, we can begin to identify the key elements of the concept of white-collar crime as envisaged and elaborated by Sutherland: the status of affluence of the offenders, the perpetration of the offenses in an organizational and occupational setting through violations of trust, and the differential responses by social control mechanisms to white-collar criminality.

**White-Collar Crime as Crime of the Upper Classes**

A key aspect of Sutherland’s presidential address and his subsequent, decade-long work on the development of the concept, characteristics, and explanation of white-collar crime was to emphasize the high social status of business offenders. Sutherland crucially noted that a score of illegal activities in business are committed by well-off, socially well-integrated, and mentally healthy individuals. For example, in his presidential address, he traces the existence of white-collar offenses back to nineteenth-century “robber barons” (Sutherland 1940, p. 2) to then provide further twentieth-century examples of the more deceptive white-collar criminals in the guise of “merchant princes and captains of finance and industry, and by a host of lesser followers” (Sutherland 1940, p. 3). “Respectability” remained a crucially defining element in the concept of white-collar crime throughout Sutherland’s work, and
a later definition in his influential book *White Collar Crime* (Sutherland 1949, p. 9) stated that white-collar crime is “a crime committed by a person of respectability and high social status in the course of his occupation.”

This view was in stark contrast with the majority of the criminological theory of the time that focused on perpetrators of violent crimes and property crimes and their explanation through individual positivism (e.g., psychiatric and psychological factors), poverty (low socio-economic class), and related socio-pathological conditions. Sutherland criticized these explanations of criminal behavior as based on biased samples of lower-class predatory crime while neglecting upper-class crime. One of Sutherland’s key aims was to provide an empirically supported criticism of this criminological myopia (Simpson and Weisburd 2009) and turn the attention of criminological theory and research onto the harms and costs of the crimes of the upper classes. For this reason, the Preface of *White Collar Crime* (Sutherland 1949, p. xiii) stated that the book was attempting to reform the theory of criminal behavior, by including these crimes into general theories and explanations of criminality – something that had not been previously endeavored.

Sutherland justified the need to include transgressions perpetrated by members of the respectable professions into criminological theory and research by emphasizing their pervasiveness and harmfulness. These types of transgressions are frequently reported and are much more harmful and costly than predatory or so-called “street” crime (Sutherland 1940, pp. 4–5). Sutherland argued that “[W]hite-collar criminality is found in every occupation, as can be discovered readily in casual conversation with a representative of an occupation by asking him, ‘What crooked practices are found in your occupation?’” (Sutherland 1940, p. 2). These “crooked practices” cause significant financial losses, taint the legitimacy of the professions, and also more widely impact social relations, and the levels of trust, social morale, and social organization in society (Sutherland 1949, p. 13). Therefore, white-collar crimes are not only injurious to individual victims but they also have a fundamentally negative impact on societal institutions (Sutherland 1961, p. 83). Sutherland maintained that these harms are not paralleled by the consequences of “street” crime, though commonly these are the crimes that fill the front pages of newspapers while business transgressions are found on the financial pages.

Despite championing the notion of crimes by upper-class individuals, it should be pointed out that Sutherland did not consider the offender’s respectability and high social status as a cause to their criminal behavior. In fact, Sutherland did not consider the offender’s respectability, high social status, or employment important in explaining white-collar crime, just as poverty or unemployment is not important for explaining ordinary crimes (Schlegel and Weisburd 1992, p. 5). The focus on the respectability of the offenders was principally used by Sutherland to support his general theory of crime – Differential Association Theory. The concept of white-collar crime was in fact a direct consequence of Sutherland’s preoccupation to locate the common factors for the crimes of the rich and the poor that would form the basis of a general theory of criminal behavior (1961, p. 234; also Cohen et al. 1956, p. 45).

Differential Association Theory provides a psycho-sociological explanation for offending, whereby individuals learn criminal behavior from those who already practice it. The relatively simple postulates of the theory are captured in Sutherland’s statement that white-collar crime, just like any other crime, is learned: “it is learned in direct or indirect association with those who already practice the behavior; and that those who learn this criminal behavior are segregated from frequent and intimate contacts with law-abiding
The “Discovery” of White-Collar Crime: The Legacy of Edwin Sutherland

behavior” (Sutherland 1949, pp. 10–11). According to the theory, a person would engage in white-collar crime when the number of definitions favorable to offending exceeds the number of unfavorable definitions (Sutherland 1961, p. 234). Individuals become exposed to definitions favorable to crime when they interact with criminal managers and colleagues, and Sutherland specifies two ways (with varying levels of pressure) in which this happens. The first method of socialization into white-collar crime is when more junior employees are ordered by their managers to do things which they regard as unethical or illegal; the second method is when employees learn from peers how to get ahead in business (Sutherland 1961, p. 240). In this way, individuals learn both specific techniques of violations of the law and a particular type of criminal ideology. Sutherland considered that every type of criminality can be linked with definitions favorable to criminality that constitute its folkways.3 The folkways of business criminality contain definitions such as “business is business” or “no business was ever built on the beatitudes” (Sutherland 1961, p. 240). Such attitudes that excuse criminal behavior enable offenders to accept the illegalities of those around them and provide them with justifications or ways to deny criminal intent (Sutherland and Cressey 1960, pp. 240–247). Sutherland (1961, pp. 235–247) found support for these processes of “differential association” and the crime-positive training that occurs in his qualitative interviews with fraudsters in the used-cars business, retail sales occupation, and accounting industry.

Sutherland outlined the process by which people come to offend, as well as the origins of crime-favorable definitions, in his work on the specific causal factors of white-collar crime. In White-Collar Crime (Sutherland 1961, pp. 253–255), Sutherland argues that “social disorganization” (in particular, the change from a system of free competition and free enterprise to a developing system of government regulation) and a corresponding upheaval of traditional social norms are the root cause of white-collar offending. This is also related to the ideology of laissez-faire, or the “folklore of capitalism” (Sutherland 1961, p. 254). Therefore, two conditions are favorable to social disorganization as an explanation for the control of business behavior. The first condition is the fact that business is often complex and technical, so inexperienced citizens cannot easily understand when business practices are harmful (Sutherland 1961, p. 254). Sutherland specifically located the reasons behind the extent of white-collar crime in the inability of the victims to understand the complexity of detrimental business practices. The second condition is the fact that business practices develop and change rapidly in contemporary society. In such periods of change, there is a temporary hiatus in regulating business behavior as old standards break down and new ones have not yet developed (Sutherland 1961, p. 254). Ultimately, these factors contribute to the creation of definitions of the legal code that are favorable or unfavorable to (improper) business behavior, and where a “violation of the legal code is not necessarily a violation of the business code” (Sutherland 1949, p. 219).

The core notion that white-collar criminal behavior is learned and easily justified or rationalized, derived from Sutherland’s work, is still relevant and documented in recent research (Soltes 2016; McDonald 2017). Further, his emphasis on the availability of “rationalizations” to white-collar offenders is a predecessor to the influential concept of “techniques of neutralization” developed by Sykes and Matza in 1957 (Sykes and Matza 1957). This concept has found particular prominence in the white-collar crime scholarship since various researchers have found that white-collar offenders commonly use techniques of neutralization when accounting for their crimes (Cressey 1953; Benson 1985; Willott et al. 2001; Klenowski 2012; Jordanoska 2018).
White-Collar Crime as an Organizational Crime

Sutherland’s work on the crimes of the upper classes was intrinsically connected to theorizing on the role of the corporation in their causation. Corporations enable individuals to have legitimate and respectable careers (notably of corporate managers) in occupations that rely on trust. Sutherland considered that the violation of this occupational delegated or implied trust is the key trait of white-collar crime (Sutherland 1940, p. 3). Corporations also perpetuate violations of law by: enabling the socialization of employees into criminogenic business cultures, creating anonymity that impedes or clouds the location of responsibility, and increasing rationality in managers’ behavior (Sutherland 1961, p. 228). This process is intrinsic to white-collar offending since “a director loses his personality in this corporate behavior and in this respect, but in no other, corporate behavior is like the behavior of a mob” (Sutherland 1961, p. 228).

As evidenced from the last quote, Sutherland (1961) noted that many white-collar offenses are committed through an organization, taking the form of “organized” (Sutherland 1961, chapter 3) or corporate crime. These arguments challenged the traditional notions of criminality since Sutherland conceptualized the “organization” or “corporation” as an offender in its own right, highlighting that corporations publicly adhere to the law, but secretly deflect from it (Sutherland 1961, p. 224). For the first time in the history of criminological research, Sutherland attempted to empirically support his claims of corporations as pervasive offenders through dedicating much space in his book *White Collar Crime* to analyzing a range of violations by 70 of the largest private American companies and 15 public utility companies: trade restraint, rebates, patents, trademarks, and copyrights, misrepresentation in advertising, unfair labor practices, financial manipulations, war crimes, and fraud offenses. A testament to the novelty and controversy of this work is the fact that Sutherland encountered resistance by the publisher of the first edition of the book to reveal the names of the companies in his dataset. Therefore, the original *White Collar Crime* was published with names of the companies redacted (Geis 2015), and they were only revealed in the 1983 uncut version of the book.

Sutherland used the empirical data to support his claims that the criminality of corporations is persistent and that a large proportion of offending companies are recidivists (Sutherland 1961, p. 218). He found that 60% of the corporations in his dataset had been criminally convicted in criminal courts, with an average of approximately four convictions each. The extent of their convictions made them “habitual criminals” since many states at the time had legal provisions that persons with four convictions were to be considered “habitual criminals” (Sutherland 1983, p. 25). Corporate wrongdoing also harms both private and public interests as it victimizes: consumers, competitors, stockholders, inventors, employees, and the State through tax frauds and bribery of public officials (Sutherland 1961, p. 217).

Despite the revolutionary focus on corporate violations, many of which were either not criminalized or rarely prosecuted at the time when Sutherland was writing about them (e.g. patents infringements, unfair labor practices, and adulteration of food and drugs), this has attracted some criticism of Sutherland’s work. This specifically concerns the confusion in the levels of Sutherland’s analysis and the conflation between the corporation and its human managers. This is, for example, evidenced in statements that attribute rationality to the corporation with regard to illegal behavior and that explain corporate offending also through the process of differential association: “when one corporation violates the law in this respect the other corporations do the same. The illegal behavior of the other corporations, at least,
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grows out of differential association” (Sutherland 1961, p. 230). Geis (1968, p. 53) writes that Sutherland has “humanized” or “anthropomorphized” the corporation due to absence of empirical material yet this conflation has caused numerous terminological debates and confusion as to the definition of “white-collar crime” (Braithwaite 1984) and as to whether “organizations” can appear as offenders.

The Differential Response to White-Collar Crime

Sutherland’s preoccupation with corporate harms expanded the criminological imagination toward the reality of under-enforced or ineffective criminal law, as well as the predominantly administrative, regulatory, and civil law control of white-collar offending. In fact, Sutherland referred specifically to the commonly employed administrative approaches to crimes in business to highlight the difference between the criminal behavior of the lower socio-economic class and the crimes of the upper classes:

The crimes of the upper class either result in no official action at all, or result in suits for damages in civil courts, or are handled by inspectors, and by administrative boards or commissions, with penal sanctions in the form of warnings, orders to cease and desist, occasionally the loss of a license, and only in extreme cases by fines or prison sentences. (Sutherland 1940, p. 8)

Here again, Sutherland focuses on the status and respectability of business offenders to explain why they are able to evade criminal justice sanctions. However, the under-enforcement of the criminal law is also explained by the lack of a more significant public reaction to business offenses. Sutherland (1961, p. 52) highlighted that the public resentment toward white-collar crime was relatively unorganized. These characteristics of the social control responses and public attitudes enable white-collar criminals to avoid perceiving themselves as “criminal.” Unlike “street” criminals, wealthy offenders are not dealt with under the same official procedures of the criminal law: they are rarely prosecuted and even more rarely sent to prison. In consequence, white-collar offenders are commonly not exposed to intimate personal associations with those who define themselves as criminals (Sutherland 1961, p. 223).

It was important for Sutherland to highlight that these “variations in administrative procedures are not significant from the point of causation of crime” (Sutherland 1940, p. 9). The lack of criminalization of business behavior and its administrative control does not detract from the fact that these behaviors are just as socially injurious as any other criminal offense. This was a further achievement by Sutherland: he advocated for the need to focus on the essence of the harm of a particular illegal activity, rather than its status as a criminalized behavior under positive law. The significance of this approach lies in the fact that, as established by decades of subsequent research by corporate crime scholars (Clinard and Yeager 1980; Braithwaite 1984; Slapper and Tombs 1999; Gobert and Punch 2003; Tombs and Whyte 2015; Barak 2017), corporations are involved in many injurious business transgressions that are not addressed by the criminal justice system. Though incredibly harmful, such violations are handled outside of the criminal justice system for numerous reasons: prosecutorial discretion toward prioritizing “street crime”; lack of resources to investigate and sanction complex corporate crime; lack of criminalization due to political influences and lobbying by corporations.
However, the bifurcation of the boundaries between administrative and criminal law also attracted criticism of Sutherland’s white-collar crime concept, specifically by legal scholars. The most immediate and notable challenge came from the lawyer-sociologist Paul Tappan (1947; also Caldwell 1968) in an article titled “Who Is the Criminal?” Tappan contended that the content of white-collar crime is unclear and asked whether a white-collar criminal should be considered to be: “the merchant who, out of greed, business acumen, or competitive motivations, breaches a trust with his consumer by ‘puffing his wares’ beyond their merits, by pricing them beyond their value, or by ordinary advertising?” or “the white collar worker who breaches trust with his employers by inefficient performance at work, by sympathetic strike or secondary boycott?” (Tappan 1947, p. 99). Tappan concluded that the “white collar criminal” cannot be considered criminal unless he has violated a criminal statute (Tappan 1947, p. 101). Sutherland’s response to Paul Tappan, published in the article “Is ‘White Collar Crime’ Crime?” (Sutherland 1945), reiterated that such conventional, legalistic approaches to defining crime drew attention away from the white-collar crimes of the powerful and supported notions of criminality as a problem belonging to lower socio-economic classes. This response was in line with Sutherland’s crucial argument that, largely as a consequence of the application of civil and administrative remedies to business offenders, these “are not regarded as real criminals by themselves, the general public, or the criminologists” (Sutherland 1940, p. 8).

Sutherland revolutionized criminological thinking through arguing for the need of theory and research to take into account the much-neglected crimes of the upper classes, their significant harms to society, and the reality of the differential treatment of white-collar as opposed to street crime offenders. In the next section, we discuss the enduring legacy and Sutherland’s lasting influence on contemporary criminological research on white-collar and corporate crime.

**Sutherland’s Lasting Influence and Relevance**

The legacy of Sutherland’s work in general, and on white-collar crime in particular, is reflected in both citations and the influence he has had on leading scholars today. Sutherland is regarded as a core source of inspiration for many critical criminologists, especially in terms of adopting broader approaches to the definition of crime that go beyond what is stated in positive criminal law (see, for example, Schwendinger and Schwendinger 1970; Lynch et al. 2015). Sutherland’s work on the crimes of the powerful has been especially cited, debated, and developed. In addition, the scope of what is addressed as white-collar crime in contemporary criminological scholarship has broadened substantially since Sutherland’s time.

In the Routledge series on “Key Thinkers in Criminology,” Friedrichs et al. (2017) take on the life and work of Edwin Sutherland. In the final chapter of that book, we review the empirical evidence that documents the claim that Sutherland has an enduring influence as a “key thinker” in criminology. Here we will discuss some of the core evidence of Sutherland’s lasting influence and relevance today with a focus on his influence on white-collar crime research.

Studies evaluating the influence of criminological scholars through citations of their work have ranked Sutherland as one of the most important figures in criminology (i.e. Giblin and Schafer 2007; Gabbidon and Collins 2012; Alalehto and Persson 2013). For example, in a study of the most-cited scholars in criminological theory, Sutherland was second on the list
of the 50 most-cited scholars (Wright and Rourke 1999). In addition, Sutherland's Principles of Criminology (with subsequent editions co-authored by Donald R. Cressey and David F. Luckenbill) is third among the 27 most-cited works in criminological theory. Sutherland's White Collar Crime came in twentieth on this list (Wright and Rourke 1999).

Looking more closely at the influence of his work on white-collar crime, Sutherland unsurprisingly ranks high in citation studies. Of the 50 most-cited authors in scholarly publications dealing with white-collar crime from 1990 to 1999, Sutherland came in sixth (Wright et al. 2001, p. 388). As noted in Friedrichs et al. (2017), perhaps the biggest surprise is that he did not come in first. But all those ahead of him – John Braithwaite, Gilbert Geis, Marshall B. Clinard, Peter Cleary Yeager, and Stanton Wheeler – were alive and still active in the field during this period of time, while Sutherland had long passed away. When reviewing the most-cited works dealing with white-collar crime, Sutherland's White Collar Crime came in second. Marshall B. Clinard and Peter Cleary Yeager’s Corporate Crime (1980) was listed first and is still considered the principal successor to Sutherland’s pioneering work (Wright et al. 2001, p. 392).

In a bibliometric study of Sutherland, Alalehto and Persson (2013) present an overview of the citation patterns associated with Sutherland’s work. They conducted a cited-author search in the Social Science Citation Index (SSCI), part of Web of Science™ (WoS), which yielded more than 2500 genuine articles between 1955 and 2010 citing Sutherland. Regarding Sutherland’s influence, Alaheto and Persson found a decrease in citations from the end of the 1970s up to the year 2000; thereafter Sutherland’s impact seems to grow stronger. In 2010, Sutherland is cited in more than 100 journal articles, which is far more than in any other year since 1955. Alalehto and Persson (2013, p. 11) also noted that in the first decade of the twenty-first century the attention given to Sutherland’s work on white-collar crime increased. According to their interpretation, the increase derives from a growing interest in white-collar crime in West European countries. Alalehto and Persson’s (2013) study does not, however, go into detail on which of Sutherland’s works are most cited in the first decade of the twenty-first century and it does not tell us whether this trend of increased influence is still evident in the second decade of the twenty-first century. To complement and update their bibliometric search of Sutherland, we carried out new searches in WoS from 2011 to 2017 and can establish that the trend seems to persist. The number of journal articles citing Sutherland increased to almost 200 during the year 2017. Looking more closely at Sutherland’s work cited in 2017, we can conclude that his work on white-collar crime accounts for a fourth of all of the Sutherland citations during 2017, and this includes various editions of his book White Collar Crime and the two journal articles “White-Collar Criminality” (Sutherland 1940) and “Is ‘White Collar Crime’ Crime?” (Sutherland 1945), both published in the American Sociological Review. The citations include references to Sutherland’s offender-based definition of white-collar crime, to his Differential Association Theory as an explanation for white-collar crime, and his introduction of the use of administrative decisions to the study of white-collar crimes. Sutherland (specifically, for his work on white-collar crime) is also referred to in the citations as one of several scholars who draw attention away from the traditional focus on crimes of the poor and powerless, to how businesspeople provide rationalizations for their illegal activities as well as how white-collar crime is best regulated.

The number and type of citations of Sutherland’s work only partly reveals his influence today. In order to understand the influence that his scholarship has had on generations of criminologists we undertook a small qualitative survey (see Friedrichs et al. 2017). We invited scholars involved in academic work in the field of white-collar crime to participate. We ended
up with 30 respondents from a range of jurisdictions and at different stages in their career. In
the survey the participants were asked to recall their first encounter with the work of Edwin
Sutherland; to trace the ways in which Sutherland was influential to their own work; to assess
the strengths and weaknesses of Sutherland’s work; and to distinguish the ways in which
Sutherland’s legacy might be relevant for a twenty-first-century criminology.

The survey revealed that for many of the respondents, Sutherland made an influential
and long-lasting scholarly impact. The emphasis here is mostly placed on his concept of
white-collar crime, but also on his theory on differential associations. Sutherland’s under-
standing of crime as a broad concept not limited to criminal law seems to have made the
greatest impression on some of the scholars. In addition, several respondents had been
crucially inspired by Sutherland’s groundbreaking challenge of mainstream criminology’s
focus on the crimes of the poor.

A number of participants, across different generations of scholars, stated that Sutherland’s
work had significantly impacted their career as scholars. For example, Sutherland’s concept
of white-collar crime in general and the emphasis on the disproportionate extent of harm
caused by the crimes of the wealthy in comparison to the much researched and popular
focus on the crimes of the poor, and the equally disproportionate level of social control
responses, have inspired scholars to undertake research on crimes of the powerful.
Sutherland’s construction of the corporation as an “offender” has also been wide-reaching:
some scholars have continued researching corporate crime very much within Sutherland’s
legacy, while others have broadened the focus and incorporated other aspects and traits
into the notion of corporate crime such as, for example, corporate culture and corporate
power. Finally, Sutherland’s original concept of organizational crime has inspired scholars
to develop new strands of the criminology of powerful organizations, such as green crimi-
nology, the criminology of human rights, and state-corporate crimes. Connected to the
expansion of criminological thinking toward organizational offenders, several of our
respondents emphasized Sutherland’s influence in expanding the understanding of deviant
behavior as beyond something that is only stated in the criminal laws of a country.

Scholars participating in the survey asserted that one of the major strengths of Sutherland’s
work is his ability to move the criminological research agenda away from its preoccupation
with crimes of the powerless. Respondents also emphasize that the greatest overall contribu-
tion of Sutherland’s scholarship is the coining of the concept of white-collar crime. However, even among these respondents, criticisms remained along the lines of the long-
standing objection that Sutherland left the definition of white-collar crime muddled.
Another relevant criticism is the underdevelopment of a macro structural theory of criminal
behavior and the fact that Sutherland overlooked Marxist theory in his analysis of white-
collar crime. Despite the criticisms, most of the scholars insist on Sutherland’s relevance for
a twenty-first-century criminology. Some argue that he – in the current globalized, neoliberal era where corporations are causing massive social harm – is more relevant than ever.

Conclusion

Edwin H. Sutherland is quite uniformly acknowledged to be an iconic figure in the
development of the field of criminology. Sutherland’s work continues to be widely cited,
and his influence is clearly enduring. Sutherland’s 1939 presidential address, titled “White-
collar criminality” in its 1940 published version, is among the most influential American
Sociological Society/Association presidential addresses, given that it introduced a new
term – “white-collar crime” – that entered the common vocabulary, first in the United States and ultimately internationally. Importantly, however, Sutherland challenged the focus of criminology on conventional crime and established a core foundation for what eventually became a significant specialized focus of criminological inquiry – the broader field of white-collar and corporate crime scholarship.

Since Sutherland’s days, much criminological research has followed his legacy (see, for example, the range and depth of contributions in this volume). Though white-collar and corporate crime scholarship is still significantly less extensive than the research undertaken on violent, drug, and terrorism offenses, Sutherland would be proud to see that the criminology of white-collar crime is now an established and vibrant discipline in its own right. Our criminological imagination, however, can be pushed further by revisiting some of Sutherland’s original theoretical and methodological thinking. For example, more ethnographic or qualitative studies are needed on “crooked” practices in the professions, and how these are shared and learned in association with deviant peers. How do such practices and the “folkways” that support them travel through occupations or through industries? Recent research on the London Inter-bank Offered Rate (LIBOR) manipulation scandal in the global financial markets showed that the manipulative practices were carried out by dozens of individuals across different banks around the world, sharing the same definitions favorable to offending (Jordanoska and Lord forthcoming). How do individuals become socialized into a shared culture across different corporations? To focus the discussion further on modern times, what is the role of technology and online communication in the differential association process in white-collar and corporate crime?

A further issue that merits revisiting is Sutherland’s notion of “respectability” of white-collar offenders: does this concept have any analytical value in contemporary society, and if so, what is its substance? How does “respectability” affect public reactions against white-collar crime in times of mass media when reputations may be easily shattered? Eren (2017), for example, compellingly shows how Bernie Madoff (a highly revered financier at one point in time) quickly became a “Wall Street boogeyman,” with public anger echoing from the media coverage of his pyramid scheme and with calls to “boil him in oil.” More empirical work is therefore needed on Sutherland’s claim that white-collar crimes and offenders do not attract meaningful public reactions.

In sum, Sutherland’s ability to increase awareness of white-collar crime and his challenge to the traditional approach to defining and conceptualizing “crime” remains his single most important contribution to the field of criminology. If – as we anticipate – criminological attention to crimes of the powerful (including the corporate forms of white-collar crime addressed by Sutherland) increases exponentially during the course of the present century, then Sutherland’s name and work will continue to resonate for successive generations of criminologists.

Notes

1 The description of his life, main publications, and the development of the concept of white-collar crime as well as the discussion on his current legacy is based on the research conducted for the book on Edwin Sutherland in the Routledge “Key Thinkers in Criminology” series (Friedrichs et al. 2017).

2 Ross’s “criminaloid” is quite widely regarded as having anticipated Sutherland’s “white-collar criminal” by more than 30 years (Gaylord & Galliher 1988, p. 32; Geis 2015, p. 10). However, for whatever reason, Sutherland did not cite Ross’s concept of “the criminaloid” in his work on white-collar crime (Friedrichs et al. 2017).
As defined by the Encyclopaedia Britannica (2018), folkways are “… the learned behavior, shared by a social group, that provides a traditional mode of conduct.” See https://www.britannica.com/topic/folkway.

The concept of “violating trust” as a defining characteristic of white-collar offenses was more fully developed in a much-cited article by Susan Shapiro (1990).

References


White Collar Crime: Definitional Debates and the Case for a Typological Approach

David O. Friedrichs

This chapter draws upon some earlier work of the author on defining white collar crime, including an invited Presidential panel presentation at the 2013 Annual Meeting of the American Society of Criminology, on defining crime, as well as the author’s text, *Trusted Criminals*.

**Introductory Observations**

The term “white collar crime” is widely invoked in contemporary public and popular discourse, and has been for a long time now. Public interest in white collar crime has always been more limited than in other forms of crime, including serial killing and terrorism. It waxes and wanes. In the recent era, in the wake of the 2008 financial crisis, interest in white collar crime – at this juncture especially associated with Wall Street “banksters” – was somewhat intensified, and again from 2016 on with the election as American president of Donald Trump, someone accused of multiple forms of white collar crime and with an administration deregulating white collar crime with record speed and aggressiveness. But there can be no question that there is far less consensus and clarity about exactly what types of actions and activities are encompassed by the term white collar crime than is true in relation to street crime, or conventional crime. In the case of most conventional crimes – from murder to rape to burglary to auto theft – the meaning of the key terms is very clear. The boundaries between legal and legitimate business and professional activities and white collar crime (illegal and illegitimate activities) are especially likely to be blurred, however, and often somewhat confusing to a lay public. Many white collar crime scholars have addressed the definitional issue over a long period of time. The present author first published on this topic more than a quarter of a century ago, and as part of the most comprehensive conference (in 1996) to address the issue (Friedrichs 1992, 1996). The late, legendary Gil Geis addressed the definition of white collar crime in an article published in 1962, and periodically over the course of his long career, with a posthumous handbook chapter on this topic published in 2016! The definitional controversy endures.

In part, at least, public understanding of the core definitional dimensions of conventional forms of crime – relative to white collar crime – can be attributed to the long-standing pervasive media attention to such crime. White collar crime by its very nature lends itself less readily to being clearly – and dramatically – represented in journalistic reports, television dramas, films, and other media. There are various reasons for this that need not be addressed here (Friedrichs 2010; Robinson 2011). To the extent that there is a popular image of white
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collar crime, it is most readily associated with the non-violent, financially focused crimes of respectable businessmen – and as is true with conventional crime, such crime is very much associated with men, not women – professionals, or employees within the context of a legitimate business. In one sense, it is understood especially in terms of what it is not, which is to say: street crime, or conventional crime. Although the most significant and consequential white collar crime has long been associated with organizations – principally, corporations – this way of characterizing crime is at odds with a deeply entrenched image of crime as perpetrated exclusively by individual human beings, and accordingly there is a bias in terms of defining crime in relation to actions that are carried out by individuals, working independently or in concert with others. But the issue of organizations in relation to the definition of white collar crime will be addressed further on.

The basic thesis of this chapter is as follows: White collar crime today can only be defined as a heuristic term – “a speculative formulation serving as a guide in the investigation … of a problem (Mifflin, H. (ed.) 2004)” – or an “umbrella” term – a broad term encompassing a wide range of different activities. Readers seeking a single, universal, and easily applied definition of white collar crime need to look elsewhere. The premise here is that at this late stage in the history of the term white collar crime it is thoroughly unrealistic and accordingly dysfunctional to imagine that one can insist on a sharply drawn and widely acceptable definition of such crime. The genie is long out of the bottle. That said, an approach to defining white collar crime – and invoking this term – is here advanced with the hope that it proves useful to students of such crime.

One further preliminary observation can be made here about the conundrum of coming up with a definition of white collar crime. The lack of consensus on this term has been so pronounced that there has been no uniformity in whether or not to include a hyphen between “white” and “collar”: i.e. white-collar crime or white collar crime. Gil Geis (1968, p. xii), in the “Preface” for the first edition of his landmark collection of readings, *White-Collar Criminal: The Offender in Business and the Professions*, takes the inconsistency with regard to the hyphen as symptomatic of the enduring lack of consensus on the definition of the term. He notes that Sutherland himself was inconsistent in this regard, having used the hyphen in his first article but then dispensing with it in the title for his 1949 book. Geis adopts the hyphen as a matter of “personal preference,” but the present author’s preference is in the opposite direction. My problem with the hyphen is that it renders “white-collar” too literally, suggesting that it applies to a segment of society where white-collar shirts are worn. Absent the hyphen, it seems to me that the metaphorical (as opposed to literal) nature of white collar crime is more readily suggested. That said, the present author has also sometimes been inconsistent here, using the hyphen in particular contexts where that is the uniform choice of other contributors to, for example, an anthology relating to white collar crime.

*Defining White Collar*

What is meant by the term “white collar”? According to one dictionary, white collar is “Of or pertaining to workers, salaried or professional, whose work usually does not involve manual labor and who are expected to dress with some degree of formality” (American Heritage 1982, 1378). At a minimum, white collar people are employed; traditionally, they are middle or upper class, not lower class; they have a “respectable” status in society. C. Wright Mills (1956) produced a celebrated book, *White Collar*, with the subtitle “The
American Middle Classes.” Mills acknowledged that the “captains” of industry occupied the top of the white collar world but his focus was on “anonymous middle managers, floorwalkers, salaried foremen, county agents, federal inspectors, and police investigators …” (Mills 1956, p. x). As he notes, “By their rise to numerical importance, the white-collar people have upset the nineteenth century expectation that society would be divided between entrepreneurs and wage workers” (Mills 1956, p. ix). One needs to recognize, then, that a tension exists between associating white collar with upper-class elites and with middle-class salaried workers. The income range for “professionals” is sufficiently broad to encompass individuals struggling to make ends meet and those who are wealthy by any criteria.

In a literal sense, for some good time, those occupying any segment of the white collar class are less likely to literally wear “white” collars – as opposed to shirts of many other colors, including pink, and whatever else. Dress standards have evolved, so some famous billionaire CEOs of tech companies – the late Steve Jobs of Apple and Mark Zuckerberg of Facebook – have appeared before investors wearing t-shirts and jeans, not “white collars” and ties. Furthermore, the term white collar crime has been applied to workers outside the ranks of the traditional “white collar” classes, including low-level “blue collar” (or “no collar”) workers, and special occupational categories: e.g. khaki-collar crime, for crime committed by military personnel within the context of the military (Bryant 1974). You also have “gold-collar” crime, committed by state officials (Brants 2007). Altogether, it would seem to be a mistake to imagine that the term white collar should be treated literally as opposed to metaphorically.

On the Definition of Crime Itself: Some Preliminary Observations

Any attempt to define white collar crime must also begin with a discussion of the definition of crime itself. There is significant resistance among many criminologists to engaging with the definitional issues relating to crime or to specific types of crime. This author has encountered over the years any number of comments on “tedious” and “interminable” definitional discussions. Many criminologists clearly prefer to “get on with the work” of addressing specific theoretical and empirical questions that arise in relation to crime and its control, as opposed to devoting time and intellectual energy on dialogues relating to definitional and conceptual issues. Such impatience is understandable on a certain level, and the downside of becoming “imprisoned” by definitional conundrums to the point where one is hindered from addressing concrete and consequential “real world” issues needs to be acknowledged. But the premise here is that avoidance of core definitional issues has costly consequences in relation to theoretical and empirical progress.

In taking on a topic such as “the definition of crime” one needs to acknowledge the not inconsiderable risk of “re-inventing the wheel,” at least partially, since this topic has been quite extensively addressed by others. I hope I succeed here in introducing a few novel and useful insights, specifically in relation to defining white collar crime, but this is well-trod terrain.

The term crime has had quite diverse meanings throughout the long history of its use, although some understandings of crime have been dominant and others more marginal. Certainly there is a long and enduring history of invoking the term crime without any attempt to define the term. For many people the meaning of the term crime is clearly taken to be obvious, and so obvious that there is no need to define it. It also seems reasonable to claim that the term crime is most widely equated with conventional criminal offenses, or
violations of the criminal law, that are exemplified by the Federal Bureau of Investigation’s “index” crimes: murder; rape; assault; robbery; burglary; auto theft; larceny; and arson. This is surely the type of crime of most concern to the American public, along with drug-related offenses and recent concerns about terrorism, and these offenses account for most of the “mass imprisonment” of the recent era (Abramsky 2007). The largest proportion of criminological scholarship addressing crime through the present era encompasses one or more of these types of crime. But it is also indisputably true that there is a long tradition critical of the limitations of a conventional conception of crime (Hall 2012; Henry and Lanier 2001; Lynch et al. 2015; Tifft and Sullivan 1980). Accordingly, the claim is made that much of the focus of mainstream criminology is seriously skewed.

Surely the most common definition of crime is “legalistic”: i.e. a violation of the criminal law. The celebrated Sutherland/Tappan debate on the definition of white collar crime – addressed in the previous chapter – exemplifies the conflict over the traditional legalistic approach to defining crime and Sutherland’s more inclusive approach, in relation to white collar crime. But one needs to differentiate actions (or failures to act) as defined in statutes (a statutory definition of crime) from findings in a court of law that a specific alleged action was in fact a violation of the law (an adjudicated definition of crime). An arrest by police officers and an indictment by prosecutors represent intermediary dimensions of a legalistic definition of crime. However, actions that appear to be a crime may turn out, on further examination, to be something other than a crime, as defined by the statutory law. But actions taken by criminal justice personnel – be they police officers, prosecutors, or judges – have demonstrable consequences in relation to “crime,” whether or not they are “factually” correct. In relation to white collar crime specifically, the characterization of such crime within law, as well as the formal adjudication of such crime by justice system personnel, is typically more problematic than is the case with conventional crime, due to the lines of demarcation between legitimate and illegitimate conduct being more blurred and unclear. As Stuart Green (2012) has noted, the term white collar crime itself rarely shows up in criminal law statutes.

It is often said that all definitions of crime are “political,” insofar as in all developed societies (or societies that have developed beyond the tribal level) a political body of some sort defines crime. At odds with an idealistic conception of the political process in democratic societies as reflecting the public will and the interests of citizens collectively, the political process is much skewed in the interests of elite elements of society, especially due to their role in funding political campaigns and careers (Lessig 2011; Vogel 2014). Historically, the kinds of harms committed disproportionately by disadvantaged segments of society are far more likely to be declared crimes by law than are the harms committed by elite segments of society. So in defining white collar crime this inherent bias in the political process needs to be kept in mind.

There are other approaches to conceiving of or defining crime. A “moralistic” approach, in this reading, defines serious violations of some moral code as crimes, irrespective of whether or not they are so defined by the state’s criminal law. One need hardly belabor the point that religious community moral beliefs have profoundly influenced formal definitions of crime, and most strikingly in relation to so-called victimless crimes – e.g. prostitution; pornography; sodomy; drug offenses; gambling – or public order offenses. Immorality in relation to crime has always been more strongly associated with the preceding types of activities than with the unethical – and “immoral” – activities of corporate executives, businesspeople, and professionals within the context of business and professional activities.

A humanistic definition of crime focuses on demonstrable harm, more often than not coming from powerful elements of society, rather than legal status as the basis for something
being designated a crime. This approach, and one recent version of it – the call for a shift from a criminological to a “zemielogical” framework – is discussed further on in this chapter.

The Mainstream Definitional Bias of Crime

Michael Gottfredson and Travis Hirschi’s (1990) *A General Theory of Crime* is – within the American context – the single most widely cited and tested criminological theory during the present era (e.g. Cohn and Farrington 2012; Goode 2008; Madfis 2012). Gottfredson (2011) has subsequently argued against adoption of either a legalistic definition of crime or a disciplinary definition of crime (e.g. economists defining crime in terms of economic activity, sociologists in terms of social norm violation, and so forth), in favor of a behavioral definition of crime, as part of “a large scope of acts people engage in as they individually and then collectively seek to maximize gain and minimize loss” (Gottfredson 2011, p. 36). In this view, then, “Crime is part of a much larger set of behaviours that provide (or appear to provide) momentary benefit for the actor but which are costly in a longer term” (p. 36). Accordingly, crime has a generic relationship to “accidents, substance abuse, or inappropriate conduct for school, work or interpersonal relations” (p. 36). It should be obvious that such a definition of crime inherently aligns crime with the behavioral patterns of members of society who are not especially well-educated or bright, who don’t have stable and well-compensated jobs, who are disproportionately poor or economically disadvantaged, and who are socially marginalized in many different respects. If crime is impulsive behavior undertaken for immediate reward (regardless of long-term consequences), it is obviously tautological to explain it as a function of low self-control and poor parenting (Goode 2008; Madfis 2012). This “behavioral” definition of crime skews the study of crime almost exclusively to street crime, even more so than the conventional legalistic definition of crime.

The Criminological Critique of the Mainstream Conception of Crime

At least some criminologists who would be classified as falling within the parameters of the criminological mainstream acknowledge the limitations of the traditional way of defining crime. Robert Agnew (2011), in *Toward a Unified Criminology*, specifically engages with the work of a range of critical criminologists and puts forth an “integrated” definition of crime that seeks to find some common ground between mainstream and critical criminological approaches to defining crime. The advantages of this integrated definition of crime, which promotes a broadening of the scope of criminological concerns, are fully addressed by him. John Hagan (2010), in his *Who Are the Criminals?*, offers a potent critique of the conventional, mainstream “framing” of the problem of crime, with its highlighting of street crime or conventional crime and its relative inattention to suite crime or high-level white collar crime.

In addition to concerns proffered by mainstream criminologists, there is a long-standing tradition of critique of conventional conceptions of crime that has been advanced by self-described radical or critical criminologists (e.g. see DeKeseredy and Dragiewicz 2018; Michalowski 2016; Tifft and Sullivan 1980). Richard Quinney’s (1970) *The Social Reality of Crime* – characterizing crime as a construct put forth by the powerful to reflect their interests – has been influential. The “humanistic” definition of crime put forth by Schwendinger
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and Schwendinger (1970) – defining crime in relation to identifiable harm, independent of how the capitalist state defines crime – is quite familiar and has been widely cited. The approach to conceiving of crime as “crimes of capital” by Raymond Michalowski (1985), in *Order, Law, and Crime*, was another noteworthy initiative, and more recently, Michalowski (2016), in the context of a tribute to the late William Chambliss, has produced a devastating critique of the approach of “orthodox” criminology to the definition of crime. Stuart Henry and Mark Lanier (2001), in an in-depth consideration of the definition of crime, have advanced a “prism of crime” definition. Lynch et al. (2015) have quite exhaustively demonstrated that the conventional criminological definition of crime in legalistic terms is lacking scientific validity. Altogether, the radical and critical criminological critiques of the definition of crime promote attention to the crimes of the powerful – and white collar crime specifically – and take a form that recognizes that such crimes tend to be exponentially more consequential than conventional crimes, or the crimes of the powerless. For some criminologists, the term crime itself is inevitably so limiting and so constrained by its historical meaning that it should be abandoned in favor of “social harm” as the focus of our concern, with criminology itself being replaced by “zemiology,” or the study of harm (see Friedrichs and Schwartz 2007; Hillyard et al. 2004). A call on the part of Victoria Greenfield and Letizia Paoli (2013), for creating “a framework to assess the harms of crimes,” represents one recent initiative to increase attention to the harm dimension inherent to definitions of crime.

### Defining White Collar Crime in the Wake of Sutherland

It is a standard practice to open discussions of the definition of white collar crime with attention to Edwin Sutherland’s foundational contribution to this topic. But since Sutherland’s contribution and the controversies relating to it are very ably addressed in the previous chapter by Aleksandra Jordanoska and Isabel Schoultz, I will not here address Sutherland (see also Friedrichs et al. 2018). I do offer a few observations on my own take on the legacy of Sutherland’s definitional initiative. Eighty years have now passed since Sutherland formally introduced the concept of white collar crime, but confusion about the meaning and most appropriate application of this concept continues (e.g. Geis 2012; Green 2012; Shover and Cullen 2012). Why is this so?

First, a wide variety of terms have been used to characterize activities that could either be classified under the broad rubric of white collar crime or are closely linked with it. *Elite deviance* is one example. The terms “power crime” and “crimes of the powerful” have also been put forth for those forms of white collar crime committed by powerful entities and organizations (Friedrichs and Rothe 2012; Ruggiero and Welch 2009). Other terms include *economic crime, financial crime, commercial crime, business crime, marketplace crime, consumer crime, respectable crime, “crime at the top,” “suite” crime, official crime and deviance, political crime, governmental crime, state (or state-organized) crime, corporate crime, occupational crime and deviance, workplace crime, employee crime, avocational crime, technocrime, computer crime, folk crime, and invisible crime.*

In some cases, different terms refer to the same activity; in other cases, they refer to specific types of crime. Obviously the invocation of so many different terms, interrelated in such a bewildering variety of ways, contributes to the general confusion about white collar crime. Each term is likely to have some unique connotations, and each tends to emphasize a particular dimension of white collar crime.
White Collar Crime and Economic Crime

Reviewing all of the aforementioned terms is well beyond the scope of the current chapter, but the term “economic crime” warrants a brief discussion here given its proliferation in the European white collar crime literature (e.g. Johansen and Ystehede 2010; Korsell 2001; Larsson 2001). Although this term seeks to link crime to economic activity that occurs within the context of the economy, it unavoidably has ambiguous dimensions (Larsson 2001). From an outsider vantage point, this author has two principal reservations about “economic crime” as a preferred term. First, the term itself fails to capture one important core dimension of Sutherland’s “white collar crime” term: i.e. crimes are not simply committed by “those” people – i.e. poor people, minorities, marginal and disenfranchised members of society – but by members of the respectable and economically advantaged and privileged segments of society. Second, the term economic crime also implicitly sends a strong message that such crimes are exclusively economic in character, when it has long been recognized that some of the most significant manifestations of white collar crime – e.g. corporate violence – have huge physical consequences, resulting in death, injury, and disease for citizens, consumers, and workers. In and of itself the term economic crime suggests that it could be applied to an especially broad range of activities with a core economic dimension, including very low-level economic-type offenses committed by poor and powerless members of society. Some of the Europeans with whom this author has raised these concerns assert that for them the term economic crime has distinctive connotations that exclude conventional forms of crime with an economic dimension. Be that as it may, it is not clear that the intrinsic limitations of the term economic crime are overcome.

Some Enduring Controversies in Defining White Collar Crime

The terms “crime” and “deviance” have both been used to describe many of the activities encompassed by the concept of white collar crime. The present author’s choice has been to emphasize the term crime for three reasons. First, this term is more closely associated with doing harm to others than is deviance (Henry and Lanier 2001). Second, quite a bit of white collar crime unfortunately does not deviate from typical patterns of behavior (e.g. deception in the marketplace). Third, many white collar offenders avoid the stigma that is so central to the notion of deviance; they do not have a deviant self-identity or lifestyle.

Criminologists who study white collar crime have generally been in agreement that it (i) occurs in a legitimate occupational context; (ii) is motivated by the objective of economic gain or occupational success; and (iii) is not characterized by direct, intentional violence. On the other hand, these criminologists have also been divided on many issues, in terms of how they define white collar crime and which attributes of offenders they emphasize (Copes and Vieraitis 2012; Geis 2012; Nelken 2012). In particular, they have been divided between those focused on exposing wrongdoing in high places and those who study occupational or fraudulent offenders. Neal Shover and Francis Cullen (2012) differentiate between a populist perspective that focuses upon privileged, powerful offenders and a patrician perspective that focuses upon occupation-based offenses, regardless of who commits them.

Michael Benson and Sally Simpson (2009), in their book White-Collar Crime: An Opportunity Perspective, review the historical conceptions of white collar crime, and note that Sutherland, although he put forth different definitions, principally emphasized that white collar crime was about the wrongdoing of managers and executives. But they object
to definitions of white collar crime limited to those of high status, as opposed to treating status as a variable to be examined in relation to white collar crime activity. They compare the offender-based and offense-based approaches. They suggest that it is the particular techniques used in white collar crime offenses that should occupy a central role in how we define such offenses, with a definition ideally incorporating overlapping dimensions of the offense- and offender-based definitions.

The present author is wholly in agreement with the claim of Henry Pontell (2016) that the extension over many decades of the concept of white collar crime to offenses by middle-class (and even lower-class) individuals engaged in offenses of little consequence has “trivialized” the problem of white collar crime by deflecting attention away from monumentally consequential crimes of major industrial corporations and financial institutions. The influential Yale White-Collar Crime Project exemplifies this problem. Unfortunately, the present author does not believe that Pontell’s call (and John Braithwaite’s 1985 similar call) for limiting the term white collar crime to the crimes of rich and powerful corporations and institutions, and the individuals who control them, is a realistic solution to this problem. Whether or not Pontell and I like it, the term white collar crime is widely applied to a very broad range of different types of offenses, by criminologists, by journalists, and by the general public. What we can do is to call for acknowledging (or conceding) this reality and that different types of white collar crime need to be clearly differentiated from each other, and that the forms (or types) of white collar crime carried out by rich and powerful institutions and individuals are vastly more consequential than those carried out by middle-class (to say nothing of lower-class) individuals (or small businesses). It is therefore the white collar crimes of the powerful that should be privileged both for criminological study and for effective public policy (and prosecutorial) responses to such crime.

The lack of consensus on defining white collar crime is consequential in many different ways. Rorie et al. (2018) demonstrate the severe limitations of meta-analysis of white collar crime studies when they typically incorporate studies adopting different definitions of the key dependent variable with considerable variation in the operationalization of the constructs adopted. Arjan Reurink (2016), in his exhaustive review of the evolution of the concept of white collar crime, highlights the limitations of applying traditional conceptions of such crime in a rapidly transforming world with post-modern dimensions, expanding globalization, and increasing financialization (see Chapter 29 by Karin van Wingerde and Nicholas Lord in this volume). The rapid migration of more and more crime from “real space” to “cyberspace” also generates whole new challenges in relation to defining white collar crime (see Chapter 28 by Tom Holt and Jay Kennedy in this volume). On the subject of white collar crimes of the powerful in the context of the world we now inhabit (in which financial markets are increasingly unfettered), Gregg Barak (2012), Vincenzo Ruggiero (2017), and Tillman et al. (2018) are among the white collar crime scholars who have produced potent analyses of such crime.

Some of the principal definitional disputes in relation to white collar crime can be summarized as follows: White collar crime should refer only to violations of criminal law, versus the view that such crime should refer to violations addressed by civil and administrative law or other normative orderings as well. White collar crime should refer only to acts committed by higher-status individuals, versus the view that it should refer to acts committed in the context of any legitimate occupation. White collar crime should refer only to acts involving financial and economic activities, versus the view that it should refer to acts involving physical as well as financial harm. White collar crime should refer only to the acts of individuals, versus the view that it should refer to the acts of organizations as well as individuals. No real consensus on these issues is likely to be realized.
Definitions of White Collar Crime in Contemporary Textbooks

How do the various white collar crime textbooks approach the issue of defining white collar crime? Altogether they take quite different approaches to this issue. It is perhaps inevitable that it is the norm to include some discussion of Sutherland's classic -- but perpetually problematic -- contribution to the definition of white collar crime. Some textbooks make no attempt to offer a definition of white collar crime. Rosoff et al.'s (1998/2004) Profit Without Honor is a quite striking example of this approach. Gary Green's (1990) Occupational Crime specifically repudiated the concept of white collar crime, and put forth an argument that it should be replaced with the allegedly more coherent concept of occupational crime. The present author has specifically addressed his disagreement with this initiative (Friedrichs 2002), and some 25 years after the initial publication of Green's book the concept of white collar crime remains, by any criteria, dominant over that of occupational crime. As Coleman (2006, p. 6) has noted, the term white collar crime is now part of everyday English and has been widely adopted.

Brian Payne's (2012) White-Collar Crime is an especially recent and comprehensive textbook. Payne (2012, p. 35) notes the conceptual, empirical, methodological, and policy-related ambiguities of the white collar crime concept. He posits that the absence of a definition acceptable to all constituencies is troublesome on several counts, insofar as it hinders detection, hinders the gauging of the most effective response to this type of crime, and renders difficult comparisons relating to white collar crime, identifying its causes, and measuring the extent of such crime (Payne 2012, pp. 37–38). He charts the numerous different modern conceptions of white collar crime as: moral or ethical violations; moral harm; violations of criminal law; violations of civil law; violations of regulatory law; workplace deviance; definitions socially constructed by businesses; research definitions; official government definitions; violations of trust; occupational crimes; and violations occurring in occupational systems. As Payne (2012, p. 42) notes, it may be especially useful to differentiate between definitions of white collar crime that can advance research as opposed to those definitions that can be applied to prosecutorial initiatives. He concludes his substantial discussion of the definitional issues by adopting the view that “White collar crime can … be defined as ‘any violation of criminal, civil, or regulatory laws – or deviant, harmful or unethical actions – committed during the course of employment in various occupational systems.”

Textbook authors have not been wholly in agreement on which definitional attributes of white collar crime are core. Some have adopted the overall approach favored here, to define the term broadly. Hazel Croall (2001), in Understanding White Collar Crime – the principal British text on this topic – favors retaining the white collar crime term as an “umbrella” term. Norwegian author Petter Gottschalk (2012), in his White-Collar Criminals, also endorses the view that white collar crime must be understood as a “broad” term. Ronald Berger (2011), in his abbreviated text White-Collar Crime, endorses an “expansive” definition of white collar crime.

White Collar Crime and Corporate Crime

Increasingly, a number of high-profile encyclopedias, handbooks, and readers have opted for “White Collar and Corporate Crime” as part of their title (e.g. Minkes and Minkes 2008; Pontell and Geis 2007; Salinger 2013). I regard this as somewhat unfortunate because it
potentially increases rather than diminishes definitional confusion. After all, the original classic in the field, Sutherland’s (1949) *White Collar Crime*, was in fact exclusively about corporate crime, and the application of the term white collar crime to at least some forms of corporate crime continues to this day. So in suggesting that there is a broadly understood division between corporate crime and all other “white collar crime” I believe a misleading view is perpetuated here.

**A Multi-stage and a Typological Approach to Defining White Collar Crime**

A coherent and meaningful understanding of white collar crime must be approached in stages. The first, most general, definitional stage is *polemical*, the second stage is *typological*, and the third is *operational*. The traditional, “popular” conception of white collar crime – the illegal and harmful actions of elites and respectable members of society carried out for economic gain in the context of legitimate organizational or occupational activity – has an important polemical and pedagogical purpose. This conception challenges a popular tendency to associate criminality with inner-city residents, minorities, young men, and conventional illegal activities such as homicide, robbery, and burglary. The more complex and qualified the concept, the less effective it is likely to be in challenging conventional crime consciousness. It is not clear whether any of the many previously mentioned terms, all with somewhat more restricted connotations, can hope to achieve the easy recognition accorded white collar crime, which has been quite widely invoked for many decades.

In the second stage of conceptual development, the purpose of a criminological typology is to organize patterns of crime and criminal behavior into coherent or homogeneous categories, to facilitate both explaining and responding to crime (Dabney 2013; Gibbons 2002). Because the patterns of actual lawbreakers are so varied, some commentators express a concern that typologies may distort reality rather than clarify it (e.g. Clarke 1990, p. 3). This concern is valid, but what are the realistic alternatives to typologies of some sort? Generalizing about “crime” or “lawbreakers” surely distorts reality even further.

The concept of “occupational crime” was first clearly identified by Quinney (1964) and was specifically defined by Clinard and Quinney (1967, p. 131) as “violation of the legal codes in the course of activity in a legitimate occupation.” They considered this formulation more useful than Sutherland’s conception of white collar crime, which is restricted to high-status offenders. Typically, occupational crime has been applied to acts in which financial gain or status is sought (or prevention of its loss is involved).

Clinard and Quinney (1973), in the second edition of their influential book *Criminal Behavior Systems*, designated corporate crime as but one distinct form of occupational crime. This distinction has been the single most influential typological scheme of white collar crime. It has been widely adopted within the field and by the more sophisticated media. Corporate crime was defined as “offenses committed by corporate officials for their corporation and the offenses of the corporation itself” (Clinard and Quinney 1973, p. 188) – the type of crime Sutherland was concerned with in *White Collar Crime*. It is widely accepted today that the characteristics and consequences of corporate crime make it fundamentally different from the range of activities subsumed under the heading of occupational crime.

A somewhat parallel but hardly synonymous conceptual differentiation that was refined during the 1970s distinguishes between *organizational* and *individualistic* white collar crime (see, e.g., Friedrichs 2007; Minkes and Minkes 2011; Schrager and Short
The complex mixture of motives and objectives in organizational white collar crime is not easily conveyed by such a dichotomy (Reichman 1986). Various more fully differentiated typologies of white collar crime developed over the years have incorporated offender–victim relationships, offender attributes, offense context, offense form and objectives, nature of harm perpetrated, or some combination of these variables (Coleman 2006; Hagan 2011). We see, then, that different approaches can be applied to the challenge of formulating a typology of white collar crime. We should never lose sight of the fact that such typologies can gloss over complexities and ambiguities involved in some of the most significant manifestations of white collar crime (Haines 2007). Despite the inevitably arbitrary and limited attributes of any classification scheme, typologies provide a necessary point of departure for any meaningful discussion of white collar crime. The synthetic typology offered in this text is adapted from some of the existing typologies but also encompasses the wide range of activities labeled as white collar crime. The principal criteria for differentiating between the types of white collar crime, broadly defined, are as follows:

- Context in which illegal activity occurs, including the setting (e.g. corporation, government agency, professional service) and the level within the setting (e.g. individual, workgroup, organization)
- Status or position of offender (e.g. wealthy or middle class, Chief Executive Officer or employee)
- Primary victims (e.g. general public or individual clients)
- Principal form of harm (e.g. economic loss or physical injury)
- Legal classification (e.g. antitrust, fraud)

The typology that follows includes activities that some students of white collar crime would exclude, but at a minimum these activities have a close generic relationship with white collar crime:

1. **Corporate crime**: Illegal and harmful acts committed by officers and employees of corporations to promote corporate (and personal) interests. Forms include corporate violence, corporate theft, corporate financial manipulation, and corporate political corruption or meddling.
2. **Occupational crime**: Illegal or harmful financially driven activity committed within the context of a legitimate, respectable occupation. Forms include retail crime, service crime, crimes of professionals, and employee crime.
3. **Governmental crime**: A cognate form of white collar crime; a range of activities wherein government itself, government agencies, government office, or the aspiration to serve in a government office generates illegal or demonstrably harmful acts. Forms include state crime and political white collar crime.
4. **State-corporate crime, crimes of globalization, and finance crime**: Major hybrid forms of white collar crime that involve in some combination a synthesis of governmental, corporate, international financial institution, or occupational crime. The term “crimes of globalization” refers to demonstrably harmful products of expanding conditions of globalization, exemplified by many of the policies and practices of international financial institutions such as the World Bank and the International Monetary Fund (Rothe and Friedrichs 2015). Crimes of globalization represent an emerging form of white collar crime likely to become increasingly significant as the twenty-first century progresses.
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Finance crime specifically refers to criminal activity in the realm of high-level finance, from banking to the securities markets.

5. Enterprise crime, contrepreneurial crime, technocrime, and avocational crime: “Residual” forms of white collar crime, or a variety of miscellaneous illegal activities that include more marginal forms of white collar crime. Enterprise crime refers to cooperative enterprises involving syndicated (organized) crime and legitimate businesses; contrepreneurial crime refers to swindles, scams, and frauds that assume the guise of legitimate businesses; technocrime involves the intersection of computers and other forms of high technology with white collar crime; avocational crimes are illegal but non-conventional criminal acts committed by white collar workers outside a specifically organizational or occupational context, including income tax evasion, insurance fraud, loan/credit fraud, customs evasion, and the purchase of stolen goods.

The third stage for defining white collar crime can be called operational. On this level, the objective of the definition is to provide a point of departure for focused empirical research or comparative critical analysis. In the positivist tradition, Wheeler and his associates (1988) provide one approach to an “operational” definition of white collar crime. For purposes of systematically comparing white collar criminals and “common” criminals, they define white collar crime as violations of eight federal crime categories: securities fraud, antitrust violations, bribery, tax offenses, bank embezzlement, postal and wire fraud, false claims and statements, and credit and lending institution fraud. Although they recognize that such an operational definition does not encompass a representative sampling of the total body of white collar crime, they consider it to reflect federally prosecuted white collar crime. If such an operational definition allows these researchers to make quantitative comparisons, then obviously any resulting generalizations must be qualified relative to the definition. Many empirical studies of white collar crime adopt much narrower definitions of specific types of white collar crime for purposes of quantitative analysis.

Such definitions, however, are not simply the purview of mainstream white collar criminologists dedicated to a scientific approach to the study of white collar crime. Critical criminologists have also formulated definitions of white collar crime that are intended to facilitate comparative analysis. Michalowski and Kramer (1987), for example, have defined corporate transgressions as violations of international standards of conduct (developed by the United Nations) by transnational corporations that result in identifiable social injury. It could be argued that such a definition raises some formidable interpretive questions, but its intent is to facilitate systematic, comparative analysis. Critical criminologists have focused their attention principally on “crimes of the powerful” or “power crime” (Barak 2015; Rothe and Kauzlarich 2016; Ruggiero and Welch 2009). For such criminologists these crimes are infinitely more consequential than the white collar crimes of middle- and lower-class individuals.

The concept of white collar crime is, in the final analysis, somewhat like a Chinese puzzle: Whichever way one turns with it, new difficulties and conundrums are encountered. Perhaps it is most easily defined in negative terms: It refers to illegal or harmful activity that is neither street crime nor conventional crime. More generally, white collar crime is a generic term for the whole range of illegal, prohibited, and demonstrably harmful activities involving a violation of a private or public trust, committed by institutions and individuals occupying a legitimate, respectable status, and directed toward financial advantage or the maintenance and extension of power and privilege. We should give up the illusion that white collar crime can – or even should – have a single meaning or definition. Ideally,
whenever a definition of white collar crime or cognate activities is advanced, it should be done so in conjunction with a clear indication of its purpose.

Concluding Observations

The aspiration to formulate a single, coherent, and universally accepted and invoked definition of white collar crime is an exercise in futility. But the foregoing discussion has taken the position that despite its inevitable, inherent ambiguity, the term white collar crime should certainly be retained; its invocation at a minimum always signals that one is not addressing conventional or street crime, and its polemical message that significant crime is committed by highly respectable individuals (and organizations) remains hugely important. Ideally, those who invoke the term white collar crime are as clear as possible about what they do (and do not) mean by the term. Those who encounter the term white collar crime should be as attentive as possible to the context within which they have encountered the term, and its specific meaning within that context. All students of white collar crime should treat statistical and comparative claims relating to white collar crime with great caution, since the definitional ambiguities and contradictions inevitably lead to cases of comparing apples with oranges. This chapter has argued that a typological approach to white collar crime – with all due acknowledgment of inevitable issues arising out of typologies – nevertheless is the optimal approach for responding to the definitional conundrum.

References


The accuracy and efficacy of crime measurement has always been a topic of discussion among practitioners and scholars of criminal justice. As far back as the nineteenth century, the field has used crime statistics to understand and explain the nature and prevalence of crime (Shulman 1966; Friedrichs 2007). How much crime occurs year to year, the costs of crime to our society, how many arrests are made, whether crime is on the increase or declining – these are all questions that would typically send the student, law enforcement administrator, politician, or curious citizen looking for a method of measuring the occurrence of crime in the present day. Journalists want to know so they can write articles, politicians want to know so they can decide what to say in their efforts to win office, law enforcement executives want to know so they can determine where to focus their efforts, assign their resources, etc. Due to the inherent need for crime measurement, there have been a number of initiatives that have been implemented in order to track crime numbers. In 1929, the Federal Bureau of Investigation (FBI) implemented the Uniform Crime Reports (UCR) in order to track what are known as index crimes; this effort has since been followed by the implementation of the National Incident-Based Reporting System (NIBRS) in order to gain more accurate measurements from crime control agencies. Official government agencies such as the Bureau of Justice Statistics have even been established. In addition to official measures of recording crime instances, victim surveys (including the National Crime Victimization Survey [NCVS]), self-report, and attitudinal measures have also been introduced into the lexicon. Though not perfect, these types of measurement instruments have been essential to our understanding of and response to crime in the United States. One thing that you will find noticeably absent from a majority of these measurement sources, however, is what can be considered an accurate portrayal of white collar crime.

Why Does White Collar Crime Matter?

The existence of white collar crime, though certainly not new, has been brought to the forefront of public attention within the past two decades due to the media attention garnered by such far-reaching cases as the Enron and Bernie Madoff scandals and the 2008 financial
crisis. It is true that instances of white collar criminality have become “a topic of almost daily news” (Salinger 2005, p. vii). Topics such as identity theft, data breaches, and various frauds and scams have been prominent in the media, and scandals involving corporations have, at times, dominated the news cycle.

Monetary estimates from the FBI and the Association of Certified Fraud Examiners (ACFE) approximate the annual cost of white collar crime as being between $300 and $660 billion (Association of Certified Fraud Examiners 2004). Other assessments have put the price of specific types of white collar crime at even higher estimations. Sources put the victim cost of consumer fraud at approximately $4–12 billion, while occupational fraud and theft can be upwards of $800 billion – with a myriad of other white collar crimes being placed either in between those estimates or completely unquantifiable (Cohen 2016). Estimates of loss to employees and stockholders in recent years due to corporate crime have reached hundreds of billions of dollars (Public Citizen 2002; Cohen 2016). Healthcare fraud costs the government and taxpayers an estimated $68 billion annually, or 3% of the nation’s annual healthcare spending (National Healthcare Anti-Fraud Association 2009). The Federal Trade Commission (FTC) documented an increase of over 2.7 million complaints of consumer fraud reported to the Consumer-Sentinel database between 2001 and 2016 (Federal Trade Commission 2017). In fiscal year 2017, there were over 34,000 intellectual property crime seizures by US Customs and Border Protection, with items ranging from pharmaceuticals to sporting goods, worth an estimated $1.2 billion (United States Department of Homeland Security n.d.), and the United States Trade Representative has estimated US losses to counterfeiting and piracy alone at $200 billion (2005). And, the list could go on.

With some victim surveys estimating nearly 50% of US households falling victim to some type of white collar crime (Kane and Wall 2006), the attention being paid to such violations in the news should not be surprising, considering the staggering impact that these types of crimes can have on society. Despite a collective understanding of the fact that white collar crime is prevalent and problematic, however, we do not necessarily know the true frequency or scope of the problem. This can be largely attributed not only to a lack of empirical studies devoted to the topic, but also to a lack of official statistical information.

Why Is White Collar Crime So Difficult to Measure?

There are multiple factors that influence the accuracy of all official gathering of crime statistics. How crimes are coded, crimes unknown to agencies, recording mechanisms, and reliability of sources can all impact data collection. The widespread lack of reliability of statistics among reporting sources has been a problem for decades, with the Wickersham Commission calling for centralized data collection and quality control as early as 1931 (Skogan 1975). Despite efforts to improve the quality of criminal justice data collection over the decades, there still exist many roadblocks to our true understanding of crime through measurement (Duffee et al. 2000), and this is nowhere more evident than when examining the incidence and prevalence of white collar crime.

White Collar Crime: A Definitional Issue

Perhaps one major reason that white collar crime has proved difficult to measure is that, unlike standard index crimes such as murder and rape, there is no agreed upon definition of
what exactly constitutes a white collar crime. Although discussion of the definition of white collar crime and its implications are covered elsewhere in this text, it is important to mention the definition of white collar crime during the discussion of measurement because it has a direct effect on how or if a crime is counted (and subsequently measured) as a white collar crime. As has been noted by other researchers in the field, “[h]ow we define the term white collar crime influences how we perceive it as a subject matter and thus how we research” (Johnson and Leo 1993). The definition impacts what questions are asked, what kinds of answers are meaningful, and where researchers look for the answers to the questions.

Coined in 1939 by Edwin Sutherland, white collar crime was originally defined “approximately as a crime committed by a person of respectability and high social status in the course of his occupation” (Sutherland 1949). This definition, however, leaves much to interpretation when identifying both offender and offense characteristics. This has led to a longstanding debate among criminologists about what exactly constitutes white collar crime (Albanese 1995). Is it based on the offender’s sociological status, the type of crime itself, or both? And, if it is both, how should those crimes be classified that have just one but not both of those elements, such as simple tax evasion or forgery committed by an average citizen?

A model of white collar crime that has lent itself somewhat more to empirical data analysis is Herbert Edelhertz’s 1970 definition: “An illegal act or series of illegal acts committed by non-physical means and by concealment or guile to obtain money or property, to avoid the payment or loss of money or property, or to obtain business or personal advantage.” This definition ignores offender characteristics and concentrates instead on how the crime was carried out. As a result, it covers a far larger group of criminal activity – including crimes (or other illegal acts such as those prohibited by civil, administrative, or regulatory law) perpetrated outside of a business context, or by persons of relatively low social status (Cliff and Wall-Parker 2017).

Edelhertz identifies four main types of white collar offending: personal crimes (“crimes by persons operating on an individual, ad hoc basis, for personal gain in a non-business context”), abuses of trust (“crimes in the course of their occupations by those operating inside businesses, Government, or other establishments, or in a professional capacity, in violation of their duty of loyalty and fidelity to employer or client”), business crimes (“crimes incidental to and in furtherance of business operations, but not the central purpose of such business operations”), and con games (“[w]hite-collar crime as a business, or as the central activity of the business”) (Edelhertz 1977, p. 27).

The FBI, when it specifically addresses white collar crimes, uses a very similar definition: “those illegal acts which are characterized by deceit, concealment, or violation of trust and which are not dependent upon the application or threat of physical force or violence. Individuals and organizations commit these acts to obtain money, property, or services; to avoid the payment or loss of money or services; or to secure personal or business advantage” (United States Department of Justice, Federal Bureau of Investigation 1989). This has been operationalized by the FBI’s Criminal Justice Services Division to mean the UCR offenses of fraud, forgery/counterfeiting, and embezzlement, and a somewhat longer list of NIBRS offenses (Barnett 2000). Thus, while this definition and that of Edelhertz are very similar, the FBI’s definition functionally excludes non-criminal illegal activity, as well as incidents that are not reported to police and incidents that don’t fit into a relevant UCR or NIBRS category. On the other hand, the FBI’s definition dovetails well with data already collected, making it a practical tool for generating statistics on white collar crime activity.

The pursuit to define white collar crime has even spawned at least one conference devoted solely to this topic. In 1996, the National White Collar Crime Center (NW3C) brought together 30 academic experts to participate in a workshop designed to debate the definitional dilemma inherent in white collar crime. Over a three-day period, the group settled on an
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operational definition that encompasses both offender and offense characteristics: “illegal or unethical acts that violate fiduciary responsibility or public trust, committed by an individual or organization, usually during the course of legitimate occupational activity, by persons of high or respectable social status for personal or organizational gain” (NW3C 1996, p. 351). Despite near constant and sometimes heated debate, more than 70 years after this form of crime was recognized, there is still no universally accepted definition of white collar crime.

While all of the above positions and discussions of white collar crime and the reasons behind it have merit, the problem of definition still remains; and without an agreed upon definition, there cannot be an agreed upon standard of measurement. That is not to say, however, that there are not measures of white collar crime that exist, only that they may not be so easily found or interpreted.

Definitionally speaking, perhaps part of the white collar crime term’s elusiveness could be attributed to the fact that, unlike other “types” of crimes, white collar crime is one term that is used to encompass an almost impossibly wide variety of criminal activities that – at times – seemingly have little in common. For instance, is it truly accurate to group crimes such as computer hacking and internet auction fraud with broad-scale corporate malfeasance such as was seen with the Enron scandal? To that end, when official statistical sources attempt to measure such broad-scale white collar crime they almost inevitably fall flat. When discussing such an expansive field of thought, it sometimes makes more sense to look at crime from a specific point of view, particularly when it comes to crime measurement and statistics.

White Collar Crime in Official Data

There are typically considered to be “three major sources of data on crime: the Uniform Crime Reports, the NCVS, and self-report surveys of criminal offending” and victimization (Duffee et al. 2000, p. 13). Although these sources have gone through many improvements to assist with the accuracy of collected information, none of these sources has successfully provided what can be considered an accurate measure of white collar crime data to date (Friedrichs 2007). Because of this, practitioners and researchers must gather information from a variety of sources “including governmental agency and annual financial reports, newspapers, and journals” (Friedrichs 2007, p. 34) when attempting to gather white collar crime statistics.

Even when information is available, it rarely portrays what could be called a true picture of white collar offending. For instance, an internet search for the terms “white collar crime measurement” or “white collar crime statistics” pulls only a handful sources, and most of that information is dated. In fact, the one government report on white collar crime using the FBI’s UCR data was published in 2000 – nearly two decades ago. In it, Barnett reports that in using UCR data there is no measure of offender or corporate structure; in addition, white collar offenses are listed under “fraud, forgery/counterfeiting, embezzlement, and all other offenses,” a category that is “very limited in its ability to measure the white-collar offenses included in its counts” (Barnett 2000, p. 2). That reporting structure for the UCR is still active today, despite advancements in awareness of and academic literature pertaining to white collar crime issues. Importantly, though, the FBI is moving toward an alternative reporting system that might help elucidate the incidence of white collar offending. While the UCR utilizes a summary data system (meaning that the most serious offense in a crime incidence is the one that is recorded), the NIBRS collects more specific details involved in a criminal offense, including victim and offender data as well as additional contextual information (e.g. whether a computer was used in the offense). NIBRS is intended to capture data on each crime
incident, including separate offenses that may be included in a single incident, which provides a much more detailed picture of crime trends (FBI n.d.). Because of the additional utility inherent in the expanded NIBRS data, the United States is moving away from the UCR as the primary crime statistics source and will implement nationwide use of the NIBRS system in 2021. This may assist in the measurement of white collar crime on an official scale, as NIBRS provides measurement on a few more white collar crime categories than the UCR (such as bribery, credit card fraud, and welfare fraud); however, the categories that are utilized in NIBRS still woefully under-represent the scope and depth of white collar crimes, continuing to couch most of the incidences under property crimes. Further, only approximately 43% of police agencies currently engage in NIBRS reporting, rendering the existing data speculative at best regarding a true snapshot of crime occurrences (FBI n.d.). Even though it is expected that NIBRS will become the “law enforcement community's standard for quantifying crime,” this is not necessarily the case with white collar crime.

Furthermore, the credibility of both the UCR and the NIBRS program suffers from the reality that they report only on crimes that are reported by police, which “are only a fraction of those that occur” (Shulman 1966, p. 483). This statement is especially troublesome when discussing white collar crimes, as surveys have shown that even with an increased number of incidences relative to traditional crimes, white collar crimes are reported at a much lower rate than traditional crimes, and even fewer of those crimes reported actually land in the hands of a crime control agency (Titus et al. 1995; Kane and Wall 2006; Huff et al. 2010). For example, a 2018 report by the ACFE states that through the past 10 years, 58–69% of occupational crime cases were not referred to law enforcement and that the rate of criminal referral has actually declined over time; the most cited reason for not referring these crimes is the fear of bad publicity – many organizations fear “their share price will take a hit if investors and customers learn that the organization’s poor controls left it vulnerable to internal fraud” (Kuehner-Hebert 2015) and it is also possible that, in addition to the monetary loss already sustained by the fraud, an organization may also receive monetary fines from authorities because of the organization’s inadequate controls that permitted the fraud to occur in the first place. Many white collar crime victims (both individuals and corporations) will seek to rectify their case through organizational contact rather than with law enforcement, and if there is satisfactory resolution to the case through that process, it is highly likely that no criminal complaint will ever be brought against the perpetrator and no true record of a crime will exist from a statistical perspective. The issue of non-report can be even more of a barrier for statistics involving victims of corporate, governmental, or state corporate crime, as some victims do not even realize that they have been victimized until long after the offense has taken place, and a majority of these types of crime are not handled by traditional law enforcement but rather by an assortment of regulatory agencies (Croall 2007). Therefore, any numbers gleaned from official data sources could provide only speculation as to the true crime landscape. The truth is that most white collar crimes (when counted) are often lumped into categories of property crime and can further be obscured by having to sift through data from various criminal, civil, and administrative agencies (Friedrichs 2007). This lack of accurate and easily obtainable measurement makes it virtually impossible to understand the scope of white collar crime and also greatly impedes the ability of researchers to conduct empirical research that can be used to inform practitioners.

Recognizing the need for a unified way to measure white collar crime, the Bureau of Justice Statistics launched the grant-funded “State and Local White Collar Crime Program” in 2014. The purpose of this program was to develop a system for measuring white collar crime statistics across the United States. The project assembled focus groups comprised of
“noted academics in the field of white collar crime, practitioners in the field, and representatives from various state attorneys general offices” (Desilets 2017, p. i). The definitional problem, however, became apparent, as the stakeholders present “varied on how a white collar offense was identified,” finally landing on a list of 11 criminal actions that ranged from consumer fraud to environmental offenses that were “areas where white collar offenses are likely to be committed and measured” but that are ultimately not defined or handled by all jurisdictions in the same manner (Desilets 2017, p. i). This project, though certainly worthwhile, highlights precisely why it is so difficult to measure white collar crime – everyone is measuring and dealing with the problem through a different lens.

One way to gauge the incidence of white collar crime is through data on prosecutions. Although this method requires that the white collar crime has not only been discovered but also deemed worthy of criminal prosecution, one can draw some conclusions based on the increase or decrease of cases. The Transactional Records Access Clearinghouse (TRAC) provides reports on US federal criminal prosecutions and convictions. For instance, the October 2018 report shows that 403 new white collar crime prosecutions were brought by the Department of Justice in that month (TRAC 2018). The monthly reports also compare cases by month, looking at crime types, defendants, and statutes/charges brought forth. In addition to monthly reports, TRAC also produces yearly reports that allow for a broader picture.

Similarly, federal sentencing data can be found in the yearly reports of the US Sentencing Commission (USSC). The USSC’s yearly Sourcebook of Federal Sentencing Statistics provides data on offenders sentenced under federal guidelines in cases commenced in district, circuit, and national courts. Using the interactive companion to the Sourcebook, it is possible to see that over the past 10 years, white collar crime-related offenses (fraud, money laundering, forgery/counterfeiting, embezzlement, bribery, racketeering, tax offenses, and antitrust violations) saw their highest collective level of sentencing in 2012, at 12,427 cases, while 2017 saw a low 9,034 cases (United States Sentencing Commission n.d.).

An additional source of prosecution statistics, both criminal and civil, can be found in the Judicial Business of the United States Courts yearly reports (United States Courts n.d.). Like most available statistical sources, this report categorizes white collar crime under the umbrella categories of embezzlement, fraud, and forgery and counterfeiting. Fraud, however, is broken down into more precise categories: tax; financial institutions; securities and exchange; mail, wire, radio, and television; social security; citizenship and naturalization; passport; identification documents and information; false claims and services, government; false statements; conspiracy to defraud the United States; unauthorized access device; health care; and other. Additional white collar-related categories include regulatory offenses, money laundering, and RICO (Racketeer Influenced and Corrupt Organizations). Although these prosecutorial reports cannot help us understand the dark figure of white collar crime, what they can provide is a snapshot in time of the types of white collar crime that were discoverable and deemed important enough to cross into a criminal prosecutorial threshold.

Other Considerations

Even if the data source provides an accurate label for what can be considered a white collar crime offense, there are further considerations such as whether the matter was criminal or civil in nature and also whether the act could be categorized as being committed by an individual or by an organization. For example, there is little doubt that an offense such as illegal disposal of toxic materials is a violation of some form of Environmental Protection
Agency (EPA) regulation and – when the act results in the death or serious illness of someone (usually a large group) and the illegal dumping was done with knowledge of the likely consequences – there is little doubt that a crime has been committed. The question is whether the offender is an individual or whether a corporation can be held liable for the criminal act.

In large complex organizations, responsibility for projects often is diffused or spread out over a number of people. The diffusion of responsibility makes it difficult to single out a particular individual or group of individuals who ought to be held responsible when things go wrong. (Simpson and Benson 2009, p. 44)

There are also considerations in the handling of a particular offense that are attributable to the enforcement agency and their unique strategy in pursuing the case. Many offenses that victimize multitudes of individuals, garner millions of dollars in ill-gotten gains, and cause inestimable damage to a community may end up being handled outside the criminal prosecutorial field, either administratively or in civil court where no one is charged with a crime. Furthermore, the determination as to which white collar crime is handled administratively or civilly (as opposed to criminally) ultimately rests with the enforcement agency whose decisions in turn may not be a function of the severity of the crime or the number of victims but a function of the ease or difficulty of pursuing one strategy over another (Benson and Cullen 1998). Prosecutors, on a daily basis, make decisions as to how to charge an individual, whether to pursue a plea bargain, or whether to simply release the accused due to lack of evidence. Depending on the quality and number of witnesses, amount and handling of evidence, and even the likelihood of a plea bargain, a prosecuting attorney will make a decision as to what charges to press, whether to go forward with prosecution, and who to charge as the person most responsible for an offense (Dervan and Podgor 2016). Something that might have started out as a criminal case may ultimately be pursued through an administrative mechanism if the evidence and witness testimony are not sufficient to support criminal standards or if the feeling is that no one will hold any one person within a corporation responsible for an act or omission resulting in physical harm, environmental harm, and/or financial loss. All of these factors greatly impact what types of crimes end up in statistical databases and how they are coded.

An additional issue that may hinder the inclusion of white collar crimes’ representation in official arrest and prosecution statistics is practitioners’ responses to the problem. Part of the lackluster crime control response may be due to the relative invisibility and difficulty of investigating and prosecuting many white collar crimes when compared to street crimes. Research has shown that community context is an important factor when deciding whether or not to prosecute a certain type of crime (Benson and Cullen 1998). Therefore, crimes that are less visible in the public eye or are seemingly less important to one community versus another are less likely to be prosecuted. This attitude can be a problem in reacting to white collar crimes that can sometimes be regarded as “victimless” – due to a lack of visible, visceral damage (unlike murder or assault) – despite evidence to the contrary.

Furthermore, white collar crimes, compared to traditional street crimes, can be significantly more complex to investigate and prosecute, making such investigations more time-consuming and resource-depleting (Albanese 1995). Many white collar crime investigations require specialized investigative techniques and/or training, and many smaller agencies are not prepared to handle such cases (Bazley 2008; Friedrichs 2009; Cliff and Wall-Parker 2017). Given that most law enforcement agencies tend to focus upon traditional index crimes, it is
often difficult for an agency to devote the resources, time, and attention required to deal with a complex white collar crime case. For instance, crimes that involve financial matters often require the use of specialized forensic accounting techniques and months’ or even years’ worth of time for proper analysis – this is not a luxury that is readily available for many law enforcement agencies. Further, the agencies that are equipped with such resources typically require a case threshold that will determine if a case is pursued or not (i.e. is this case worthy of the time and resource expenditure?). This threshold is typically monetary and typically high, which means that many white collar crime cases will not be investigated and prosecuted because a dollar threshold of harm was not met.

There may be reluctance on the part of state and local agencies to investigate and prosecute these crimes if they do not already have a dedicated unit and additional manpower devoted to white collar crime matters. Though larger state and local and federal agencies may have the resources to investigate cases, it is impossible that they possess enough manpower to investigate and prosecute every case of white collar crime that comes across their desks. For instance, for large-scale cases such as the Enron scandal it can take decades to thoroughly investigate and bring about charges; though the crimes were brought to light in 2001, cases related to Enron were still being adjudicated in 2017, nearly two decades later (Zales 2016; Stempel 2017). Simply put, if arrests are not made and/or prosecutions are not taking place, then these crimes cannot end up in statistical counts. That said, measuring white collar crime is not necessarily impossible. There is certainly not a one-stop shop for white collar crime measurement (especially when looking at government sources), but there are other sources that can be utilized.

Other Data Sources

In an effort to combat the lack of information reaching crime control entities, victim surveys have been employed to try to help fill in the gap of what can be considered the dark figure of crime. Overall, very few studies have been devoted to assessing the prevalence of white collar crime victimization as it relates to the topic as a whole. In 1995, Titus, Heinzelmann, and Boyle published research that looked at victims of fraud and found that 15% of those surveyed admitted to being victimized by fraud within the past year. Similarly, NW3C has undertaken a series of studies (Rebovich et al. 2000; Kane and Wall 2006; Huff et al. 2010) that do address the topic of white collar crime victimization, as it ranges from credit card fraud to false stockbroker information, and have found 17–36% and 24–46% victimization rates among individual and household survey respondents, respectively, throughout the years. These victimization studies, though relatively few and with a range of victimization numbers, consistently indicate that white collar crime is indeed a serious issue for the general public and occurs at much greater rates than typical index crimes. White collar crimes, however, continue to see much less attention paid to their inclusion in traditional collections of crime statistics.

Another way of looking at white collar crime prevalence is by focusing on categories of white collar crime. To echo Friedrichs (2007), it is possible to gather data when looking at a variety of sources. When looking specifically at occupational crime, for instance, one very useful report is the ACFE bi-annual Report to the Nations. Although this report is survey-based and is focused on answers provided by members of ACFE, it provides more than a cursory-level look at occupational fraud cases across the globe. The 2018 report discusses data based on nearly 3000 cases in 125 countries across 30 industries, with a
combined loss of $7.1 billion (ACFE 2018). These reports can give insight into a number of areas, including frequency, cost, methodology, victimization type, perpetrators, victims, and case resolutions. This is a level of detail typically not available through more large-scale, government data collection, and it can be a useful comparison tool over time. Similarly – although more broadly focused – PricewaterhouseCoopers produces the Global Economic Crime and Fraud Survey. The 2018 survey had over 7200 respondents across 123 countries and showed that 49% of businesses were victims of “fraud and economic crime,” with asset misappropriation being among the most common fraud types experienced (PricewaterhouseCoopers 2018).

There are a host of other niche surveys and reports that focus on specific types of white collar crimes. For example, the NCVS began including questions related to identity theft in 2004 (Bureau of Justice Statistics 2006); however, the larger focus is devoted to more seriously viewed index crimes (e.g. robbery, burglary, murder, manslaughter, rape), with no other crimes couched within white collar criminality being surveyed. Similarly, initiatives from the FTC have included studies devoted to assessing the prevalence of identity theft and consumer fraud (2012, 2013). The FBI’s Internet Crime Complaint Center (IC3) focuses solely on victim-reported internet crime; in 2017, IC3 (2018) reported over $1 billion of losses and received its four-millionth complaint since its inception in 2000. These are just a few examples of the many niche sources where white collar crime data might exist. Similar reports exist for intellectual property crime, elder fraud, healthcare fraud, and many other types of crime that can fall under the white collar crime umbrella (depending on the definition used). While these surveys and reports are designed to try to quantify the prevalence of certain white collar crimes within the general public, the definitional parameters with which they identify white collar crime (again) do not always capture the true essence of the problem. Nevertheless, if one can be transparent regarding their inherent flaws, there are many sources from which researchers can draw at least anecdotal information.

White Collar Crime and the Issue of Regulatory Agencies

As mentioned earlier, another complicating factor in sourcing white collar crime data is that much of the available information out there is housed in regulatory agencies. Regulatory agencies can pose a problem in attempting to measure the presence of white collar crime for a number of reasons, including that “agency data are not systematic across sources” (Simpson 2011, p. 484). Furthermore, most agencies provide for multiple levels of addressing violations. Regulatory agencies often retain inspection and enforcement authority that enables them to issue formal written notices of a violation that are not necessarily recorded as a violation of the law until such time as the offending party fails or refuses to take the required corrective action, at which time the agency may determine to take civil action against the offending entity. If a civil process finds in favor of the regulatory agency and the offending entity pays their fine and/or takes the appropriate corrective action, again, no criminal offense is recorded as having taken place, only a violation of a regulation and a civil action to compel correction.

Most states have legislation empowering regulatory agencies that provides for a final step in the process that does involve handling an issue through the criminal justice system. Counting these instances, however, poses yet another problem. Since the entities the regulatory agency has authority over are often corporate entities whose stockholders may suffer from a negative finding, most legislation provides specifically that even criminal
proceedings in the regulatory arena remain confidential until the final appeal has been exhausted, which can sometimes take years. Research conducted by NW3C shows that 27 of the 50 (54%) states required a Freedom of Information Act before information would be released regarding the results of a Banking and Finance regulatory investigation (unpublished). Two states do not address the issue in their legislation, while only 19 allow access to the information on request. Further, according to Desilets (2017), there is no statute that exists within the United States that requires regulatory agencies to keep or report data in civil or criminal matters.

To further complicate matters, there is existing legislation that states, in effect, that regulatory agencies are exempt from Freedom of Information Act requests for information on any particular investigation into an alleged violation. While some areas of regulatory enforcement make provision for disclosure of information regarding allegations and investigations into violations, there are those agencies that specifically protect their inner workings from discovery and public disclosure. The State of Alabama serves as a classic example where the legislation governing the handling of banking violations specifically spells out that the agency has criminal recourse against the unauthorized disclosure of any information pertaining to an investigation of an allegation of impropriety (Alabama Legislative Information System Online 2013).

What Do We Know and What Should Be Done

The lack of a universal definition of white collar crime poses more far-reaching consequences than simply lack of consistency. If something cannot be defined, then it cannot be accurately measured. Under varying definitions, white collar crime can constitute anything from a simple check forgery to large-scale corporate malfeasance and sophisticated computer crimes. This definitional variance makes it extremely difficult to gather information pertaining to crime incidences because, even if white collar crime data is captured, it does not mean that the data will be comparable to other data.

In cyclical fashion, if one does not know how to accurately define a problem or does not know how prevalent a problem is, then how can one respond or control it? The lack of crime and arrest statistics goes so far as to “implicitly suggest that white-collar crime is not as serious as conventional crimes (which law enforcement takes exhaustive measures to count accurately)” (Albanese 1995). Those that study white collar crime know that this is not the case, as research shows that incidences of white collar crimes not only affect many more individuals than traditional street crimes but that white collar crimes also bring with them significant financial, emotional, and even physical tolls for the victims (Kane and Wall 2006; Croall 2007). In some instances, ramifications of a single white collar crime can have national or global impact, yet in many cases crime control entities’ responses indicate that traditional street crimes are still given much more attention than white collar offenses.

Despite decades of research, white collar crime remains an enigma in the field of criminology and criminal justice. There remains no agreed upon definition of what constitutes white collar crime and no systematic attempt to count its occurrences. Due to the lack of available data, white collar crime scholars are forced to gather information from a variety of sources, including official “statistics,” newspapers, court cases, self-reports, and victimization reports. The nature of these sources of data and their inherent limitations means they are likely to “produce highly biased crime incidence and prevalence estimates” (Simpson 2011, p. 483). It is clear not only that a definitional parameter needs to be set but that crime
control agencies must begin counting white collar crimes as a regular part of their data collection. An additional type of recourse that may be helpful is to continue to educate the public regarding the types of white collar crime victimization and encouraging them to report these to the police. Unlike more traditional crime types, white collar crime victims are often either unaware of their victimization or do not report the victimization to proper authorities (e.g. a victim of credit card fraud reporting to the credit card company but not to local police) (Kane and Wall 2006; Friedrichs 2007; Huff et al. 2010). Furthermore, regulatory agencies need to make an effort to make data more accessible to those who seek to study white collar crime; while it is understandable why this is not ideal for many corporations, the fact remains that this is a serious issue (that can relate to public safety) that needs be dealt with, partly through transparency of data. If researchers and practitioners cannot empirically support claims regarding the incidence and prevalence of white collar crimes, then it is impossible to justify the expenditure of funds for research and development that could potentially impact the lives of millions of citizens through the prevention and control of these crimes.

References


Section II

Extent and Cost of White-Collar Crimes
Types of Harm, Extent of Harm, and the Victims of Occupational Crimes

Petter Gottschalk

Introduction

The purpose of this chapter is to describe harm and victims of occupational crime. The chapter discusses types of harm, extent of harm, and the victims of occupational crime. The chapter presents a number of case studies of white-collar offenders and victims.


Gottschalk and Rundmo (2014) found that occupational criminals receive a more severe punishment in court in terms of prison sentence, despite the fact that corporate criminals commit financial crime for far greater amounts of money. They speculate that judges consider offenders who enrich themselves to be worse criminals than offenders who enrich the organization illegally.

Occupational criminals can find their victims both internally in the organization and externally. For example, embezzlement can cause harm to an employer, while fraudulent statements can cause harm to a bank. Insider trading can cause harm to other shareholders, while tax evasion causes harm to the society at large.

This chapter is concerned with harm and victims of occupational crime committed by white-collar offenders. Occupational crime, types and extent of harm, and victims are introduced first in this chapter, followed by case studies of two convicted white-collar criminals in the United States. Then a sample of convicted occupational criminals in Norway is presented, followed by case studies according to main victim categories: employers, tax revenue, customers, banks, and shareholders.

Next, the theory of convenience is introduced to explain the white-collar crime phenomenon (Gottschalk 2017), followed by an estimation of the shadow economy of which white-collar crime is a part. Harm and victims of occupational crime committed by
white-collar offenders is thus not only a matter of frequency, but also a contribution to the underground economy which causes damage to society both locally and globally (Edelbacher et al. 2016).

**Occupational Crime**

Occupational crime is committed for personal benefit. Hansen (2009) argues that the problem with occupational crime is that it is committed within the confines of positions of trust and in organizations, which prohibits surveillance and accountability. Heath (2008) found that individuals who are further up the chain of command in the firm tend to commit bigger and more severe occupational crime. According to Hansen (2009), individuals or groups commit occupational crime or elite crime for their own purposes or enrichment, rather than for the enrichment of the organization as a whole, in spite of supposed corporate loyalty. Occupational crime is offenses committed through opportunity created in the course of a privileged occupation in an organizational context. It involves abuses of structural systems in the workplace in order to accomplish various forms of white-collar crime (Sutherland 1983). It is violation of the legal codes in the course of activity in a legitimate profession (Friedrichs 2002). Occupational crime is committed on behalf of the individual offender. It is the use of one's occupation for personal enrichment through the deliberate misuse or misapplication of the employing organization's resources or assets (Holtfreter 2005). It is committed by persons in an organizational setting for purely personal gain and to the detriment of the organization (Kang and Thosuwanchot 2017). Any fraud committed by an employee, by a manager or executive, or by the owner of an organization where the victim is the organization itself may be considered occupational fraud (Peltier-Rivest 2009).

Occupational crime is typically committed under conditions of low levels of socialization and weak accountability. Employees may be unfamiliar with organizational goals or simply ignore organizational goals, while at the same time exerting efforts toward personal goals due to weak restraints by the accountability system. The presence of occupational crime may be symptomatic of larger failures in an organization's system since an organization without committed and accountable employees suggests a higher likelihood of failing in the long run. Occupational crime tends to be committed by privileged individuals who feel no attachment to the organization, and who do so for purely personal gain (Kang and Thosuwanchot 2017).

Holtfreter (2005) finds that occupational crime is clandestine, it violates the perpetrator's fiduciary duties to the organization, it is committed for the purpose of direct or indirect financial benefit to the perpetrator, and it costs the employing organization assets, revenues, or reserves. Occupational crime is a violation of trust.

Holtfreter (2005) distinguishes between three mutually exclusive categories of occupational crime: asset misappropriation, corruption, and fraudulent statements. Button and Tunley (2015) suggest that fraud is one of the most, if not the most, voluminous crimes in most industrialized countries, with financial losses that eclipse all other kinds of crime. Levi (2008) agrees that fraud is a gigantic problem, but argues that we do not know the true extent because of the ambiguity of fraud: many acts are open to interpretation as to whether they represent crime, civil issues, or regulatory transgressions. Similarly, Cross (2015) argues that we do not know the extent because of non-reporting by many victims who are reluctant to report victimization due to the shame and stigma associated with this type of victimization and a strong victim-blaming discourse.
Leasure and Zhang (2017, p. 604) found that the most common type of occupational crime is embezzlement, which is the appropriation of money for one’s own benefit: “The use of computers has increased the amount of embezzlement as they make this crime easier to commit.” Arrests for embezzlement in US banking rose significantly as computers became the preferred way of doing financial business. Occupational crime can also be the simple theft of company supplies and products.

Leasure and Zhang (2017, p. 604) suggest that occupational crime can also be classified as professional occupational crime, which is committed by professionals such as lawyers, lawmakers, or doctors in the course of their jobs:

For instance, doctors may steer patients to specialists or laboratories in which they have a financial interest or bill insurance companies for procedures that were not performed.

Occupational crime differs from corporate crime, government crime, and state-corporate crime in terms of motive and opportunity as well as behavior. Occupational crime is committed for the benefit of the individual as opposed to the organization, the government, or both the organization and the government. Occupational crime has to be carried out and concealed in a manner that makes responsible authorities in the organization or the government unable to become aware of the offense. The offender in occupational crime has no informal mandate from the organization or the government to commit crime, and thus he or she must behave in a manner that does not cause suspicion internally.

**Types and Extent of Harm**

Kempa (2010) found that victims of fraud in Canada report high incidences of stress, anger, depression, loss, and isolation – especially among those who lost more than $10,000. Further, trust in others is also often undermined because fraud is often initialized through an existing relationship of trust.

In a study of financial fraud in the private health insurance sector in Australia, Flynn (2016, p. 155) found present and future harm to the integrity of the insurance system:

Fraud compromises the integrity of the private health insurance system, leaching from it millions of dollars every year. These losses are significant but given little public attention. A culture of denial exists among most politicians, health administrators, staff in insurance companies and the general public about the scale of the problem.

Ottusanya (2012) studied financial criminal practices of the elite in developing countries, and found that the questionable practices of the political and economic elite increase their capital accumulation but harm citizens. Harm to citizens occurs because the state–civil society relationship is distorted, and because any accountability that the state might have to its citizens is eroding. State policy and state institutions tend to favor the particular interests of the elite rather than the general interests of society.

Peltier-Rivest (2009) found that the median fraud loss was $187,000 in Canada after fraud was committed by an employee in an occupational crime. While asset misappropriations were the most frequent schemes, fraudulent financial statements were the costliest, with a median loss of $1 million and a mean loss of $2 million. The results also suggest that private companies and not-for-profit organizations suffer relatively larger
Petter Gottschalk

... fraud losses, with a median (mean) loss of, respectively, 7% (11%) and 11% (14%) of their annual sales. The results also indicate that organizations employing fewer than 100 employees sustain fraud losses representing a median of 11% of their sales and a mean of 19% of their sales. The smaller the organization, the more likely fraud losses will be relatively larger.

Distinctions can be made between financial harm, emotional harm, and physical harm that might result from occupational crime. Financial loss is suffered by victims of occupational crime, but the loss is typically less than in cases of corporate crime, government crime, and state-corporate crime. The financial loss represents the illegal profit that the offender is able to obtain when receiving a bribe, committing embezzlement, misleading a bank, or carrying out other kinds of white-collar crime. Emotional harm occurs when co-workers have to handle the disappointment when learning about crime. Emotional harm also occurs for all organizational members because of reputation damage caused by crime. Both vendors and customers will become skeptical and potentially turn away from the victimized organization. Emotional harm is often suffered by whistleblowers – who notice the misconduct and report it – in terms of retaliation (Rehg et al. 2008).

Physical harm from occupational crime can occur when adverse actions are taken to silence individuals who notice misconduct. Perri (2011) suggests that it is a misperception that white-collar criminals commit financial crime because of a temporary moral lapse that represents an out-of-character act for the offender. He argues that white-collar offenders may display a pattern of criminal thinking that parallels street-level offenders coupled with the same behavioral traits that serve as risk factors for offenses to occur. The belief that white-collar criminals are non-violent is misguided, as there is a subgroup of offenders who are willing to resort to violence, such as homicide, to prevent their fraud schemes from being discovered and revealed.

Perri (2011) argues that the impact of personality traits such as psychopathy and narcissism has unduly been omitted in research on white-collar criminality. Such factors have an important role to play in some cases when white-collar criminals turn violent in order to prevent the detection of their felonies. When white-collar offenders turn red, then they cause physical harm.

Crime Victims

It has been suggested that white-collar offenses represent victimless crime. Nothing could be further from the truth. A single scam can destroy a company, devastate families, ruin a bank, or cost investors millions of dollars. Occupational crime victims include employers, tax services, customers, banks, and shareholders, as discussed below.

Reisig and Holtfreter (2013) studied elderly victims of shopping fraud in the United States. They found that two forms of remote shopping – telemarketing purchase and mail-order purchase – increase the probability of becoming a victim of shopping fraud. The probability of becoming a target and victim of shopping fraud was affected positively by reduced levels of self-control.

Holtfreter et al. (2005) conducted a similar study of consumer fraud, where they looked at consumers’ vulnerability. They found social vulnerability especially interesting, where socially determined lifestyles and patterns of daily activities have an impact on vulnerability. Social status can potentially influence their attractiveness as fraud targets, and may also contribute to successful victimization once targeted.
Golladay (2017) studied victims of identity theft and found that victims are often much older than victims of violent and property crime. Identity theft victimization is most common between the ages of 25 and 64 years. Unlike many kinds of crime, identity theft victimization is not significantly different for men and women. Victimization varies based on income. Households that report an income of over $75,000 a year reported higher rates of victimization.

Lokanan (2014) studied the demographic profile of victims of investment fraud in Canada. The findings indicate that the victims were not particularly rich, and a significant proportion borrowed money and opened margin accounts to invest. Those most vulnerable were investors who were retired and had limited investment knowledge. Many also dipped into their savings to fund their future retirement needs. Kempa (2010) suggests that one million adult Canadians (nearly 5%) have lost money to some kind of investment fraud.

Peltier-Rivest (2009) found that the most frequent victims of occupational fraud were private companies, followed by government entities, and public companies.

Holtfreter et al. (2010) found that offending and victim populations overlap to some degree, suggesting that a common underlying factor partially explains both outcomes. They found that low self-control is associated with fraud offending. The findings also show that individuals with lower levels of self-control report that they are more likely to behave in ways that increase their exposure to fraud victimization. The overlap between fraud offending and victimization exposure is partially explained by low self-control. A similar result is presented by Holtfreter et al. (2008).

Distinctions can be made between victims such as consumers as opposed to clients, vulnerable populations as opposed to the general public, and employers as opposed to employees. Consumers suffer when they get involved in schemes that benefit the vendor representative. Clients of attorneys suffer when attorneys abuse funds deposited in law firm accounts. Vulnerable populations suffer when they are taken advantage of in terms of trust violations. The general public suffers when allocation of resources is misdirected to corrupt activities. Employers suffer when the credibility of the firm is harmed. Employees suffer when the trust in their goods and services deteriorate as a consequence of a white-collar scandal.

**Norwegian Sample**

From 2009 to 2015, a total of 408 convicted white-collar criminals were reported in Norwegian media. Most of them were convicted of occupational crime. I collected court documents for each of them and developed a database of white-collar offenders. In the database, there are 63 corporate criminals and 345 occupational criminals (85%). The following categories were applied to classify victims of occupational offenses:

- A total of 109 offenders caused harm to their employers as victims (31.5%)
- A total of 73 offenders caused harm to the society at large by tax evasion (21.2%)
- A total of 53 offenders caused harm to their customers as victims (15.4%)
- A total of 43 offenders caused harm to banks as victims (12.5%)
- A total of 29 offenders caused harm to shareholders as victims (8.4%)
- A total of 38 offenders caused harm to others (11.0%)

In the following, we will review case studies where offenders caused harm to an employer, the revenue service, customers, banks, and shareholders, respectively.
Are Blomhoff was a priest in the Methodist Church. He had a business education and became Chief Executive Officer (CEO) in the Betanien Foundation, which was linked to the church. The foundation operated childcare facilities and homes for the elderly. Because of the climate in Norway, Betanien wanted to help snowbirds move to Spain in the winter season. The board at Betanien decided to build a nursing home in Spain, and CEO Blomhoff took on the task. Money was transferred from Norway to Spain, and Blomhoff was in charge on both sides of the transactions. He embezzled some of the money and bought himself an apartment in Spain. In addition, he spent some of the money on parties with friends and prostitutes in Spain. When two colleagues blew the whistle on Blomhoff, the chairman at Betanien did not believe them. When the two whistleblowers threatened to tell the media, the chairman hired global auditing firm BDO (2014) to investigate the matter. The fraud examiners found evidence of embezzlement of more than 2 million Euros. In the district court later that year (Drammen Tingrett 2014), Blomhoff confessed to the embezzlement and was sentenced to four years in prison.

The harm to Betanien was not only a financial loss. The whole foundation stood still when the chairman had to resign from his position. Trust deteriorated, and the two whistleblowers became extremely active in accusing others of involvement in the fraud. Rumors and accusations went back and forth in the organization, and sponsors and donors became reluctant to support the foundation.

Victim: Tax Revenue

Isa Gerbeshi was running Wara Painting Service, which went bankrupt in 2014. The bankruptcy lawyer involved in the Wara case, Anne Helsingeng, reported it to the police, but the case was dropped. Later Oslo police followed Gerbeshi’s moves and got him convicted to five years in prison for money laundering and tax evasion (Haakaas 2015).

Gerbeshi and his family, who were from Kosovo, were involved in a number of bankruptcies, leaving behind unpaid taxes of more than 22 million Norwegian kroner ($3 million). This amount represents lost income tax that would have funded government activities. The society at large is thus a victim of Gerbeshi’s scam. Another victim is the law-abiding part of the Norwegian construction and painting industry that loses in competition with companies from the shadow economy.

The shadow economy is defined as market-based production of goods and services, whether legal or illegal, that escapes detection in the official estimates of the gross national product. The shadow economy comprises those economic activities and the income derived from them that circumvent or otherwise avoid government regulation, taxation, and observation (Schneider and Williams 2013).

The society at large is a victim of the shadow economy, since the shadow economy causes damage to the financial interests of the country, regardless of whether legal or illegal businesses are involved in these economic activities. The shadow economy is sometimes labeled the informal economy or the underground economy (Edelbacher et al. 2016, p. 1):

The informal economy is emerging worldwide as an antipode to the formal economy. Although only partially visible and parallel to the formal economic system, it is manifested in social and cultural activities in European cities in the tourist trade, in the form of vendors in the streets and
Types of Harm, Extent of Harm, and the Victims of Occupational Crimes

squares or those selling flowers in restaurants. It has links to drug trafficking and prostitution, but also provides economic opportunities for immigrants, young people, and students. It has links with the formal economy, contributes to the forces of formal and informal social control, and is an important factor in the economies of European countries.

The shadow economy is illegal economic or non-complying economic activity within legal businesses existing alongside a country’s official and legitimate economy, e.g. transactions such as under-declared income, undeclared work, and over-declared costs.

The Gerbeshi family now owns a number of houses in Kosovo that look like palaces (Haakaas 2017).

Victim: Customers

Odd Arild Drevland was an attorney at law in his own law firm. He registered billable hours on February 29, but that date did not exist in the year he was recording those hours worked. In the trial against him, he was, among others in the indictment, accused of having falsified an agreement. He referred to an alleged understanding he had with a deceased entrepreneur. The contract was completely open, which gave Drevland the opportunity in the future to take out whatever he meant to claim in connection with work for the entrepreneur’s company. For a number of years, Drevland was chairman of the company (Buanes and Valland 2015).

In court, Drevland admitted to losing control of his finances. He admitted embezzlement of a major client when he was in charge of a large property transaction. He admitted embezzlement of another client who had money in a client account in his law firm. Drevland was sentenced to two and a half years in prison (Pettersen et al. 2015).

The main victims of Drevland’s fraud were his customers who trusted his legal work for them. He abused their trust by embezzling some of their money. He did not only cause harm to his clients, he also caused harm to the legal profession, since every fraudulent attorney is one too many for the legal profession. A fraudulent attorney causes a discussion about whether or not lawyers should continue with their privileges in terms of client-attorney privilege and in terms of denial of government access to information about money deposited in client accounts in law firms.

Victim: Banks

Christer Tromsdal was labeled a finance acrobat. He used various firms and associates to commit bank fraud. He asked banks to finance property developments and property procurement where the values were misstated, based on fake estimates from corrupt consultants. A total of 15 defendants were convicted in court to imprisonment. Banks lost hundreds of millions of Norwegian kroner (about $50 million).

The direct victims were the banks. The indirect victims are bank customers who have to compensate for the bank loss, either by higher interest rates on bank loans or by lower interest rates on bank deposits. Tromsdal has been convicted several times for white-collar crime, and his latest sentence, of six years’ prison, was passed in 2015 in Oslo District Court (Oslo tingrett 2015).

Consistent with the behavioral dimension of convenience theory as explained later in this chapter, Christer Tromsdal applied neutralization techniques when blamed for crime.
Table 4.1 Neutralization techniques applied by white-collar criminal Christer Tromsdal.

<table>
<thead>
<tr>
<th>#</th>
<th>Neutralization technique</th>
<th>Yes/No</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Rejects responsibility for the crime and disclaims leadership role in the action.</td>
<td>Yes</td>
<td>He blames others and says he only tried to help some friends. &quot;It is not my responsibility&quot; (Bjørndal and Kleppe 2013).</td>
</tr>
<tr>
<td>2</td>
<td>Denies injury from the crime and refuses to acknowledge that harm has occurred.</td>
<td>No</td>
<td>There is no sign of this neutralization technique.</td>
</tr>
<tr>
<td>3</td>
<td>Dismisses victims of the crime and denies that anyone has suffered harm.</td>
<td>No</td>
<td>There is no sign of this neutralization technique. However, he seems to consider himself as the main victim of the crime. “I have let myself be used by others” (Bjørndal and Kleppe 2013).</td>
</tr>
<tr>
<td>4</td>
<td>Condemns the condemners and is skeptical of those who criticize his action.</td>
<td>Yes</td>
<td>He feels that he has been a victim of a witch-hunt by Økokrim for more than 10 years, and he condemns investigators and prosecutors at Økokrim. “I choose to call the whole process a witch-hunt” (Hultgreen 2012). “People say it is the crook that cheated all the old people” (Kleppe 2015).</td>
</tr>
<tr>
<td>5</td>
<td>Invokes appeal to higher loyalties as a reason for his action.</td>
<td>Yes</td>
<td>He had to do it for his friends and acquaintances. “I have helped friends and acquaintances” (NTB 2015).</td>
</tr>
<tr>
<td>6</td>
<td>Alleges normality of action and argues that action is quite common.</td>
<td>Yes</td>
<td>“When someone hears the word ‘straw man,’ it sounds scary, but to me it is like an assistant” (Meldalen 2015).</td>
</tr>
<tr>
<td>7</td>
<td>Claims entitlement to action because of the situation.</td>
<td>No</td>
<td>There is no sign of this neutralization technique.</td>
</tr>
<tr>
<td>8</td>
<td>Notes legal mistake and considers infringement irrelevant because of error in the law.</td>
<td>Yes</td>
<td>“In my head it is not illegal to do business with others” (Kleppe 2015).</td>
</tr>
<tr>
<td>9</td>
<td>Feels entitled to make mistakes and argues action is within acceptable mistake quota.</td>
<td>Yes</td>
<td>Since he once was a police informant, he feels entitled to do business his own way. “I was shot at work for Oslo police” (Dahle 2011).</td>
</tr>
<tr>
<td>10</td>
<td>Presents dilemma trade-off by weighting various concerns with conclusion of committing the act.</td>
<td>No</td>
<td>There is no sign of this neutralization technique.</td>
</tr>
</tbody>
</table>

Table 4.1 shows neutralization techniques applied by Tromsdal, as they appeared in numerous media reports and court documents in this decade. “Yes” means that Tromsdal applies this neutralization technique, while “No” means that there is no sign of this neutralization technique in the many interviews in the media with Tromsdal.

As illustrated in the table, there is no direct sign of victim denial or harm denial by Tromsdal as an occupational crime offender. However, he presents himself as a victim, where he claims that others are responsible for harm that presumably has been inflicted on him.
Victim: Shareholders

Rune Brynhildsen was a partner in the firm Woldsdal Public Relations. He was sentenced to 10 months in jail for exploiting inside information about a company where he was a public relations (PR) advisor. Brynhildsen was sentenced for violation of the Securities Act. In his job as a PR consultant he learned about future plans, including mergers and acquisitions that would influence stock prices. Brynhildsen also leaked information to allies who traded stocks accordingly (Høyesterett [Supreme Court of Norway] 2011).

Insider trading victimizes other shareholders. When an insider trader has extra profit by purchase or sale of stocks, others lose, because the value of the company has not changed. Furthermore, insider trading undermines the capitalistic market for allocation of financial resources among companies registered on a stock exchange.

Brynhildsen initiated illegal insider trading prior to price-sensitive announcements. He and his associates capitalized on finance and industry information that he had been privy to, in advance of public notice.

McInish et al. (2011) found that insiders are more likely to trade on high volume days, which indicates an effort to hide their trades. Hansen (2014, p. 29) found that the regulatory system in the United States is faulty, where some are prosecuted and others get away with civil actions "much as the regulatory systems that are expected to control all types of underground, black market activities."

Yusuf Acar in the United States

In this and the following section, two cases studies are presented from the United States. Yusuf Acar, a mid-level manager at the District of Columbia’s Office of the Chief Technology Officer (OCTO), was arrested on March 12, 2009, and charged with bribery, conspiracy, money laundering, and conflict of interest related to procurement improprieties. He was sentenced to two concurrent terms of 27 months in prison. During his guilty plea, Acar admitted that he accepted bribes on at least 59 occasions from Sushil Bansal, who owned a company called Advanced Integrated Technologies Corporation (AITC). Bansal paid Acar a total of more than half a million dollars. Sidley (2010) conducted an internal investigation of the case, while the Federal Bureau of Investigation (FBI 2010) conducted a criminal investigation of the case.

The main victim of Acar’s scheme was his employer in Washington, DC. Other victims included AITC’s competitors as well as employees at OCTO whose jobs were negatively influenced by the services provided by AITC. “The residents of the District of Columbia deserve an ethical government with ethical employees, and have the right to know that their money is being spent honestly and for the public good,” said US Attorney Machen (FBI 2010).

The harm was not only overpriced IT services from AITC; it was also underperforming computer software supplied by AITC people. Because of the bribes, Acar made several procurements of both computer software and consulting services from AITC.

OCTO had 231 full-time employees and employed 267 contractors, most of whom were full-time. OCTO had a longstanding contractor culture, where contractors draw a salary from a third-party vendor that contracts with the District government. Contractors played a key role in managing numerous, simultaneous, one-time modernization projects.
Acar’s occupational crime involved a series of loosely related fraudulent schemes that were not particularly complex according to fraud examiners Sidley Austin LLP (2010). They all escaped detection and would likely have remained undiscovered but for the corporation of an informant.

Yusuf Acar had ample organizational opportunity to commit convenient white-collar crime:

- He was in charge of hiring consultants.
- He was in charge of buying software licenses.
- He was able to monitor emails by others.

Over time, Acar’s schemes had grown more brazen, reflecting his growing confidence that there were no mechanisms in place to detect the fraud. The initial plan was a basic corruption scheme with kickbacks from Sushil Bansal’s company, AITC, which had been awarded a contract to provide temporary contractors in the security division. Bansal had tendered a number of candidates, but Acar and his co-workers had initially rejected them as unqualified.

**Harriette Walters in the United States**

Harriette Walters served as a tax assessments manager for the District of Columbia. She was convicted of being the central participant in the largest fraud scheme ever perpetrated by a government official in the district. In September 2008, Walters pleaded guilty to federal charges related to the theft of over $48 million of district funds. Counsel from Wilmer Cutler Pickering Hale and Dorr and forensic accounting advisors from PricewaterhouseCoopers were hired to investigate how Walters was able to embezzle the funds from the District of Columbia (WilmerHale and PwC 2008).

Walters masterminded a nearly two-decade-long scheme in which she processed fraudulent real property tax refunds and arranged for the proceeds of those funds to be deposited into bank accounts controlled by her and her friends and family. For example, she cashed refund checks that were returned when the taxpayer recipient had died. She also fabricated several tax refund checks. It appeared that Walters had figured out that she had the last eyes on the tax refund check and operated with little monitoring (Stewart and Nakamura 2007).

Because of the lack of monitoring, four managers were held responsible for failing to catch the fraud. The four managers resigned: Deputy Chief Financial Officer Sherryl Hobbs Newman, her Deputy Director Matthew Braman, the Director of Real Property Tax Administration (RPTA) Martin A. Skolnik, and the Chief Assessor Thomas Branham (Stewart and Nakamura 2007).

The investigation by WilmerHale and PwC (2008) had a mandate of determining how Walters was able to embezzle over nearly 20 years and recommending changes in controls, work environment, and oversight structures that could help prevent future fraudulent schemes. The investigation did not attempt to trace the stolen money or determine how the money was distributed or spent. Nor did the mandate seek to determine the guilt or innocence of any participants in Walters’s scheme. Federal authorities had addressed those issues.

The WilmerHale and PwC (2008) investigation involved three phases: (i) document and data collection; (ii) document and data review and analysis; and (iii) witness interviews.
The investigators reviewed and analyzed more than 680,000 electronic and hard copy documents. They reviewed emails and other electronic documents associated with 87 current and former employees.

The second phase of the investigation involved a review of the collected documents and an analysis of the data included in the documents. WilmerHale and PwC reviewed documentation for manual real property tax refunds, including all refunds dating back to 1998, no matter the amount. A total of 1,600 documents required more in-depth review because: (i) the identity of the refund recipient was fraudulent; the voucher packets reflecting the refund were issued to a legitimate business or entity, but the check was addressed to “care of” and an address related to several of Walter’s payees; (ii) there was a lack of authorizing signatures; and (iii) documentation did not correspond to the property or tax payer listed as the recipient of the refund or was missing. In addition, WilmerHale and PwC closely scrutinized the following types of real property transactions:

- refunds over $10,000
- refunds that were to be held for taxpayer pickup and those issued to taxpayers who did not appear to own property in the District
- refunds ordered by the court for which an original court order with a raised seal did not accompany the refund documentation.

Following the review of the refunds, WilmerHale and PwC analyzed the data in various tax systems, where they identified “refunds with characteristics consistent with refunds previously identified as fraudulent in court documents filed by the U.S. Attorney’s Office.” The analysis also identified suspicious refunds where hard copy documentation was not available, unclear, or incomplete. The analysis of the Financial Management System (FMS) revealed several refunds to entities or individuals involved in Walters’s scheme; unfortunately, hard copy records were unavailable. FMS was a system that processed refunds manually. It was replaced in October 1998 with the System of Accounting and Reporting (SOAR), which also required that refunds be processed manually.

A similar analysis of data in SOAR was conducted. Real property tax refund payments in the general ledger, which was housed in SOAR, were isolated and searched for refunds characteristic of fraud (i.e. known entities involved in the fraud scheme, refunds sent to “care of” addresses or coded “hold for pickup,” etc.). Lastly, WilmerHale and PwC analyzed documentation for real property tax refunds processed through the Integrated Tax System, in order “to identify patterns of data and activity indicative of Walters’ scheme.” The system is an automated system that was introduced in 2005. It is composed of several applications which supported the District’s various tax types (i.e. personal income, business, and real property tax). This system interacted with some of the District’s relevant computer systems, but not all. There was no direct interface between the system and SOAR, which meant entries from the system had to be manually entered into SOAR. The private investigation team discovered that Walters “manipulated the system to process fraudulent refunds at least twice.”

In addition, WilmerHale and PwC requested copies of canceled checks associated with the refunds previously identified during the review and those associated with all other real property tax refunds of $100,000 or more. Reviewing the canceled checks allowed WilmerHale and PwC to determine whether the refunds were legitimate or illegitimate and to identify checks that “had been deposited at bank branches where known fraudulent refunds had been processed based on account information on the back of checks.” They also compared endorsements to confirm or identify additional fraudulent refunds.
Finally, the private investigation team compared refunds in the SOAR general ledger with those from other databases. WilmerHale and PwC identified refunds that did not coincide with actual properties or property owners contained in the various systems. Furthermore, they “obtain[ed] additional information regarding the fraudulent nature of certain previously identified suspicious payments.” This concluded the document review and data analysis.

The final phase of the investigation process, witness interviews, supplemented the previous reviews and analyses. WilmerHale and PwC conducted interviews of over 70 individuals including: current and former OCTO employees, representatives of the Office of the District of Columbia Auditor, the Office of the Inspector General, the Office of Risk Management, the District’s current and former independent auditors, and other third parties.

Upon completing the investigation, WilmerHale and PwC concluded that Walters perpetrated her lengthy fraud scheme due to a failure of controls, a dysfunctional work environment, and a lack of oversight. The reliability of the real property tax refunds process could not be ensured because no policies or procedures could be found within the Office of Tax and Revenue (OTR), which formally documented how real property tax refunds should be processed. If policies and procedures did exist, managers and employees did not follow them consistently. Managers in the OTR did not test the refund process or take basic steps to examine real property tax refunds. In fact, when Walters began her scheme, her managers in the RPTA signed off on these refund vouchers without reviewing the attached documentation for legitimacy. “Worse, Walters’ direct supervisor in 2003 evidently made clear in words or deeds that she no longer wished to sign off on real property tax refund vouchers at all.” This failure of managers to exercise responsibility allowed Walters to process all real property tax refunds without review and approval from upper management. In addition, there was lack of automated controls.

WilmerHale and PwC (2008) formulated the following recommendations:

- Controls Improvement. Walters’s scheme went undetected for such a long time in part because of the lack of sufficient controls, the failure of existing controls to operate effectively, and the lack of management oversight of those controls.
- Systems Improvements. The vast majority of Walters’s fraudulent refunds were processed manually.
- Work Environment Improvements. A culture of compliance was lacking in the organization.

When evaluating this investigation, it can be assumed that the starting point for the examination was good. The FBI had already identified who, what (i.e. fraud), and how (processing fraudulent real property tax refunds) for the crime. Evidence was already collected, and Walters was already arrested. At this point, Walters already knew she had been caught. According to her attorney, Walters wanted to cooperate and tell the truth. She told investigators loopholes in software allowed her to carry out the scheme, and lax internal controls allowed her to go undetected. Walters revealed her role in scam, how she did it, how it could have been prevented, and who did not pay attention at their job.

The investigating team focused on the mandate: How did the fraud occur? Why did the scheme go undetected for so long? What changes can be made to reduce risk of any recurrence of similar fraudulent activity?

The investigative process seems professional. For example, the report makes clear what the investigation was and was not: Investigation was not to determine guilt or innocence,
but was an audit of administration of real property tax refunds. They do not only blame Walters (rotten apple) but also management (rotten barrel). Evidence and interviews back up report statements. Investigators cooperated with criminal investigations. For example, they obliged the request to hold off on witness interviews. They invited attorneys to sit in on interviews they conducted. They informed individuals they interviewed of their rights (i.e. if truth would incriminate, no answer). They hired independent attorneys to represent certain interviewees. Interviews were optional, and many refused. Investigators could probably have made it more attractive to participate in interviews.

In addition to Walters, 10 more individuals pled guilty in connection with her scheme. None were district employees; they were bank managers, relatives, and friends. The Chief Financial Officer for the District of Columbia asked several high-ranking managers to resign for their failure to prevent or detect Walters's scheme. More than 30 individuals lost their jobs due to the fraud scheme. A total of $10 million was recovered by law enforcement officials. Walters's assets were seized and sold (i.e. house, car, and handbags). Managers and employees were replaced. New guidelines were introduced.

### Convenience Theory

The theory of convenience explains white-collar crime in three dimensions (Gottschalk 2017). First, there is a financial motive for illegal profit. Next, there is an organizational opportunity to commit and conceal crime. Finally, there is willingness for delinquency in the behavioral dimension. Occupational criminals have a personal motive for financial gain that can be caused by both threats and possibilities. Divorce and separation, collapse in the housing market, gambling debt, and large hospital bills are just a few examples where threats can create a motive for financial crime at work. Greed, on the other hand, is possibility driven, where greed is defined as a lack of satisfaction with whatever you have already. A greedy person always wants more (Goldstraw-White 2012). Facing strain, greed, or other situations, an illegal activity can represent a convenient solution to a problem that the individual or the organization otherwise finds difficult or even impossible to solve.

In the organizational dimension, Benson and Simpson (2018) suggest that the organizational opportunity to commit white-collar crime manifests itself through the following three characteristics: (i) the offender has lawful and legitimate access to the premises and systems where crime is committed; (ii) the offender is geographically separated from his victim; and (iii) criminal acts appear to be legitimate business. While corporate crime typically satisfies all three criteria, occupational crime may not satisfy the second criterion, because the most frequent victim is the employer. A fourth characteristic for both corporate and occupational crime is the availability of resource to conceal crime and delete all traces of the crime. Concealment is an important aspect of white-collar crime. In traditional crime, criminals go into hiding. In white-collar crime, the offense is hidden. Concealment is also important for occupational offenders in another context that is not the case for corporate offenders. Since the occupational offender has personal financial gain, the individual has to avoid detection and possible confiscation. Sometimes tax havens and faithful family and friends are means to succeed in such efforts to make crime convenient.

In the behavioral dimension, neutralization is a key component that causes willingness to commit occupational crime (Sykes and Matza 1957). Offenders claim that they cause no harm to any victims at all. In addition to neutralization, lack of self-control stands out as a key characteristic of offenders (Gottfredson and Hirschi 1990).
In our perspective of harm and victims of occupational crime, the theory of convenience suggests that convenience is at the core of the offender’s attention. Rather than being concerned about harm or victims, the offender is focused on a path of action that implies little time and effort, and little pain and struggle. The more pain that can be externalized for the offender, the more harm is potentially suffered by victims.

**The Shadow Economy**

The magnitude of harm from white-collar crime can probably not be exaggerated. It is often argued that detected offenders are just the tip of the iceberg of all white-collar crime. Estimating the magnitude of white-collar crime is an even greater challenge than estimating social security fraud or tax evasion, as illustrated in Figure 4.1.

The only potential indication for the scope is the total of convicted white-collar criminals. As illustrated in the figure, this is a small circle within the larger circle of total white-collar crime. When estimating social security fraud or tax evasion, there are two known sizes, not only one: There is the detected fraud as well as the total payments in social security, and there is the detected evasion as well as the total tax revenues in tax collection.

Based on the research method of expert elicitation, the tip of the iceberg in white-collar crime in Norway is estimated at 9.4%. We know that the magnitude of convicted white-collar crime is 1.1 billion Norwegian kroner (approximately $138 million). Given that these convicts only represent less than 10% of the total offender population, the total magnitude of white-collar crime in Norway is 12 billion Norwegian kroner (approximately $1.5 billion). With a population of 5 million inhabitants as compared to the United States with 321 million inhabitants, the equivalent of $1.5 billion detected in Norway would be $96 billion in the United States. Ninety-six billion is less than estimates from the FBI and the Association of Certified Fraud Examiners, who approximate the annual cost of white-collar crime as being between $300 and $600 billion, according to the National White Collar Crime Center (Huff et al. 2010).

![Figure 4.1](image-url)  
*Figure 4.1  Estimation of the magnitude of different forms of financial crime.*
Conclusion

White-collar crime comprises occupational crime and corporate crime as well as government crime and state-corporate crime where privileged individuals abuse their positions of trust in a professional setting to commit financial crime. Occupational white-collar crime is characterized by personal enrichment (Holtfreter 2005) to the detriment of the organization (Kang and Thosuwanchot 2017).

Victims such as employers, customers, and banks suffer financial harm. In addition, competitors and the society at large are challenged by white-collar crime as part of the shadow economy (Schneider and Williams 2013). In trust-based societies such as Norway, which is rated the best country to live in by the United Nations, and the United States, which is number 14 on the list (Chokshi 2017), the damage to an open and transparent society can be formidable.

There are several implications for theory, policy, and research based on this chapter. Occupational crime is a distinct form of white-collar crime where the motive of personal gain can influence both selection of victims and the extent and kind of harm suffered by victims. An interesting avenue for theoretical development might be the link between personal gain and victimization, where the offender's benefit can be perceived as a trade-off against the victim's harm in the perspective of rational choice theory. Policies to prevent occupational crime might be concerned with subjective detection risk, where a perceived likely detection will prevent most potential criminals from the offense. Perceived detection probability varies among individuals and is influenced by both real substance control mechanisms and intentional symbolic control mechanisms. The presence of external and internal auditors and compliance routines as well as ethical guidelines can influence individuals' perceptions of detection risk. Future research might focus on links between variation in perceived detection risk and the tendency to commit occupational crime. Furthermore, future research might study variation in victimization extent and the tendency to commit occupational crime.

References


From Economic Crime to Corporate Violence: The Multifaceted Harms of Corporate Crime

Gabrio Forti and Arianna Visconti

This chapter was conceived and elaborated jointly by the two authors. Gabrio Forti materially wrote part 1, while Arianna Visconti materially wrote parts 2, 3, and 4.

White-Collar Criminals, Corporate Criminal Careers, and Harm to Social Trust in E.H. Sutherland’s Seminal Work

Public perception of white-collar and corporate crime seriousness has significantly increased in many countries during the past decades, with varying attitudes about the degree of harm and culpability (Simpson 2002). In addition, the importance of social harm as a basis for punishment of white-collar criminals – beyond any failure to legally prosecute them – has been extensively highlighted (Ford 2012; Hall 2013). However, many of the reasons which prompted Edwin Sutherland to shed light on the ability of white-collar and corporate criminals to conceal their harmful conduct are well worth considering today; there still remain “myriad ways in which a central component of social structure – economic power – shields its bearers from the wrath of the law and protects them from the popular sentiments and demands for justice” (Calavita et al. 1991, p. 422).

Sutherland’s groundbreaking work on white-collar crime amply referred to corporate criminality, covering the “life careers” of several firms. Specifically, his data relied on “the decisions of courts and administrative commissions against the 70 largest manufacturing, mining, and mercantile corporations” (Sutherland 1983, p. 13). He remarked how “persistent” was such criminality, having found among these offenders a large proportion of recidivists (Sutherland 1983, p. 227).

It is from his well-known and oft-discussed definition of white-collar crime – “as a crime committed by a person of respectability and high social status in the course of his occupation” (Sutherland 1983, p. 7) – that we can still draw an appropriate perspective on corporate crime and its harms. Although Sutherland admitted that his definition was “not intended to be definitive, but merely to call attention to crimes which are not ordinarily included within the scope of criminology,” it may be certainly deemed as part of his “enduring influence” (Friedrichs et al. 2018) especially when considering the core idea of his work. He identified that the difference between white-collar criminals and those of the lower classes lies principally in the so-called double standard benefitting white-collar
offenders, namely “in the implementation of the criminal laws which apply to them,” white-collar criminals being actually “segregated administratively from other criminals” and thus not regarded as “real criminals” by the general public, the traditional criminological approach, and even by themselves (Sutherland 1940, p. 8). It is this “high social status” of the offenders and the “respectability” linked to it (often difficult to reconcile with their criminality) that makes this definition so meaningful: the tension it radiates fits quite well for both the individual white-collar and the corporate offender. The harmful actions committed by these “respectable” people/organizations are bound to contradict and, even more, betray the social trust that is so vital for the willingness to allocate resources (Friedrichs 2007; Dearden 2016) and – first and foremost – vital for the very fabric of society. This is especially true when trust is placed upon people enjoying high status, and thus upon the major political, corporate, and financial institutions they manage (Klein 2015). The potential for harm is even more obvious if we consider how businesspeople customarily feel and express a “contempt for law, for government, and for governmental personnel,” growing out of the fact that law is seen as a hindrance to their practices (Sutherland 1983, p. 229).

These characteristics, besides being essential features of white-collar and corporate crime, should also be deemed relevant in assessing their peculiar harmfulness, consisting in a damage to social relations which is much more important than the great financial losses to which they lead. Actually, white-collar crimes, unlike most conventional crimes – whose effects on social institutions and social organization are generally negligible – “violate trust and therefore create distrust, which lowers social morale and produces social disorganization on a large scale” (Sutherland 1940, p. 5).

The Complexity of Corporate Crime and its Harms

All these features, including violation of trust (also incredibly relevant in more recent definitions of white-collar crime: e.g. Shapiro 1990), are commonplace in cases of corporate misconduct. Corporate crime harm is complex, even more so than white-collar crime harm (Green 2007); such complexity is related to the complexity of the underlying corporate activities and structure – e.g. their epistemic architecture, “in which boundaries between the inside and outside of an organization, or subsections of an organization, are constructed” (Costas and Grey 2016) – as well as of the laws meant to regulate them.

Like any other complexity, it stems not only from the many relevant variables (some of which we hinted, or will hint, at), but first and foremost from the multiple ways they interact. The causal loops interconnecting the main features of white-collar crime are strengthened and consolidated within and through corporate organizations, also due to their intersections with institutions of political governance (see Figure 5.1). This is highlighted by the term “state-corporate crime,” intended to encompass “serious social harms that result from the interaction of political and economic organizations” (Michalowski and Kramer 2007, p. 200).

Such “harm complexity” requires a great amount of updated knowledge to be dealt with, but, even more, it requires the ability to focus on a range of essential nodes and interrelations, as well as the ability to frame them within a structure. This structure might be better conceived as a system of harms, which – like every system – is more than the sheer sum of single parts, predominantly relevant being its (mostly bidirectional) causal chains (Arnone and Iliopulos 2012). The elucidation of such a system’s dynamics and conditions becomes much more revealing than any drab listing of single components thereof, both for explanation and prevention of crimes.
By drawing on Sutherland's definition and its context, we can still get valuable hints to sketch a kind of “causal loop diagram” of corporate harms, whose collection of linked nodes (each creating feedback loops through their connections) allows a first overview of relevant causal chains (or at least of correlations), clustered around corporate criminality. Among such nodes we could mention: “social status,” “violation of trust,” “lowering of social morale,” “social disorganization,” “social inequality,” and “contempt of law.” Then a first idea of the system could be formed following the paths of influence running from each of them to the others.

**Figure 5.1** Causal loop diagram of corporate crime harm.

Public Perceptions of Corporate Crime Victimization

As a result of this (admittedly sketchy) overview, the “core” social harm caused by corporate crime seems to emerge, namely “violation of trust in the law.” This violation itself is bound to cause further crime (white-collar as well as street), stemming in both cases from social values, i.e. – according to Sutherland’s theory – what persons “have learned from those with whom they associate (and more fundamentally from the culture of their society)” (Geis and Goff 1983, p. xxxii).

One main feature of corporate crime harm, encompassed in Sutherland’s (1983, p. 236) approach to white-collar crime, and equally intertwined with the etiology thereof, is corporations’ influence on public knowledge and social equality in the access to it. As he said, “the rationalistic, amoral, and nonsentimental behavior of the corporation was aimed in earlier days at technological efficiency,” while “in later days more than previously it has been aimed at the manipulation of people by advertising, salesmanship, propaganda, and lobbies.”

Public knowledge about crime is primarily derived from its representation in the mass media and biased by various “myths” (e.g. increasing crime rates) that suggest “collusion between the media and corporate business to deliberately mislead the public for the sole
benefit of private industries that prosper from the fear of crime” (Michel 2018, p. 2). Sutherland highlighted how businesspeople were shielded in various ways against harsh criticism thanks to their relationships with persons in government and public agencies of communication (Sutherland 1983). While this isolation from unfavorable definitions of their crimes is certainly relevant to the causation as well as concealment of crime, it should also be included in any system of harms done by white-collar and corporate crime.

The epistemic means available to corporations, which include policies aimed at removing from them the stigma of crime (Sutherland 1944), may be conducive in itself to social harm. As one example, consider both testimonial injustice – occurring “when prejudice causes a hearer to give a deflated level of credibility to a speaker’s word” – and hermeneutical injustice – occurring “at a prior stage, when a gap in collective interpretive resources puts someone at an unfair disadvantage when it comes to making sense of their social experiences.” It is in being wronged this way that lies the harm for people (first and foremost for victims of corporate crime), a harm which “may go more or less deep in the psychology of the subject,” and which thus “can cramp self-development,” preventing people from becoming what they actually are (Fricker 2007, pp. 2–5).

In face of corporations, which can be deemed not only legally (Glasbeek 2007) but also epistemically and culturally created “sites of irresponsibility,” even the best-organized victims are definitely the underdogs, being “seldom in a position to fight against the management of the corporation” (Sutherland 1983, p. 237). Moreover, corporate crime, having both its roots and its upshots in social inequality, can become particularly harmful thanks to emerging technologies, which “often distribute their burdens and benefits unequally” and “often empower some people (or institutions) while disempowering or disadvantaging others.” The more so whenever introduced according to market mechanisms or in contexts carrying pre-existing inequalities: an environment which further prevents socially and economically disadvantaged people from having fair access to them (Sandler 2014, p. 13).

Aesthetic and epistemic rights have been affirmed to counter epistemic injustice (Fricker 2007; Anderson 2012; D’Agostini 2017; Godbee 2017), which affects and disadvantages not only vulnerable populations (women, ethnic minorities, poor, etc.) due to stereotypes and prejudices, but everyone. When confronted with powerful entities like corporations, which have all the means to undermine possible complainants’ credibility and to make reality invisible (including corporate crime harm), no one is immune (Klein 2015).

To appreciate the extreme topicality of the harm “structure” based on Sutherland’s seminal definition, we use this framework as a tool to prioritize approaches and confront the complexity of corporate harms according to a systemic view. As a sheer example, we now juxtapose this framework with recent studies on one of the areas more affected by corporate crimes, namely environmental harms. As stated by Lynch and Stretesky (2003, p. 219), green criminology currently emphasizes “the corporate deconstruction of green,” and corporate use of advertising to affect environmental consciousness (Stauber and Rampton 1995). As we will further discuss, being victims of environmental harm but not widely recognized as victims of “crime,” they are not included within the traditional scope of victimology, “largely based on conventional constructions of crime” (Skinnider 2011). This consideration prompts green criminology to enlarge the current definitions of crime and encompass social harms more broadly (Mackenzie and Green 2009; Natali 2013); in so doing, the field can deal also with those cases which are not adequately prosecuted due to the constraints imposed by the available legal procedures (at the national, transnational, and international levels) (Hall 2013, p. 14).
The Apparent Harm: Economic Consequences of Corporate Crime

If the broader social dimension of white-collar and corporate crime harm was already well present in Sutherland’s mind, its most apparent feature (in terms of economic losses) was also effectively represented by his famous statement that while million-dollar burglaries or robberies are “practically unheard of,” like or even more extensively damaging episodes of embezzlement are to be considered “small-fry among white-collar criminals” and that, therefore, “the financial cost of white-collar crime is probably several times as great as the financial cost of all the crimes which are customarily regarded as the ‘crime problem’” (Sutherland 1940, pp. 4–5). Economic consequences remain today the most visible, and socially acknowledged, negative repercussion of corporate crime or (as it is often called) economic crime (i.e. “crimes of profit that take place within the framework of commercial activity”; Korsell 2002, p. 201). This is mainly due to such costs’ direct connection with the very nature of commercial activity, and to a relatively easier measurability (as opposed to physical and/or emotional harms, discussed below).

The latter, however, is more apparent than real, and is also to some extent compromised by the “double standard” already mentioned above. This double standard, in turn, negatively affects social and institutional control of corporate crime. As Braithwaite (2000, p. 292) observed, when a social and cultural bias exists such that bank robbery is shameful and insider trading by bankers is not (or is, anyway, far less reproached), people “will believe that bank robbery is a major problem when it is not,” and that “will cause them to be blind to the corporate crimes of bankers as a central crime problem, when the reality is that the best way to rob a bank is to own it.”

The full economic impact of corporate crime can only be appreciated by including both direct and indirect negative economic consequences in our evaluation. However, both may be quite difficult to measure in full, and the latter are especially hard to assess.

Direct Economic Costs

Direct economic harm can be understood in terms of victims’ losses (Friedrichs 2007), which per se makes its measurement tricky. As is well known, several structural features of corporate crime come together to produce victims who are unaware or to delay or prevent the reporting of corporate crime (Box 1983), contributing to a substantial dark figure (Biderman and Reiss 1967). Among these features, of particular importance are: the complexity of the laws that govern corporate activity (as well as the frequent complexity of violation schemes); the need for a certain expertise to appreciate these offenses; the usually diffuse nature of their negative effects (potentially over long periods of time and affecting thousands or even millions of people, with often no particular person suffering much at a particular time); and the general lack of the personal confrontational nature typical of conventional crime victimization (Sutherland 1983; Croall 2001a).

Such problems are even greater for all those offenses where there are actually no direct individual victims and where, by definition, the community as a whole suffers the economic impact of the crime. This occurs, for instance, in cases of corruption, where the use of estimates becomes therefore unavoidable (Hafner et al. 2016).

This same complexity may also affect the ability of law enforcement agencies (as well as of scholars and experts) to discern what portion of the economic losses – related to major financial crises where the involvement of criminal activity is suspected (or even
ascertained) – can be ascribed to said criminal activity, and what losses, instead, are to be blamed on incompetence, poor judgment, or simple bad luck (Friedrichs 2007). This is not even to mention the impact of adopting different definitions of “crime” (as discussed in Chapter 2) – especially in an area where many harmful behaviors do not fall under criminal law provisions – on what is actually counted as corporate crime economic harm.

Even with all of these caveats, Sutherland’s intuition about the disproportion between direct economic costs of common and corporate crime appears to be confirmed by subsequent studies. For instance, when matching the 5 billion-dollar losses due to conventional crime in the United States in the year 1990 against the 200 billion-dollar losses due (solely) to the Savings and Loan scandal in the same period, such disproportion is quite apparent. The inequality remains obvious not only when using the governmental estimate (according to which about 75% of the latter were to be attributed to criminal behaviors), but even when choosing to stick to the most prudent estimate that just 3% of said losses were directly related to fraud (Poveda 1994).

The ever-increasing growth, in recent decades, of international finance and speculative activities over industrial and commercial ones has also greatly increased the economic losses attributable to this sector as a consequence of fraudulent and illicit behaviors. In the case of the financial crisis of 2008–2009, losses were estimated to be in trillions (not billions) of dollars (Friedrichs 2016). As such, this growing incidence of financial scandals (and their ever more global reach) has certainly influenced the aforementioned increase in social perception of corporate crime’s harmfulness (Holfreter et al. 2008; Piquero et al. 2008; Cullen et al. 2009). However, public opinion still appears far from grasping the full scope of the negative effects of corporate crime, not only in terms of the complex social harms (as discussed above) or their possible repercussion on people’s life and health (as we will see in the following section), but also from a purely economic perspective.

**Indirect Economic Costs**

As stated above, direct costs do not exhaust all economic consequences of corporate crime. Indirect costs – which are far harder to assess or even estimate – must also be considered (Friedrichs 2007) as they encompass broader negative economic consequences of corporate crime. Such indirect harms might include: higher insurance rates; higher costs for goods and services; loss of jobs and/or slower employment growth; costs related to future crime prevention (through more complex regulation and enforcement as well as private initiative); and increased taxes whenever the collectivity is made to shoulder the “externalities” of corporate activity (i.e. all the actual harm-related costs for workers, consumers, neighbors, and other stakeholders that corporations are able to keep off their balance sheets by dumping them on social security, public healthcare systems, public clearance of polluted areas etc.; Passas and Goodwin 2004; Tombs and Whyte 2015).

It does not, therefore, come as a surprise that some scholars embrace the idea that “there are no reliable estimates of the cost of fraud to the economy as a whole” (Levi and Burrows 2008, p. 297; italics added), even if attempts are occasionally made to calculate the full scope of the economic fallout of severe corporate crimes. With respect to corruption, for instance – which (as previously stated) is a good example of how difficult and complex calculating the economic cost of corporate crime is – recent studies estimate an annual direct cost of 120 billion euros for the area of the European Union (European Commission 2014). Studies also estimate an overall amount of both direct and indirect costs (taking into
account the effect of corruption on economic output and growth of genuine wealth per capita) of between 179 and 990 billion euros in gross domestic product (GDP) terms on an annual basis (Hafner et al. 2016). Even when proper estimates are not attempted, there is a growing consensus about the existence of a negative correlation between corruption and a country’s economic performance; as corruption spreads, spending for education, training, and research is cut, foreign investments shrink, creation of new enterprises and new jobs slows down, competitiveness falls, economic inequality grows, and GDP per capita decreases (Arnone and Iliopulos 2012; Arnone and Borlini 2014; Hafner et al. 2016).

Finally, even when discussing – as we are going to do in the next section – those forms of corporate deviance that most directly affect people’s physical integrity, health, and even life, indirect economic costs must not be overlooked. According to the most recent European Environment Agency report, air pollution and greenhouse gases from industry cost Europe between 59 and 189 billion euros in 2012 (while, over the period 2008–2012, the estimated cost was at least 329 billion euros, and possibly up to 1053 billion euros). These costs include the negative economic impact of a number of harmful consequences of air pollution, such as premature deaths, hospital costs, lost work days, health problems, damage to buildings, and reduced agricultural yields (EEA 2014). The area of environmental harm is also, in turn, a good example of how hard – if not impossible – it can be to distinguish between costs related to actual law violations by corporations and costs related to legal activities, to individual activities, or to State activities. However, proceeding by way of (prudent) estimates, we can confidently assume that (even if actual corporate crime contributed just a tenth of such costs) its impact would dwarf that of all indirect costs of street crime.

The Invisible Harm: Corporate Crime as Corporate Violence

The aforementioned rising public awareness about economic crime harmfulness does not seem to extend to what is probably its most dangerous form, whether regarded from an individual or a “community safety” perspective (Tombs and Whyte 2006; Croall 2009): corporate violence. Even today, public opinions about corporate violence appear to fall well short of the level of perceived seriousness and punitive attitudes felt toward common crimes with comparable or lesser impact on people’s health and physical integrity (Michel 2016). This seems related, on one hand, to those same cultural and cognitive biases mentioned in the opening, and on the other, to some specific structural features of this kind of corporate crime. Those structural features also account for the comparative scarcity of victimological data on this issue (Walklate 1989).

Corporate violence has been defined (Punch 2000, p. 243) as a “specific subset of business deviance” that causes death, injuries, or illnesses to people through illegal or in any case harmful behaviors which occur in the course of the legitimate activity of economic organizations. Basically, harms to life, physical integrity, or health can be related to three main strands of corporate activity (Hills 1987; Mokhiber 1988; Clinard 1990; Stretesky and Lynch 1999; Friedrichs 2007; Tombs 2010): (i) corporations acting as employers, whenever violations of health and safety regulations occur, or workers are otherwise exposed to known and avoidable risks, and thus suffer bodily and/or psychological harm; (ii) corporations as providers of goods and services, whenever harms to customers’ health are a consequence of the commercialization of unsafe products; and (iii) corporations as environmental exploiters, whenever the pollution of air, soil, or water connected with their activity also negatively affects human health.
This extremely concise description is nonetheless sufficient to hint at the main reasons why this particular kind of corporate crime harm does not usually receive the same amount of attention as direct economic costs. It is not only that (as also happens with proper “economic” crime) the very criminal status of many of these behaviors is often called into question, as we have seen. Even more relevant is the fact that corporate violence, because of its organizational context and nature, generally fails to be conceived as violence at all, notwithstanding its extremely harmful consequences.

In fact, violence is generally, and socially, understood as a direct and intentional interpersonal aggression, and is therefore commonly associated with conventional predatory offenses, such as voluntary homicide, organized crime, or terrorism (Walklate 1989; Stretesky and Lynch 1999; Punch 2000; Tombs 2007; Pemberton 2014). Instead, corporate violence differs in basically all its structural features from stereotypical violence. For one, it is generally indirect, as it results from complex corporate policies, decisions, and actions, undertaken on behalf of the organization and in the course of its legitimate business activity, and which end up exposing people to harmful consequences (Friedrichs 2007; Lynch and Barrett 2015). Also, as a consequence of its indirect nature, said effects are quite often removed in space and time from the corporate decision or action that triggered the chain of events that ultimately led to people being injured or killed. In some cases, the temporal distance can amount even to several decades, as it happens with long-latent illnesses such as, for example, mesotheliomas due to work-related or environmental exposure to asbestos (Clinard 1990; Rosoff et al. 2007; Visconti 2017). Therefore, serious difficulties frequently arise when it comes to reconstructing the causal relationship between the corporate action and its harmful effects. This is a difficulty which is, in some cases, so insuperable that it leads to the failure (or even the abandonment) of criminal prosecutions, even where allowed by national law (Friedrichs 2007; Tombs and Whyte 2015; Giavazzi 2018). It is even harder to trace the harm back to just one or several clearly identifiable individuals, as is the rule with “common” violence (Giavazzi 2018). This same organizational origin of corporate violence also accounts for its basically involuntary nature, as corporate actions leading to the harming of people are usually motivated by the desire to increase corporate profits and/or ensure corporate survival, and the harm to persons is a consequence, rather than a specifically intended outcome, of such decisions (Friedrichs 2007; Tombs and Whyte 2015). It is therefore also easy to conceptualize them frequently as mere “accidents” or “misfortunes” (Box 1983; Walters 2014), rather than as consequences of ingrained corporate policies. However, once this connection has been made (and equal all other features of the offense), the standard of responsibility applied by public opinion to a corporate actor may be higher than that applied to individuals (Hans and Ermann 1989).

Corporate Violence and Collective Victimization

All of those features described above explain why “corporate violence” is not generally framed as “violence” either by scholars or by the general public, and thus also contribute to accounting for the comparative scarcity of empirical data and scientific research on the subject. Nonetheless, what is easily gauged from the existing literature is an almost invariable collective dimension (also) of corporate violence victimization (Sutherland 1983; Walklate 1989; Croall 2001b). This, in turn, affects (or should affect) the appraisal of its consequences and of appropriate prevention and control strategies (Tombs 2014; Walters 2014; Lynch and Barrett 2015; Forti 2018).
A good starting point to assess the diffuse and collective nature of corporate violence harms appears to be work-related deaths, injuries, and illnesses. These are, in fact, generally recorded, at least for social security purposes – although such records are imperfect (for example, a variable amount of unrecorded “accidents” should also be assumed, as well as a possible dispersion – and ultimately loss – of relevant data due to split competencies between different public bodies: Tombs 2014). A comparison provided by Poveda (1994) between work days lost in the United States in the year 1990 due to non-fatal injuries related to “street” crime, and work days lost in the same nation and time due to non-fatal work-related injuries and illnesses, shows 5.9 million lost days for the former as opposed to 60.4 million for the latter, with an estimate of 45% of work-related harms having been caused by safety rules violations. A more recent analysis of the UK situation (Tombs and Whyte 2007; Tombs 2014) reckons the number of work-related fatalities due to occupational illnesses for the year 2013 as ranging between a minimum of 13000 (as per official Health and Safety Executive statistics) and a (prudently) estimated maximum of 50000, of which up to two thirds are considered as attributable to corporate criminal behaviors.

Considering asbestos-related deaths and illnesses – which, as previously stated, can originate from both work-related and environmental exposure – the World Health Organization (2009) has estimated that, in 2004, lung cancer, mesothelioma, and asbestosis from occupational exposures resulted in 107000 deaths and 1523000 Disability Adjusted Life Years, while deaths related to non-occupational exposures (far harder to measure) can also be estimated in thousands per year. In the field of environmental crime, a study by Lynch and Barrett (2015) has calculated, for the year 2010 in the United States, a total of 1895800 illnesses attributable to exposure to small particle matter (SPM) emissions from coal-fired power plants; however, this should be considered a serious underestimation. The WHO (2018) estimates that outdoor air pollution by SPM caused 4.2 million premature deaths worldwide in 2016, due to stroke, heart disease, lung cancer, and both chronic and acute respiratory diseases, including asthma. Once again, it is all but impossible to extract from such data the exact amount of harm to health ascribable to corporate offenses, even more so when considering that the legal status of polluting activities can change dramatically through space and time (an assessment of the impact of the deregulation turn recently taken in environmental policies in the United States estimates that it will result in the – perfectly “legal” – deaths of “over 80,000 US residents per decade and lead to respiratory problems for many more than 1 million people”; Cutler and Dominici 2018, p. 2261). On the whole, however, it can be safely assumed that this kind of corporate violence – while greatly underestimated in official statistics (Box 1983; Tombs and Whyte 2015) – causes a far higher number of deaths, injuries, and illnesses than common crime (Walklate 1989; Tombs 2007) or even terrorism1 (Institute for Economics and Peace 2017).

Even single episodes of corporate violence usually cause collective victimization and, therefore, widespread harm to human health. Just consider the notorious Bhopal industrial disaster, which occurred in the Republic of India on December 3, 1984, and caused (through the release of a toxic cloud of methyl isocyanate) between 3000 and 5000 deaths and at least 200000 recorded injuries and illnesses (Punch 1996; Pearce and Tombs 1998; Croall 2010).

Finally, the aforementioned collective dimension can also, on occasions, have intergenerational features. Consider, for instance, harms related to the commercialization of unsafe drugs and medical devices (Braithwaite 1984; Clinard 1990; Croall 2001b; Friedrichs 2007; Rosoff et al. 2007; Dodge 2009; Tombs and Whyte 2015). A primary example is harm resulting from the sale, prescription, and use of Thalidomide as an allegedly safe anti-nausea medication for pregnant women, which caused fetal malformations in several countries
around the world and over about a decade (Braithwaite 1984; Mokhiber 1988; Friedrichs 2007; Visconti 2017). Thalidomide immediately comes to mind as a good illustration of both trans-border and trans-generational harmful consequences of corporate violence.

The Serious Individual Consequences of Corporate Violence

The physical harms caused by corporate violence can vary in magnitude (Croall 2001b; Friedrichs 2007; Rosoff et al. 2007) from transient, mild, short-term illnesses to life-long (often disabling) maladies and life-threatening (and ultimately lethal) conditions, even possibly affecting future generations. Regardless of magnitude, all have – almost invariably – repercussions on further aspects of the quality of life of the individual victim and, generally, of their relatives. This is, of course, related to the already mentioned economic consequences which corporate violence also generates (e.g. in terms of reduced work capability and income, or even loss of the family main or only breadwinner; Matthews et al. 2016; Visconti 2017) in addition to a further (and less considered) feature of corporate violence victimization, i.e. its traumatic impact also from a psychological perspective.

That element of “violation of implied or delegated trust” which all white-collar and corporate crimes share (Sutherland 1940, p. 3), and which has been discussed in its broader social implications in the opening of this chapter, cannot but elicit feelings of betrayal, rage, resentment, frustration, and mistrust in individual victims (at least if and when they become aware of the suffered offense). This assumption is on the whole confirmed by those studies (admittedly few) which, based on interviews of victims of financial frauds, analyze the psychological impact of this kind of victimization (Ganzini et al. 1990; Shover et al. 1994; Levi 2001; Spalek 2001). These feelings appear even more exacerbated in those cases of corporate violence where the organization promised – to patients, workers, whole communities – a better future (e.g. in terms of efficacy of a new medicine or of wealth and growth), only to reveal over time the poisoned fruit of corporate deviance. Examples include harms to hemophiliac victims of infected hemoderivative drugs or the suffering of employees and residents in the asbestos-polluted neighborhoods of Eternit plants (Visconti 2017). Sentiments of mistrust and resentment may also end up being directed toward all similar economic and financial organizations. When victims perceive that public regulatory bodies or (following the reporting of the crime) law enforcement agencies failed to act, they may develop a wider feeling of abandonment, insecurity, and distrust against public institutions and the law (Shover et al. 1994; Visconti 2017). Failure to achieve a sense of closure, when related to perception of inadequate assistance provided by public agencies (in giving information, support, counseling, and answers to questions of responsibility), can greatly contribute to the victims’ distress. This condition appears to be associated with the increased likelihood of the affected persons developing a mental health condition (Matthews et al. 2016).

In fact, relatives of victims of work-related deaths actually appear to display even greater rates of post-traumatic stress disorder (PTSD), prolonged grief disorder, and depressive disorder than family members of victims of homicide or fatal accidents. They also experience high levels of anxiety, feelings of isolation, mood swings, fear, and guilt (Matthews et al. 2016). PTSD has also been associated with family members of people deceased because of asbestos-related illnesses in highly contaminated areas such as Casale Monferrato (Italy), probably related to multiple bereavements as well as to the everyday fear of developing the same disease due to like environmental exposure (Visconti 2017).
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Sentiments of shame, guilt, and self-blame are also reported, particularly by victims of fraud, and are in many ways similar to those experienced by victims of rape; both sets of victims suffer the social narrative, and consequent feeling, that they, to some extent, “contributed” to the crime (Levi 2001). Victims of fraud and rape appear also to share higher rates of major depressive episodes and generalized anxiety disorders after the crime (Ganzini et al. 1990). It is probably not too far-fetched to assume that similar feelings might be developed also by (some) victims of corporate violence, particularly when a shared public narrative exists which places at least part of the blame on them – for example, with work-related accidents (because that job was, after all, a “choice” of the employee, or because the “accident” was “victim precipitated”), as well as with illnesses or injuries suffered by consumers (via a caveat emptor mentality; Croall 2007; Tombs 2007, 2007; Bisschop and Vande Walle 2013).

Finally, disruption of social and affective relationships may follow a severe victimization from corporate crime, especially corporate violence, not only because of the aforementioned traumatic nature of the experience and corrosive effect of failing to find out the “truth” about causes and responsibilities, which is an all-too-common occurrence (Snell and Tombs 2011; Matthews et al. 2016). It may even happen, particularly in the most serious cases of environmental pollution, that individuals or whole communities are forced to relocate to escape from potentially lethal residences, resulting in a severe disintegration of their social bonds and identity (Rosoff et al. 2007; Arrigo and Lynch 2015).

Achilles and the Tortoise: Corporate Crime Shapeshifting and the Lagging Behind of Criminological Knowledge. Challenging Questions and Future Perspectives

As widespread, expanding, topical, and yet still mostly opaque as corporate violence is, it could well be already “old history” (at least as currently understood) when regarded from the perspective of the increasingly rapid evolution of both economic activities and corporate crime. As we conclude this brief overview of the harms of corporate crime, we must acknowledge that (even while scholars strive to achieve a better understanding of the mechanisms and consequences of recently discovered corporate misconducts) new forms of even more widespread and pervasive harm are born at the frenetic pace of our brave new world’s permanent technological revolution.

There was no space, here, nor there is yet sufficient empirical knowledge, to discuss emerging new frontiers of corporate harm. Yet consider, for instance, how the manipulation of information and scientific evidence (which has long been practiced; Sutherland 1983; Proctor 2008) has become more organized and systematic in the face of climate change or of rising expenditure in pharmaceuticals (as just two examples; Michaels 2008; Oreskes and Conway 2008). Such manipulations have now reached – thanks to the internet and new social media – completely new potentials for manipulating the whole of the cultural, economic, and political life of entire countries, with possible harmful repercussions on basically all aspects of individual and community life. The ever-increasing dimensions of multinational corporations (often far richer and more powerful than many States) allow for new forms of environmental exploitation which, like the monopolization of fresh water resources, may pave the way for gross violations of basic, fundamental human rights of entire populations and of present and future generations (Johnson et al. 2016). These exploitations create serious dangers for peace and international stability, not to mention the potential for
economic, social, cultural, and political harm of ever more frequent bio-patenting practices (South 2012), whose next frontier might well interest human genetics too.

Monitoring and revealing this continual and ever-faster “shapeshifting” of corporate harm is possibly the most urgent task that criminological studies are called to address in the coming years, a quite challenging one, considering the limited resources available to – and limited political and academic appeal of – even “traditional” strands of corporate crime research (Snider 2000; McGurrin et al. 2013). However, as Yeager (2009) observed, it is possible that those same elements of political and scientific “volatility” which have contributed to the marginalization of this field of study can also nourish its intrinsic dynamism and attract new researchers and new resources – should cultural and socio-economic conditions change enough to raise a greater public awareness about the salience of corporate wrongdoing in all its forms.

As far as the “state of the art” stands, however, there are other issues that still warrant further attention by both scholars and policymakers. As we have seen, even better-known forms of corporate violence are not yet fully understood and acknowledged in the entirety of their scope. Even less studied, however, is the actual individual negative impact of this kind of victimization (Visconti 2018); existing research mainly focuses (understandably) on the broader collective dimension of harm, while in-depth victimization studies are extremely limited in both number and range. Yet, multiple structural factors contribute to making victims of corporate crime and corporate violence more vulnerable to secondary victimization; for one, the absolute inadequacy (or nonexistence) of victim support services to deal with the peculiarities of their situation (Schenk 2018). Structural factors also contribute to increased serious repeat victimizations (Croall 2009). The frequent geographical association of the most dangerous corporate activities with the poorest and most marginalized communities (Stretesky and Lynch 1999; Croall 2010; Bisschop and Vande Walle 2013; Tombs and Whyte 2015) hints at the peculiar risks of intimidation and retaliation to which these victims might be exposed – not just individually, but collectively.

All these specific dangers and needs that corporate crime victims experience need to be better known, understood, and ultimately prevented (Forti et al. 2018). This is an undertaking which, in turn, implies a need for advocacy, research, and investment of political, economic, and social resources in tackling the multifaceted harms of corporate crime. Ultimately, both scholarly research and criminal-policy attention to the issue of corporate crime should be strengthened and directed more effectively to the specific organizational and systemic peculiarities of both harm genesis and harm prevention, control, and reparation. Such an endeavor should also entail exploring the potentialities of innovative enforcement strategies, such as responsive regulation and restorative justice, in dealing with corporate crime and corporate violence (Ayres and Braithwaite 1992; Fisse and Braithwaite 1993; Braithwaite 2002; Schell-Busey et al. 2016; Mazzucato 2017; Aertsen 2018).

Notes
1 According to the latest available data, victims of terrorist attacks globally amounted to 25,673 in 2016 (Institute for Economics and Peace 2017).
2 Intergenerational effects result not only in the form of teratogenic effects on fetuses, but also through negative effects on human fertility, or the transmission of toxic substances to infants through a mother’s milk.
References


Beyond State and State-Corporate Crime Typologies: The Symbiotic Nature, Harm, and Victimization of Crimes of the Powerful and Their Continuation

Dawn L. Rothe and Corina Medley

Introduction

Consider for a moment Saudi Arabia’s ongoing violations of human rights or the use of cluster bombs and indiscriminate attacks it has launched in Yemen; Israel’s ongoing occupation of Palestine and withholdings of finances and supplies; the United Kingdom’s and the United States’ ongoing foreign drone assassinations, including targeting their own citizens abroad; the Trump administration’s ongoing ethical violations, including accepting payments from foreign governments and the illegal violations in the administration’s treatment of immigrants; the ongoing efforts to privatize the world’s water systems; Wells Fargo’s financing of environmentally and socially damaging projects and creating millions of fraudulent customer accounts to increase profits; the Equifax data breach or the ongoing violations of citizens’ privacy with the increasing demand by states that internet service providers hand over personal emails, server searches, and social media accounts. All of these examples are ongoing instances of state and state-corporate crime/harm. However, and regrettably, the core focus of politicians, citizens, and social control agents remains on the more banal forms of “law”-breaking street crime, while crimes of the powerful are far more prevalent and harmful. This chapter provides a basic foundation for understanding state and state-corporate crime, followed by a critique of these terms and the limitations of the typologies. We conclude with some thoughts on why the crimes of the powerful continue, emphasizing our failure to recognize the complex and dialectic nature of our everyday life and states’ and corporations’ violence and harms.

Overviews of the Fields of State and State-Corporate Crime

State Crime

The field of state crime is, relatively speaking, one of the newer areas of research under the umbrella of white-collar crime (i.e. occupational crime or corporate crime), beginning in 1989 with Chambliss’s Presidential speech at the American Society of Criminology.
conference, where he made a call to criminologists to pay attention to state-organized crime. Chambliss defined *state crime* as “acts defined by law as criminal and committed by state officials in pursuit of their jobs as representatives of the state” (1990, p. 184). Since Chambliss’s speech, the field of state crime has grown significantly, and with that, the definition of state crime has expanded to include a zemiological approach (i.e. focusing on social harms instead of a strict definition of “crime” as violations of law). This definitional expansion accounts for the low probability that a state is going to criminalize an act that serves its interests; the same is true for those holding these positions of power. Such an approach includes acts that are harmful though not criminalized by the state (e.g. torture; the denial of health care or basic shelter; the promotion of neoliberalism, racist, sexist, or classist policies aimed at generating further inequalities) as well as acts of omission (e.g. failing to respond to or prevent a natural disaster that could have been avoided through upgraded infrastructure; responding with only symbolic gestures to corporate harms and violence). For example, Kramer and Michalowski (1990) quickly followed Chambliss with the definition of *state-facilitated crime*, those activities of the state which fail to constrain criminal and dangerous behaviors. More recently, Rothe and Kauzlarich (2016, p. 102) define *state crime* as “an act or omission of an action by actors within the state that results in violations of domestic and international law, human rights, or systematic or institutionalized harm of its or another state’s population, done in the name of the state regardless of whether there is or is not self-motivation or interests at play.” This recognizes agency, the organizational context, and lack of action as well as direct and indirect perpetration, encompasses harms not “criminalized,” and provides some limitations by recognizing the systematic or institutionalized component.

The early research on state crime, as was the case with state-corporate crimes discussed in the following section, often focused on the definitional ambiguity of the term “white-collar crime” and why and how crimes of state should fall under the purview of criminologists (Barak 1991; Chambliss 1995; Green and Ward 2000; Sharkansky 1995). Needless to say, Chambliss’s piece catalyzed critical criminologists especially. Three edited volumes were published in its wake: (i) Barak’s (1991) *Crimes by the Capitalist State*; (ii) Tunnel’s (1993) *Political Crime in Contemporary America*; and (iii) Ross’s (1995) *Controlling State Crime*. All three of these books contained chapters addressing issues of conceptualization, or theory and cases. They begin with Sutherland’s (1939) call for an extension of criminological thought to white-collar crime studies and then extend this to the next logical step – a criminology of political institutions. State crime studies began to appear in peer-reviewed journals as well. Kauzlarich et al. (1992) published the first of many pieces on crimes regarding nuclear weapons (see also Kauzlarich 1995, 1997; Kauzlarich and Kramer 1998), explicitly framing the issue in terms of state crime. Kauzlarich and Kramer’s *Crimes of the American Nuclear State: At Home and Abroad* (1998) holds a central place in the history of state crime studies as it is the first research monograph focused upon state crime. The year 1998 also saw the publication of David Friedrichs’s (1998) landmark two-volume anthology titled, simply, *State Crime*. In 2000, Ross published his follow-up volume to *Controlling State Crime* (1995), *Varieties of State Crime and Its Control*. This volume explored state violations of international and domestic law (e.g. Canada, France, Japan, Israel, United Kingdom, and the United States) bringing together scholars from many different fields of inquiry.

Since these early works, state crime scholarship and research has grown exponentially. Consider the literature produced on state crime over the next decade with topics ranging from the US invasion of Iraq (Kramer et al. 2005), the illegal use of and threatened use of nuclear weapons (Kauzlarich and Kramer 1998), the ongoing genocide in Darfur (Rothe and Mullins 2007), crimes against humanity in Uganda (Mullins and Rothe 2008), the US role in
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and lack of response to Hurricane Katrina (Faust and Kauzlarich 2008), to the many cases of state-corporate crime such as the Challenger (Kramer 1992; Vaughan 1996), Imperial Foods, and ValuJet cases (Matthews and Kauzlarich 2000), and Halliburton (Rothe 2006).

More recent cases include (but are not limited to) a variety of harms and violence of the state, including perspectives from many jurisdictions – from “Image politics and the art of resistance in Syria” by Nour K. Sacranie (2013); to Australian border policing with “Back to the future: Australian border policing under Labor, 2007–2013” and “Australian border policing and the production of state harm” by Michael Grewcock (2014 and 2015); to topics in the Handbook of Crimes of the Powerful edited by Gregg Barak (2015) such as torture with “Transnational institutional torturers: state crime, ideology and the role of France’s Savior-Faire in Argentina’s Dirty War, 1976–1983” by Melanie Collard; “Para-state crime and plural legalities in Colombia” by Thomas MacManus and Tony Ward; and state crime and gender with “Gendered forms of state crime: the case of state perpetrated violence against women” by Victoria Collins. There are also recent articles that focus on topics like: the dialectics of the state and law such as “Law, the state, and the dialectics of state crime” by Tony Ward and Penny Green (2016); resistance and women’s efforts to express their ongoing oppression as in “My pain grows as my life dwindles: women, poetry, and resisting state violence in Afghanistan” by Victoria Collins (2018); and state crime and transitional justice – see “When rabbits are in charge of carrots: land grabbing, transitional justice and economic-state crime in Afghanistan” by Huma Saeed and Stephan Parmentier (2017).


As the considerable number of topics reflect, the harms and victimization and costs of state crime are vast and far outweigh those of street crime, even though we have no real ability to track the individuals harmed by state or state-corporate crimes given these “numbers” are not inserted into a database, unlike those in the Uniform Crime Report. David Friedrichs rightly suggests there is “an inverse relationship between the level of harms caused by some human (individual or organizational) activity and the level of criminological concern” (Friedrichs 2009, p. 1). While we could continue to give examples of research within the field of state crime, we think it is important to note that states rarely act by themselves and state crimes often involve corporations. As Steve Tombs (2012) suggests, states and corporations are increasingly in a symbiotic relationship leading to the systematic, routine production of crime and harm. In light of this, the following section addresses the field of state-corporate crime.

State-Corporate Crime

The concept of state-corporate crime first appeared in a series of papers that were presented in 1990 (Kramer 1990; Kramer and Michalowski 1990). Yet, its origins and evolution have a longer history spanning more than eight decades of collaborative efforts to understand
crimes of the powerful, from Sutherland and white-collar crime to political crime to organizational crime. However, Kramer and Michalowski (1990, p. 4) provided the most widely cited definition of state-corporate crime: “State-corporate crimes are illegal or socially injurious actions that occur when one or more institutions or political governance pursue a goal in direct cooperation with one or more institutions of economic production and distribution.” State-corporate crime increasingly came to be seen as taking two forms, although these types often interacted with each other. Accordingly, a distinction emerged between state-facilitated and state-initiated crimes (Kramer 1992; Kauzlarich and Kramer 1993). It should be noted that all crimes carried out by either the state or by corporations (corporate crime, state crime) involve some level of implicit or explicit cooperation between states and corporations (Friedrichs and Rothe 2014). In many circumstances, disentangling “state interests” from “corporate interests” is highly problematic due to the intersecting agendas of those at the top of both the state and the corporate hierarchies and the multiple “interlocks” reflected in movements in and out of high-level state and corporate positions. Such intersections can work in a myriad of fashions. This is reflected in the book Wrongdoing at the Intersection of Business and Government (edited by Raymond Michalowski and Ronald Kramer in 2006), which brings together the classic works of state-corporate crime as well as several new chapters. It was the first anthology specifically dedicated to state-corporate crime documenting the daunting costs of state-corporate crime in a wide range of settings and contexts, including where states created laws that facilitated corporate wrongdoing and crimes (e.g. the infamous Savings and Loan debacle within the United States) as well as when regulatory and advisement agencies simply failed to do their appointed tasks (e.g. the Occupational Safety and Health Administration's failure to provide remedy to safety violations at an Imperial Chicken plant in Hamlet, North Carolina [Aulette and Michalowski 1993] and the Federal Aviation Administration's failures to ground ValuJet [Matthews and Kauzlarich 2000]).

The concept of state-corporate crime took off with seminal research endeavors including the examining of fraud in the Dutch construction industry collusion, situating this crime as occupying a place between corruption and state-corporate crime (Van Den Heuvel 2005). State-corporate crime has investigated the Paducah gaseous diffusion plant (Bruce and Becker 2007); the Democratic Republic of Congo and gold and diamond industries (Mullins and Rothe 2008); state-corporate crime symbiosis and the transnational security industry (O'Reilly 2010); Blackwater in Iraq (Welch 2010); global warming and state-corporate crime (Kramer and Michalowski 2012; Lynch et al. 2010); the state-corporate environmental crimes in the Canadian-Alberta tar sands (Smantych and Kueneman 2010); OxyContin and a regulation deficiency of the pharmaceutical industry (Griffin and Miller 2011); and Steve Tombs's (2012) research on the financial bailouts that suggests that the bailouts can also be understood in terms of a symbiotic state-corporate crime relationship.

Other more current examples of state-corporate crime research emphasize the need to widen the focus on state-corporate crime to fully recognize the symbiotic significance (Whyte 2014); describe the state-corporate cover-up of the 2010 Gulf of Mexico spill (Bradshaw 2014) and the social harm of the Spanish crisis due to state-corporate crime (Bernal et al. 2014); and expose the National Security Administration's surveillance and the cooperation of major telecommunications companies (Finley and Esposito 2014). Others have written on the “Mirage of pirates: state-corporate crime in West Africa's fisheries” (Standing 2015a, b), human rights violations of state corporations such as the practice of gas flaring in Nigeria (Izarali 2016), the collusion and “Bid-rigging networks and state-corporate crime in the construction industry” (Reeves-Latar and Morselli 2017), the loss of coastal land due to state-corporate crime (Bisschop et al. 2018), and the states' aiding and taxation of transnational companies (Evertsson 2017).
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As with the ongoing examples of state crime, readers should have a sense of the magnitude of ongoing research on state-corporate crime and how the lines of demarcation between state and corporate entities, and between the public and the private realm, are blurred and opaque. This is by no means an exhaustive list of research on state-corporate crime, but does provide potential state-corporate scholars with an array of topics where the concept has been utilized. Moreover, as with the field of state crime, the vast number of topics reflect the fact that the harms, levels of victimization, and costs far outweigh those of street crime. However, we suggest that these categories are not only abstract, but mask the broader systems that fuel both state and state-corporate crime. The following section delves into the problem with adopting such categories of distinction.

The Problem of Abstract Typologies

We would be amiss if we did not move beyond the simplistic and overly generalized typologies of state and state-corporate crime to go beyond the states and corporations and consider the symbiotic nature of state and corporations’ relations with power, neoliberalism, and what is wholly ignored – the role of the “powerless” in the ongoing reproduction of these harms and violence. Here we are not suggesting to adopt a broader category, such as crimes of the powerful. While we recognize a general value in using the term “crimes of the powerful,” we must recognize how the use of separate categories for classifying such crimes misses a host of other relations and factors associated with these harms (Rothe and Kauzlarich 2016). Simply, the various divisions under crimes of the powerful and white-collar crime – including corporate crime, state-corporate crime, state crime, crimes of globalization, organized crime, and environmental crimes – create *divisions within divisions*, missing the broader symbiotic nature and relationships they have with each other and beyond, at times making it nearly impossible to claim one form or another. Ergo, typologies that consider these crimes to be distinct from one another may be convenient to highlight a primary role of one organization (e.g. the corporation or the state). However, this abstract and artificial *division within divisions* blinds us to the bigger problem – how the current power/economic structures are reproduced and the status quo is maintained. In other words, all of the above typological classifications ignore the reasons why violence, inequality, oppression, subjugation, and social/environmental destruction of the world continue to make victims out of us. Furthermore, such victimization occurs through our consent and our consumption, which is driven by the political ideology and enactment of neoliberalism. Therefore, an analysis of the driving forces behind the status quo of the system, where the harms and violence are reproduced and reinforced by the powerful, must include an examination of how neoliberalism and the powerless – through the everyday banality of our lives – reproduce the conditions that facilitate and legitimate these harms and crimes and ensure keeping the broader systems intact – the status quo. The following section provides a frame for this argument.

Neoliberalism and the Banality of Everyday Life

We never see beyond the choices we don't make.
— The Oracle in the film *The Matrix* (Silver et al. 1999)

Little attention is paid to the role that consumption has in the facilitation and reproduction of the inequalities and violence of neoliberalism. As noted by Renner (2002, p. 53) “most
consumers don’t know that a number of common purchases bear the invisible imprint of violence.” As the opening quote to this section suggests, we do not recognize our role in the perpetuation of state and state-corporate crimes as we do not see beyond the choices we do not make or how the box of hyper-capitalism ensures its “legitimacy” through the mystification of neoliberalism wherein hegemony and hegemonic discourse serve to ensure domination by consent. But consumption takes many forms, spanning from the use of everyday products to purchasing entertainment that blatantly objectifies and reifies inequalities and facilitates the harms and violence of states and corporations. In Global North countries, these consumerist behaviors are less noticeable as they occur within a democratic state where narratives of agency and freedom of decision-making (i.e. to purchase or not purchase a product) are used to counter broader systemic patterns of inequality. Moreover, there is little recognition of the relationship between the harms, violence, and institutionalized inequalities and our own consumption, pacification, tacit support, and facilitation of these.

To frame the above statement, let us first begin with Gramsci’s (1971) notion of ideological hegemony – where a particular ideology (neoliberalism) is reflected throughout society, permeating all institutions and social relations, making it appear innate. In this sense we recognize that neoliberalism is a political project put into economic practice and legitimated through ideological and cultural hegemony1 (see also Harvey 2016). It becomes thought of as the only way it should be, even if this is profoundly misleading, obfuscating, or disguising a more heinous “truth”: the violence and harm of the system itself. This violence then becomes banal, disavowed, depoliticized, and normalized through cultural hegemony and hegemonic discourse (Neocleous 2008, pp. 73–74).

Gramsci also notes that “civil society” is ruled through consent. Bourdieu and Wacquant suggest that consent is a form of symbolic violence: “the violence which is exercised upon a social agent with his or her complicity” (1992, p. 167). They refer to this complicity as misrecognition: “recognising a violence which is wielded precisely inasmuch as one does not perceive it as such” (1992, pp. 167–168). Given that hegemony is tied directly to capital accumulation – “the profit-seeking process at the heart of the world economy” and our “advanced consumer capitalism as a way of life” – consent is thus organized around commodification, consumption, and consumerism (Carroll and Greeno 2013, pp. 122–124).

Furthermore, hegemonic discourse represents the dominant ideology (neoliberalism, consumerism), justifying the social, political, and economic status quo while masking the violence of the system. The discourse is “intended to sustain the pre-existing modes of hegemonic dominance” (Pearce and Tombs 2006, p. 428). This violence is systemic, inherent in the social conditions of neoliberalism where all aspects of society are commodified and legitimated through hegemonic neoliberal discourse.

In regard to neoliberal hegemony specifically, it is, according to Fisher, tied to the fatalism endemic to “capitalist realism” (Fisher 2009; Fisher and Gilbert 2013): the idea that there are no viable alternatives to neoliberalism, that is, a post-capitalist future is unimaginable. Given that capitalist realism is ubiquitous in our worldview, ways of being, mundane activities (including purportedly benevolent ones), and even seemingly subversive elements and modes of resistance all serve to buttress neoliberalism. Consumer capitalism, as Fisher (2009) would say, is part of the pervasive atmosphere, it operates in ways that go far beyond (but are just as entrenched as) explicitly consumerist frameworks such as advertising. Consequently, there are many sites where everyday consumption facilitates state and state-corporate crime or, as we prefer, crimes of the powerful. They are, after all, inexorably linked.
Take, for example, one of the most mundane things about being alive today: using technology, whether it is voluntary or obligatory, such as phones, computers, and the Internet of Things, to stay connected to each other as well as to the stuff we buy. While the internet and new media may have prosocial potential, under late capitalism we see that they have become integral to what Dean (2005, 2009) calls communicative capitalism. By this, she argues that the positioning of democracy in markets and the increasing commodification of information (especially networked communication) tend to obstruct political change and exacerbate inequality – despite their great potential to do otherwise. It is apparent that communicative capitalism not only fosters neoliberal ideals and material arrangements, but it also drives the (de)politicization, weaponization, and control of information and data for political gain and profit. Cybercrime, civil rights, and corporate control of culture are just a few of the issues that can be raised here. The scandal surrounding Cambridge Analytica and Facebook showed us how politicians and private research firms worked together, and with social media platforms, to access user data – without informed consent – for the purposes of swaying voters. Our information has been commodified and used to surveil the masses at the federal level (as revealed by Snowden and the practices of the National Security Agency) as well as at state/city levels, through the deployment of technology such as Stingray. And the ongoing struggles between the public, politicians, and internet providers over net neutrality policies demonstrate access to information is not readily considered a public good, as corporations are continually vying to control access to information for their own economic – and ideological – gain.

There are many other, more direct examples of mundane consumption that enables crimes and harms of the powerful. One of our most basic needs as human beings – clothing – is one site that illustrates that. Our desire to have an endless variety of clothing, at least partially fueled by the Sisyphean pursuit to have the latest fashion trends, contributes to practices associated with “fast fashion,” which are often tied to exploitative and harmful working conditions, and unsustainable production processes that elicit environmental degradation or devastation (see, for example, Cline 2013; Joy et al. 2012). The deaths and injuries that resulted from the 2013 Savar Plaza collapse in Bangladesh are just one instance that highlights the dangerous and unjust conditions that garment workers face. Even leaving aside the amount of textile waste and clothing that ends up in landfills in the United States alone (in 2013, according to the Environmental Protection Agency, it was 12.8 million tons; Tan 2016) – fast fashion, as well as “slower” modes of producing clothing, is oftentimes detrimental to the environment. Toxic dyes, chemicals and pesticides, and an exorbitant amount of water are used in the production process, and those practices not only pose a threat to the environment, they are typically harmful to workers as well. Furthermore, the act of caring for our clothes is detrimental to the environment, as a considerable amount of plastic ends up in the ocean from washing them (Weldon 2017), which joins the other trash that is generated from the hyperconsumption of single-use plastics and other disposable products. Needless to say, the impact of this and other waste associated with consumer capitalism has been devastating for poor communities, as well as for marine life and wildlife. Finally, it is also worth noting that the fashion industry is part of the prison industrial complex, as some companies attempt to reduce costs by relying on prison labor.

Besides everyday direct and indirect consumption that is seemingly benign, forms of consumer culture that are framed as altruistic and compassionate point to something much different: violence. Recent events surrounding Puerto Rico and Hurricane Maria in 2017 demonstrate that. Just after the disaster, reports of fund-raising by cruise companies
for victims of the storm, and about the delivery of relief supplies by their ships, began to pop up in the news (e.g. Scipioni 2017). Those came along with articles that covered how cruise companies are encouraging people to book cruises to Puerto Rico, despite the catastrophic conditions on the island (e.g. McClure 2017). According to the logic provided by the companies, consumption was justified on the grounds that it was the pathway to recovery. While charity efforts, more generally, point to structural violence and systemic inequality (Žižek 2008), in this case, the harm is compounded by the government’s response – or lack thereof – to the disaster, much like in the case of Hurricane Katrina (Žižek 2008). Companies urging tourists to take those cruises shortly after the hurricane, and consumers partaking in them, has no meaning without considering the horrific backdrop of the island, not only at that time, but for months afterward. Many Puerto Ricans lost their homes and had no food, water, or electricity, yet resources were guaranteed for tourists once they arrived at their destinations and for surrounding excursions. Tourists were expected to consume their way to goodwill, while many people on the island were struggling to survive, not to mention the ones that were already dead. Even without disasters like Hurricane Maria to account for, there are plenty of criminological and zemiological issues associated with tourism and other leisure activities, such as the social and environmental consequences of traveling to popular locations like the Maldives (Smith and Raymen 2018). And now, neoliberal leisure in the Anthropocene has brashly embraced the opportunity to commodify and consume the consequences of climate change. With the ice rapidly melting, at least one company is touting luxury cruises in areas of the Arctic that were once inaccessible, but are now navigable by ship (Dennis and Mooney 2016). Along with the promise that the changing oceanscape has for capital in the context of leisure-based consumption, it also opens up more room for trade and shipping routes (Struzik 2016). These types of moves further exacerbate – and capitalize on – the same types of behaviors that are arguably at the heart of climate change in the first place. While humans and other beings are perishing, capitalism, unfettered, persists.

We are reminded of the two main characters in the novel The Iron Heel, by Jack London (1908, p. 39), Ernest Everhard and Avis Cunningham. Ernest, in an effort to expose the blood and violence behind the Cunninghams’ capitalistic successes, tells Avis that everything in her home is dripping with blood from the beams to her expensive gown. “Except that the gown you wear is stained with blood. The food you eat is bloody stew. The blood of little children and of strong men is dripping from your very roof-beams. I can close my eyes, now, and hear it drip, drop, drip, drop, all about me.” Initially rejecting this statement, Avis decides to take to the streets and look at society’s ills and the harms perpetrated on the lower class. Soon she sees through the imaginary social order created and sustained by the elite and tells Ernest she sees they (the working class and impoverished) have been badly treated: “I-I think some of their blood is dripping from our roof beams ... I shall never be able to take pleasure in pretty gowns again.” Ernest responds, “Nor will you be able to take pleasure in sackcloth” (p. 41).

We readily admit the contradiction posed here of our position in this chapter and our desire to reject our complicity in the crimes of the powerful and the system itself while holding privileged positions in higher academe, writing on our latest computers, checking our cell phones for the latest emails, and a host of other choices we make daily. Nonetheless, we hope that more active, informed, and deliberate consumers will recognize how our consumption practices are connected to the violence of the state and the lining of the pockets of the powerful – at the expense of the many (Rothe and Collins 2018a, b, c).
However, taking the throttlehold that capitalist realism has on social relations into consideration, we also realize that more information about the harms of global commodity chains and the commodities themselves is not enough, nor is “better consumption.” For the former, there is already a certain “fetishistic disavowal” (Žižek 2008) that is evident for the information currently out there about the harms of capitalism, as many continue to justify actions that knowingly exacerbate these harms. The latter, “better consumption” – as the deviant leisure criminological perspective reminds us – is tied to particular instances of neoliberal hegemony that reside at the intersections of consumerism, crime, and harm known as “hedonic realism” – “the inability to see beyond the horizon of a social order where leisure is synonymous with … consumer capitalism” (Smith and Raymen 2018, p. 67). Consumerism itself must be tackled if we are to see any meaningful change in state and corporate practices, and a downturn in state and state-corporate crime and harm. Until then, commodification will continue and consumption will enable the harms of crimes of the powerful.

**Concluding Thoughts**

Most scholars researching state and state-corporate crime generally accept and suggest the current system of regulations needs to be enforced or more regulations and laws should be enacted to control these harms and crimes. We view this as not only counterproductive, but legitimating a violent system of control while ignoring the symbiotic and dialectic relationships that fuel the broader system of inequality, power, and neoliberalism. After all, neoliberalism ensures the inability to escape the facilitation and reification of the inequalities, harms, and crimes of states and corporate interests. Perhaps most problematic are the suggestions for a “different” system. We see this as a philosophical exercise at best. Reforming the current system does not challenge, and will not change, the hegemony of capitalist/hedonic realism, as reformation relies on the very idea that contributes to these problems in the first place: the salvation of “benevolent capitalism” (Winlow et al. 2015, p. 19). While we cannot fall into the trap of fatalism, blind optimism will also get us nowhere. As Thacker (2010) reminds us, we cannot see any other options beyond what we know historically and currently. We cannot see the unknown, much to the chagrin of positivistic assumptions of predictions. Moving forward then is to address this symbiotic relationship with an ethos of “enlightened catastrophism”:

As we begin to think through how we might change our future, we can at least draw strength and motivation from the absolute certainty that the path we’re on leads to catastrophe. If we stay as we are, if we remain wedded to the reductive logic of the market, if we risk nothing and turn away from our most pressing problems, much that we value and much that we take for granted these days will disappear, and life will get a lot harder for the vast majority. (Winlow 2017, p. 190)

Given what we have suggested above, it seems prudent to point out that perhaps our best option at this time is limited to promoting knowledge through conversation, research, or teaching about how consumerism breeds state and state-corporate crime and overall inequalities and oppression of our system and society to our friends, family, peers, and colleagues. Consider, for example, the consumption and commodification of patriarchy, gender inequality, and violence perpetrated against women in its many forms – from
Hollywood Blockbuster movies such as the recently released *The Perfect Guy*, *The Twilight Saga*, and *The Boy Next Door*, to the uniforms of the wait staff at Hooters, to the tampon tax, to higher insurance. In an era often characterized as post-feminist, the complicity of women and men in the reproduction and reification of the heteronormative patriarchal status quo needs to be recognized (see Collins and Rothe 2017; Rothe and Collins 2018a, b). Alternately, think of the violence of the state exercised through commoditized consumption of inequalities from the vast monies being put into the Trump administration’s zero tolerance border policy where children are removed from their parents as billions of dollars are given to agencies to deal with the harms of the state this has created, through the governing of the female body through commodification and legislation of healthcare coverage for birth control, to the bargaining of foreign aid related to any abortion-related agencies, to the commodification of death and the subsequent affirmation of economic inequality (see Rothe and Muzzatti 2018). Simply we can begin by demystifying our role in the harms and violence of the powerful, to “see the blood dripping from our beams,” to begin to imagine a state and social order where inequality is unacceptable. Thus, replacing one dogmatic ideology of neoliberal consumerism that includes the thought of something new, to develop a new political and economic form that looks beyond “the capitalist horizon” that regrettably, we believe, will only occur when the existing system collapses (Žižek 2009).

**Note**

1 Cultural hegemony refers to “the ‘spontaneous’ consent given by the great masses of the population to the general direction imposed on social life” (Gramsci 1971, p. 12).

**References**


Section III

What We Know About White-Collar Offending
Who Commits Occupational Crimes?

Michael L. Benson and Hei Lam Chio

Occupational Crime: Introducing the Concept

Because work and employment are thought to provide a stake in conformity and a valuable sense of identity, Americans have long had a deep faith and belief in their efficacy in preventing crime. Classical criminological theory provides many reasons for thinking that employment might deter criminal behavior. Rational choice theory, for example, suggests that money made from working should reduce motivations to engage in economic crime (Clarke and Cornish 2008). Likewise, anomie (Merton 1938) and differential opportunity theories (Cloward and Ohlin 1960) posit that lack of access to legitimate work enhances the attractiveness of crime. Social bond theory suggests that those who work have a stronger social bond and less free time than those who are idle, and hence workers should be less likely to engage in crime than non-workers (Hirschi 1969). Besides preventing crime by reducing the motivation to offend in the first place, work is also thought to serve as an important pathway out for those who have fallen into a life of crime (Latessa 2012; Laub and Sampson 2003). In short, work and employment are important mechanisms for controlling crime.

Unfortunately, even though work is often touted as a cure-all for crime, it can sometimes have the opposite effect and provide potential offenders with opportunities and motivations for crime rather than keeping them on the straight and narrow. When crimes are committed while one is engaged in activities related to legitimate occupations, they are called occupational crimes (Clinard and Quinney 1973). Occupational crimes come in a variety of forms and can involve people in diverse occupational roles, with varying motives for their offenses and different targets of their illegalities (Bloch and Geis 1970). For example, occupational crimes encompass (i) individual professionals acting against their clients (e.g. stockbrokers who misappropriate funds), (ii) employees who steal from their employers (e.g. embezzlers), (iii) corporate executives who engage in illegal activities to further their companies (e.g. antitrust cases), (iv) business owners who cheat their customers (e.g. consumer fraud cases), and (v) government officials who misuse their positions or authority (e.g. corrupt politicians who sell their votes). The concept of occupational
crime is related to the concept of white-collar crime but it is typically construed more broadly in regard to the social status of the perpetrators. Whereas white-collar crime was originally defined as a “crime committed by a person of respectability and high social status in the course of his occupation” (Sutherland 1949, p. 7), occupational crime includes crimes by people of less than high social status as long as the crimes are related to legitimate occupational activities. The overlap between occupational and white-collar crime, however, is considerable, and much of the research to be reviewed here uses the latter term.

Occupational crime is sometimes distinguished from corporate crime according to whether the primary beneficiary of the crime is an individual or a corporate entity. Clinard and Quinney (1973), for example, restricted the term “occupational crime” to offenses committed by individuals for their own benefit in an occupational setting, while corporate crime referred to crimes committed by corporate officials for the benefit of their corporations. This distinction has been criticized as difficult to apply in practice because both individuals and their organizations may benefit from any given instance of occupational illegality (Wheeler and Rothman 1982). The interests of a small business owner, for example, certainly are not easily separable from the interests of his or her business, and corporate executives who commit crimes in order to benefit their organizations, such as price-fixing, may still benefit individually if participating in the scheme advances their career trajectories (Wheeler and Rothman 1982). In short, the need to distinguish between occupational and corporate crime is debatable, but one thing is clear – these types of crimes are made possible by opportunities that arise out of legal occupations (Green 1990). That these crimes arise out of legal occupations is an important distinguishing feature of this type of offending. This feature differentiates it from other types of offending because – unlike street-level crimes – occupational crimes provide offenders with specialized access to their criminal targets by virtue of their occupational positions (Felson and Boba 2010). Hence, the social and demographic characteristics that influence access to particular occupations indirectly determine who commits particular occupational crimes. These characteristics include age, race, ethnicity, sex, education, social class, and residential location.

Identifying Occupational Criminals

To answer the question of who commits a particular form of crime, researchers typically select samples of people who have been convicted of, say, sex offenses or drug offenses, and then examine their psychological, social, and demographic characteristics. There are problems in using this strategy with occupational crimes, because occupational crimes represent a sociological concept and not a legal category. By definition, occupational crimes are crimes committed in the course of legitimate occupational activities; therefore, to identify occupational criminals requires knowing whether the offense of which a person was convicted was directly related to their legitimate occupational activities. Criminal justice agencies usually do not keep track of such information in their official records, and this can make it difficult to determine whether a particular offense is occupationally related or not. For example, income tax fraud can be committed by a small business owner who lies on business tax forms (which would qualify as an occupational crime), but the same type of offense could also be committed by an individual who lies on personal income tax forms (which would not qualify as an occupational crime). Sampling people who have been convicted of income tax fraud, therefore, may involve a mix of occupational and non-occupational criminals.
However, there are certain offenses that are almost always occupationally related, at least within the federal criminal justice system. These would include antitrust offenses, securities offenses, and embezzlement. In addition, there are other offenses at the federal level that usually are committed within occupational settings, such as lending and credit fraud, bribery, mail fraud, and false claims. For the purposes of this chapter, therefore, we focus on these seven offenses as common types of occupational crime. This strategy has an additional benefit in that these particular federal offenses were the subject of research in the 1970s and 1980s, which will permit us to compare contemporary occupational criminals to their counterparts from several decades ago (Benson and Moore 1992; Weisburd et al. 1991).

Social and Demographic Characteristics of Occupational Criminals in the Past

In the 1970s, the National Institute of Justice (NIJ) funded two studies on sentencing in several US District Courts. One study was under the guidance of Stanton Wheeler, while the other was conducted by Brian Forst and William Rhodes. Both studies (hereafter referred to as the Wheeler study and the Forst and Rhodes study, respectively) gathered social and demographic data on people convicted of various crimes, some of which were occupational in nature. From this research, a profile can be created of who committed occupational crimes in the 1970s. Table 7.1 presents data on the social and demographic characteristics of the offenders in the Wheeler study (Wheeler et al. 1988).

Table 7.1 Social and demographic characteristics of white-collar offenders by statutory offense in the Wheeler study.

<table>
<thead>
<tr>
<th>Offense</th>
<th>Antitrust</th>
<th>Securities fraud</th>
<th>Bribery</th>
<th>Lending &amp; credit fraud</th>
<th>False claims</th>
<th>Mail fraud</th>
<th>Bank embezzlement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Race (white)</td>
<td>99.1%</td>
<td>99.6%</td>
<td>83.3%</td>
<td>71.5%</td>
<td>61.8%</td>
<td>76.8%</td>
<td>74.1%</td>
</tr>
<tr>
<td>Sex Male</td>
<td>99.1%</td>
<td>97.8%</td>
<td>95.2%</td>
<td>84.8%</td>
<td>84.7%</td>
<td>82.1%</td>
<td>54.8%</td>
</tr>
<tr>
<td>Female</td>
<td>0.90%</td>
<td>2.20%</td>
<td>4.80%</td>
<td>15.20%</td>
<td>15.30%</td>
<td>17.90%</td>
<td>45.20%</td>
</tr>
<tr>
<td>Age</td>
<td>53</td>
<td>44</td>
<td>45</td>
<td>38</td>
<td>39</td>
<td>38</td>
<td>31</td>
</tr>
<tr>
<td>Financial standing</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Median assets</td>
<td>$650 000</td>
<td>$59 000</td>
<td>$45 000</td>
<td>$7000</td>
<td>$4000</td>
<td>$2000</td>
<td>$2000</td>
</tr>
<tr>
<td>Median liabilities</td>
<td>$81 000</td>
<td>$55 000</td>
<td>$19 000</td>
<td>$7000</td>
<td>$5000</td>
<td>$3500</td>
<td>$3000</td>
</tr>
<tr>
<td>Education</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>College graduates</td>
<td>40.0%</td>
<td>43.0%</td>
<td>27.0%</td>
<td>18.0%</td>
<td>29.0%</td>
<td>23.0%</td>
<td>13.0%</td>
</tr>
<tr>
<td>Home owners</td>
<td>87.8%</td>
<td>62.1%</td>
<td>57.0%</td>
<td>44.8%</td>
<td>42.1%</td>
<td>33.5%</td>
<td>31.0%</td>
</tr>
</tbody>
</table>

Source: Adapted from Table VII in Wheeler et al. (1988).
Since race, sex, and age are such important covariates of involvement in street crime, we begin with them and note that there is considerable variation across the statutory offense categories in the percentage who are white and male. Virtually all of the antitrust and securities offenders were white males, well over 95% for both offenses. White males were slightly less predominant in bribery offenses, but it still would have been hard to find a non-white person or a female convicted of bribery in the districts studied by Wheeler. The race and sex distributions for the remaining four offenses were not quite as unbalanced but still for the most part are heavily weighted toward white males. The only exceptions involve false claims, where close to 40% of the offenders were non-white, and bank embezzlement, where almost half of the offenders were women. Overall, though, 85% of the white-collar criminals were males and 82% were white (Wheeler et al. 1988). In regard to age, the offenders were on average in their late 30s or early 40s. Taken together, the results indicate that in the 1970s, middle-aged white males were over-represented in most of these occupational crimes.

The people convicted of the various statutory offenses also varied considerably in several indicators of class status, such as financial standing, educational attainment, and home ownership. The antitrust, securities, and bribery offenders all appeared to be in good financial shape with assets that comfortably exceeded their liabilities, especially so in the case of antitrust offenders, but the asset to debt ratio for the remaining four offense types was not nearly as good. Indeed, for those convicted of false claims, mail fraud, and embezzlement, their liabilities exceeded their assets. The results for education and home ownership also suggested that the antitrust, securities, and bribery offenders came from a different social background than the other types of offenders. The former were more likely to own their own homes and to have graduated from college, but significantly less than half were college graduates, a standard indicator of high social status.

In assessing this information, Wheeler and his colleagues came to the conclusion that most of the people who committed these crimes were members of the middle or lower middle class, which was at the time an unexpected finding (Weisburd et al. 1991). They did not appear to be anything like the powerful, high-status individuals that Sutherland (1949) called white-collar offenders, but they also occupied a different level of the social hierarchy than the people who commit standard street crimes (Wheeler et al. 1988). In the 1970s, then, occupational crimes were, as Wheeler and colleagues called them, “crimes of the middle classes” – especially the white male middle class (Weisburd et al. 1991).

However, even though the white-collar offenders in the Wheeler study were not all high-powered corporate executives, those who committed antitrust and securities offenses had, on average, more financial assets, occupational stability, and educational attainment than the other types of offenders. In other words, they appeared somewhat closer to the stereotype of the white-collar offender than the rest of the sample. These two statutory offenses also tended to be the most serious in that they were more costly, long lasting, and complex than the other offense types. Indeed, Wheeler and colleagues constructed a three-tiered hierarchy of offenses based on their overall seriousness – taking into consideration duration, geographic spread, complexity, multiple participants, and financial loss. Antitrust and securities offenses were at the top of the hierarchy, followed by bribery and lending and credit fraud in the middle with false claims and mail fraud at the bottom.

Because the Wheeler study was based on only seven federal districts, located in relatively large urban areas that were selected precisely because they were thought likely to contain a sufficient number of white-collar offenders, it is possible that their findings may not generalize to other districts (Benson and Walker 1988). But, as shown in Table 7.2, this does not
appear to be the case. These data come from the Forst and Rhodes study, which drew data from different federal districts and focused on a slightly different set of occupational crimes, though four of the offenses are the same – bribery, false claims, mail fraud, and bank embezzlement. In terms of their race, sex, and age characteristics, the offenders in the Forst and Rhodes study bear a striking resemblance to those in the Wheeler study. They are predominantly white, male, and middle aged. In addition, the percentages of college graduates and home owners within the various offense categories are all within a few points of one another. These numbers confirm the picture of occupational criminals drawn from the Wheeler study; in the 1970s occupational crimes were committed primarily by middle-aged middle-class white men.

Table 7.2 Social and demographic characteristics of white-collar offenders by statutory offense in the Forst and Rhodes study.

<table>
<thead>
<tr>
<th></th>
<th>Bribery</th>
<th>False claims</th>
<th>Mail fraud</th>
<th>Bank embezzlement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Race (white)</td>
<td>77.5%</td>
<td>56.9%</td>
<td>78.7%</td>
<td>75.5%</td>
</tr>
<tr>
<td>Sex</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Male</td>
<td>89.4%</td>
<td>72.8%</td>
<td>85.5%</td>
<td>52.6%</td>
</tr>
<tr>
<td>Female</td>
<td>10.60%</td>
<td>27.20%</td>
<td>14.50%</td>
<td>47.40%</td>
</tr>
<tr>
<td>Age</td>
<td>47</td>
<td>38</td>
<td>37</td>
<td>30</td>
</tr>
<tr>
<td>College graduates</td>
<td>24.3%</td>
<td>21.7%</td>
<td>13.1%</td>
<td>9.3%</td>
</tr>
<tr>
<td>Home owners</td>
<td>63.2%</td>
<td>33.5%</td>
<td>31.3%</td>
<td>41.8%</td>
</tr>
</tbody>
</table>

Social, Demographic, and Criminal Characteristics of Contemporary Occupational Criminals

Age, Gender, and Race/Ethnicity

Since the studies conducted by Wheeler and colleagues as well as those by Forst and Rhodes, there have been no large-scale projects focused on white-collar offenders or occupational crimes. However, beginning in the early 2000s, the United States Sentencing Commission (USSC) has made datasets available to researchers and the public that contain information on everyone who is convicted of a federal crime on an annual basis. These data include individuals convicted of the exact statutory offense(s) and many of the social and demographic variables used in the Wheeler study, including age, sex, race/ethnicity, marital status, and education. Unfortunately, the USSC does not include data on the financial standing of convicted defendants. Focusing on 2015, we identified all of the individuals convicted of the statutory offenses used in the Wheeler study (antitrust, securities fraud, bribery, lending and credit fraud, false claims, mail fraud, and bank embezzlement).

Table 7.3 presents the social and demographic characteristics of persons convicted of occupational crimes in 2015 in the same districts used in the Wheeler study and the Forst and Rhodes study. The most notable difference concerns the race and ethnicity of contemporary occupational criminals. Unlike in the 1970s, whites are a majority in only four offense categories (bank embezzlement, lending and credit fraud, mail and wire fraud, and securities offenses), and even for those offenses the white majority is much smaller now than it was four decades ago. Compared to non-whites as a group, whites are in the minority...
for antitrust, bribery, and false claims offenses. We must note, however, that the large percentage of Asian and Pacific Islanders convicted of antitrust violations in 2015 is something of a freak occurrence. In that year, the US government pursued only a small number of price fixing cases and most of those were against Japanese auto parts manufacturers who had operations with employees of Asian descent in the United States (US Department of Justice 2015). Ordinarily, throughout the 2000s, whites comprised a majority of antitrust offenders but not as large a majority as in the 1970s.

The USSC data allow us to get a detailed picture of the race and ethnicity of non-white occupational offenders, and this picture shows that Blacks and Hispanics now make up a substantially larger proportion of all of the persons convicted of occupational crimes than they did in the past. The only exception to this general pattern is for antitrust offenses. For all other occupational offenses, however, it is now much easier to find offenders who are people of color. For example, in the 1970s, there were literally almost no non-whites convicted of securities offenses, but in 2015, 20% of securities offenders were non-whites, and of this 20% Hispanics and Blacks made up over half of that group (4.6 and 6.9%, respectively). Blacks and Hispanics, taken together, make up well over 40% of bribery and false claims offenders, and they form a substantial proportion of those convicted of lending and credit fraud and mail/wire fraud. Thus, occupational crime is no longer an almost exclusively white form of crime in the large urban districts studied by the Wheeler group and Forst and Rhodes. Since the 1970s, it has somehow been democratized and is now available to a broader mass of people from different racial and ethnic backgrounds.

The democratization of occupational crime, however, has not extended quite as much to age or sex. As in the 1970s, contemporary occupational crime offenders are middle-aged individuals, with an average age in the 40s or 50s. The level of participation of women in most offense categories is roughly similar now to what it was in the past, implying that – like

Table 7.3  Demographic characteristics of white-collar offenders by statutory offense in selected districts in 2015.

<table>
<thead>
<tr>
<th></th>
<th>Antitrust</th>
<th>Bank embezzlement</th>
<th>Bribery</th>
<th>False claims</th>
<th>Lending &amp; credit fraud</th>
<th>Mail/wire</th>
<th>SEC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Race</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>White</td>
<td>38.5%</td>
<td>52.9%</td>
<td>39.3%</td>
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* national sample.
Who Commits Occupational Crimes?

almost all other forms of crime (Steffensmeier and Allan 2000) – occupational crime is still primarily a male form of antisocial behavior. However, it is worth noting that women are more involved now in bribery and securities violations. They comprise 17.9 and 9.2% of the offenders (respectively) of offenders in 2015 versus the 1970s, where they made up less than 5% of bribery cases and less than 3% of securities offenses.

Since the 16 districts studied earlier tended to be heavily populated and to contain large urban centers, it is possible that they are somehow different from the other 78 federal districts in regard to the types of people who are convicted of occupational crimes. Table 7.4 permits us to investigate this possibility. It presents the same results as in Table 7.3 for the nation. The pattern of involvement of Whites, Hispanics, and Blacks in occupational crime nationwide is very similar to what was observed in Table 7.3. The only exception to this general rule concerns bank embezzlement, where a much larger percentage of offenders are white in the national data (74.1% compared to 52.9%). In general, though, Hispanics and Blacks make up a substantial proportion and sometimes a majority of people convicted of bribery, false claims, lending and credit fraud, and mail/wire fraud. Thus, except for antitrust offenses and securities violations, occupational crime has been democratized across the United States with regard to race and ethnicity, but women are still under-represented in all occupational crimes outside of bank embezzlement.

Unfortunately, the USSC data do not permit us to get a detailed picture of the seriousness of the various types of offenses as did the researchers in the Wheeler study. Thus, we cannot ascertain whether the offense hierarchy that they identified still exists, but we do note that white males still dominate securities offenses just as they did in the 1970s. We suspect that securities offenses are still also among the more serious occupational offenses, and that the other offenses have probably also maintained their relative positions within Wheeler’s offense hierarchy. What has changed is the race and gender of the offenders, with the lower end of the hierarchy now being more heavily populated by non-whites.
Another important finding that emerged from the research done in the 1970s concerned the criminal histories of white-collar offenders. The classic stereotype of the white-collar offender pictures “him” as an upstanding and law-abiding member of the community, someone who is likely to have avoided any contact with the justice system prior to becoming involved in white-collar crime. In other words, white-collar/occupational offenders have long been assumed to be one-shot offenders. It has also been assumed that once they had been caught and punished for a white-collar offense, most of these offenders would be deterred from ever offending again. These assumptions turned out to be wrong. In the Forst and Rhodes study and the Wheeler study, approximately 40% of the offenders had previously been arrested for another offense at the time they committed the white-collar offense that brought them into the federal justice system (Benson and Moore 1992; Weisburd et al. 1990).

In addition, a 10-year follow-up study conducted on the Wheeler sample found that a substantial number of the offenders continued to commit offenses after their convictions for white-collar crimes (Weisburd and Waring 2001). Subsequent analysis of the follow-up data discovered that offenders in the sample followed three different types of criminal trajectories (Piquero and Weisburd 2009). Most of the offenders (about 70%) committed very few offenses over the course of their lives. These offenders were called “crisis responders” or “opportunity takers.” The crisis responders were those who committed crimes out of desperation, while the opportunity takers were people who happened to find themselves in an occupational position that enabled them to enrich themselves illegally. In contrast to the low-rate group, another group of offenders (about 25%) offended more frequently and persistently. These medium-rate offenders appeared to be “opportunity seekers” in that they actively sought out occupational positions that would permit illegal enrichment (Piquero and Weisburd 2009). Finally, a small percentage of the sample (about 5%) were what the researchers called “stereotypical criminals.” These individuals committed a wide variety of different types of crime, only some of which were occupationally based. A less detailed statistical analysis of the Forst and Rhodes data also uncovered evidence of significant heterogeneity in criminal histories among that sample of offenders (Benson and Moore 1992).

Unfortunately, the USSC data do not permit one to investigate the criminal histories of offenders using sophisticated statistical trajectory analysis. But what little information there is suggests that a sizeable proportion of contemporary occupational criminals have been involved with the justice system on more than one occasion. The last row in Table 7.4 shows the percentage of offenders in each statutory offense category that have any sort of criminal history or law enforcement contacts for the nation as a whole. Except for bank embezzlement, close to or more than half of the offenders in each category have some sort of criminal history. Although these data do not reveal much about the nature or seriousness of the offenders’ prior contacts with law enforcement, they do indicate that even among high-level offenders, such as those who commit antitrust and Securities and Exchange Commission (SEC) violations, it is not unusual for them to have more than one contact with the justice system. In other words, one-time offending is not necessarily the norm among occupational criminals in the United States.

Notably, the United States is not unique. A recent investigation of white-collar offenders in the Netherlands revealed strikingly similar findings (van Onna et al. 2014). This study examined the criminal development and criminal profile of a sample of 644 individuals convicted of serious white-collar crimes, that is, cases that were complex and long lasting.
and in which significant amounts of money were defrauded. The researchers were able to draw from official records that contained all registered offenses from age 12 onward. Their analyses identified four distinct trajectories. About three-quarters of the sample (78%) did not begin offending until they were adults and they then offended at a low frequency. This group contained two trajectory groups labeled stereotypical white-collar offenders (SWOs) and adult-onset offenders (AOs). The SWO group consisted of people who had no criminal activity as adolescents or young adults but who started to offend in their mid-30s and thereafter offended very rarely. The AO group started offending in early adulthood and thereafter continued to commit crimes at a slightly higher rate than the SWO group. The remaining 22% actually started offending as adolescents and they offended at a higher rate. This high-rate group also contained two trajectories. One was labeled adult persisters (APs). These individuals started offending in adolescence and continued to offend into their 40s at a rate that was more than double that of the AO offenders. Finally, a small number of individuals (4%) were categorized as stereotypical criminals. They started their lives in crime as adolescents and continued to offend at a rate higher than everybody else into their 50s.

Criminal trajectory analysis is a complex statistical art form and its application to white-collar offending is in its infancy. Thus, we have probably not heard the last word on the number or shape of trajectories in white-collar crime. Nevertheless, two general lessons can be drawn from the results that are available so far on patterns in white-collar offending. First, calling someone a white-collar or occupational criminal on the basis of a single arrest or conviction can be misleading. Although most of the people who commit occupational crimes began offending as adults and go long periods of time avoiding contact with the justice system, a significant proportion of occupational offenders commit other types of crime that come to the attention of authorities. In short, there is a notable amount of heterogeneity in white-collar offending patterns – for this reason, the classic division that scholars have long made between white-collar offending and other types of offending may not reflect the reality of criminal behavior (van der Geest et al. 2017). Second, in light of the different rates and types of offending that occupational criminals manifest, it is likely that different sorts of causal forces are at work among these offenders. Single incident offenders are probably responding to a unique set of stressors or opportunities that arise at a particular point of time in their lives. Their offending may have situational rather than individual-level causes. The causes of repeat offending, however, may involve individual-level factors, such as low self-control or other psychological characteristics, that persist in an individual over time. The causes of occupational crime, therefore, almost certainly involve both situational and individual-level factors (Piquero and Benson 2004; Weisburd and Waring 2001).

**Causes of Occupational Crime**

Historically, white-collar crime research has focused primarily on the cultural and organizational contexts that are thought to promote white-collar offending (Braithwaite 1985; Clinard 1952; Sutherland 1949). Sutherland (1949), for example, argued that white-collar crime flourished because the world of business was permeated with attitudes and values that defined illegal business behavior in favorable terms and because American society was socially disorganized in regard to business crimes. Others have argued that white-collar crime is an endemic feature of capitalism and is promoted by the cultural values that underlie capitalistic economies (Benson and Cullen 2018; Messner and Rosenfeld 2012;
In addition, business organizations have been conceived as inherently criminogenic because they are goal-directed entities and hence always under pressure to achieve their economic goals or risk losing out to their competitors (Gross 1978, 1980). All of these factors probably do help create contexts in which white-collar and occupational crime are likely to occur, but not everyone in these contexts becomes a white-collar criminal. That is to say, not everyone succumbs to the criminogenic values and pressures that pervade organizations.

To understand why some people break the law while others do not requires a more detailed examination of their personal situations. One of the potentially most important situational causes of occupational crime is the fear of loss, or, as it is sometimes called, “the fear of falling.” It is easy to understand why someone who is poor and starving would be likely to steal a loaf of bread, but the people who commit occupational crimes are rarely in such desperate circumstances. Indeed, they often are relatively well off and potentially have a lot to lose if they are caught committing a crime. From the perspective of standard criminological theory, this set of facts creates what has been called the problem of white-collar crime motivation (Wheeler 1992). Why would someone who has attained a level of material success risk losing it by committing a crime? The answer is that the desire to maintain one's standard of living can motivate criminal behavior, and self-reports from white-collar offenders indicate that they often are motivated not so much by greed as by a desire to hang on to what they already have (Benson 1985; Cressey 1953; Rothman and Gandossy 1982). Thus, occupational criminals sometimes have motives that are specifically related to their position in the class system. Unlike the majority of common street offenders, they have at least middle-class (if not upper-class) positions in life. Hence, unlike common offenders, they can be threatened by the prospect of losing their positions and associated material well-being. The fear of falling, then, may be a unique class-based cause of occupational crime (Benson and Moore 1992). However, while the fear of falling hypothesis is an intuitively appealing explanation for some white-collar offending, it has received little systematic empirical attention, so its validity remains an open question. Indeed, one study suggests that the fear of falling may actually hold people back from engaging in white-collar crime (Piquero 2012).

Besides the fear of falling, recent research suggests that occupational crime may result from other, more traditional criminological processes and factors. The most interesting theoretical and empirical developments have focused on applying the life-course perspective to white-collar crime (Piquero and Benson 2004; Piquero and Piquero 2016; Piquero and Weisburd 2009). In particular, researchers have investigated how well Sampson and Laub’s age-graded theory of informal social control can account for involvement in white-collar and occupational crime (Engdahl 2011). This theory posits that variation in exposure to informal social controls is the primary cause of variation in criminal behavior, especially among adolescents and young adults (Laub and Sampson 2003; Sampson and Laub 2005). People who are subject to less informal control are more likely to be involved in crime and deviant behavior than people who are under greater social control. The theory is age-graded because it is based on the premise that the sources of informal social control, or, as they are also called, social bonds, change over the life course. For children, the most important sources of social control are parents. As children transition into adolescence, parents become less important, while peers and school become more important. Finally, in adulthood, marriage and employment become the primary sources of social control (Laub and Sampson 2003; Sampson and Laub 1993, 2005).
Although the age-graded theory was originally developed primarily to explain how the onset of involvement in street crime starts in childhood and then develops through adolescence and adulthood, scholars have recently begun to explore how the theory might apply to adult-onset offending, that is, to people who lead more or less conventional law-abiding lives until they are adults and who then commit crimes. This pattern of offending has until recently been ignored by criminologists, yet it is common among white-collar and occupational criminals. Since the theory predicts that weak social bonds are the primary cause of crime, it follows that if a person’s bonds weaken for some reason then they are at increased risk of crime. Not many studies have been done yet, but preliminary results indicate that when adults experience a weakening of social bonds – for example, from the breakup of a marriage or a setback in an occupation – they are at increased risk of becoming involved in occupationally related crimes (Engdahl 2011; van Onna and Denkers 2018).

The most convincing research to date has been done by researchers in the Netherlands. Joost van Onna and Adriaan Denkers (2018) identified a sample of 634 individuals convicted of white-collar crimes involving large amounts of money, organizational complexity, and substantial duration over time. The white-collar offenders had different ages of onset and included some early-onset offenders who began offending (in other types of crime) before reaching adulthood, but the average age of onset was 31. Over half of the sample (n = 361) were individuals who had occupied executive positions. Using official government records, the researchers then constructed a control sample (n = 1788) who were matched to the white-collar offender sample on age, sex, region of residence in the Netherlands, income, and occupational position. The two samples were compared on several different measures of social bonds, including marriage, marital stability, home ownership, residential mobility, and various indicators of occupational stability. The use of a control sample is quite unusual in studies of white-collar offenders and gives the study added methodological integrity (but see Collins and Schmidt 1993).

The results of the analyses showed that – compared to controls with similar socio-demographic backgrounds – the white-collar offenders as a group had weaker social bonds both in their social lives (marital stability) and in their economic lives (occupational stability). Significantly, these results held across a variety of comparative scenarios. For example, the white-collar offenders who were executives were compared to their matched executive controls and found to have weaker social bonds. Likewise, the early-onset white-collar offenders had weaker bonds than their matched controls, as did the adult-onset offenders compared to their matched controls. Finally, within the white-collar offender sample, the executives had the highest social bonds on average, followed by the adult-onset offenders, with the early-onset white-collar offenders having the weakest average social bonds. Overall, the study shows that bonds to conventional society are important protective factors against involvement in white-collar crime as well as conventional street crime. Or, to put it another way, weakened social bonds are a risk factor not only for ordinary street crimes but also for white-collar crime (van Onna and Denkers 2018).

This is only one study, so the results must be treated as provisional. More research is needed to see whether the patterns identified by van Onna and Denkers (2018) generalize to other samples. Nevertheless, it opens up interesting avenues to explore regarding how informal social controls relate to criminal offending, especially in regards to the causal effects of weakened social bonds. The theory of age-graded informal social controls was originally formulated to explain the onset of offending in adolescence and then explain why some people persisted throughout life while others eventually desisted in adulthood (Sampson and Laub 1993). One of the main factors hypothesized to promote desistence was
undergoing a positive “turning point” such as getting married or finding a rewarding job. Marriage and employment are theorized to lead to increased informal social controls, which in turn help offenders turn away from a criminal lifestyle. A considerable body of research supports this theoretical prediction (Laub and Sampson 2003; Sampson and Laub 2005; Sampson et al. 2006). But little empirical research has been done on what happens when social bonds and informal social controls are weakened in adulthood (Engdahl 2011). In other words, the potential criminological effects of experiencing negative turning points in adulthood are not well understood and yet they may play an important role in adult-onset white-collar offending (Eggleston and Laub 2002). Individuals who have been lifelong law-abiding citizens may initiate criminal behavior in adulthood as a result of some kind of personal or business crisis which undermines their social bonds (Benson and Moore 1992; Engdahl 2011). The breakup of a marriage, the death of a spouse, or the loss of a job are all too common examples of potentially negative turning points that can happen to anyone and that may have criminogenic consequences.

Conclusions

Occupational crime is an important but understudied type of criminal offense. Although the concepts of occupational crime and white-collar crime are related, it should not be assumed that they necessarily reference the same types of people. The stereotype of the white-collar offender as a person of wealth, power, and high social status is not accurate for most of the people who commit occupational crimes. Rather, they tend to be members of the middle or working classes of society. As this review has shown, recent research suggests three general conclusions in regard to the question of who commits occupational crime. These conclusions concern the demographic characteristics of occupational criminals, their criminal histories, and the causes of their behavior.

Data from the US Sentencing Commission suggest that the demographic make-up of the people who commit occupational crimes has changed over the course of the past five decades. In the 1970s, occupational criminals were predominantly middle-aged white males, but that is less true today, at least in regard to race and ethnicity. African Americans, Hispanics, Latinos, and Asians, as well as other racial and ethnic groups, are now much more likely to be convicted of occupational crimes in the federal justice system than they were 45 years ago. Indeed, for some types of offenses, they make up a majority of the people convicted in federal courts. Women are also somewhat more involved in occupational crime now than in the past, but the change in the sex distribution of offenders has not been nearly as dramatic as the change in race and ethnicity. The sea change in the racial and ethnic make-up of occupational criminals that has been observed over time calls out for further investigation. It seems reasonable to think that greater access to educational and occupational opportunities for minorities lies behind the change in offending patterns, but this has not been empirically demonstrated yet.

Although white-collar offenders are often assumed to be one-shot offenders who have little experience with the criminal justice system, a surprisingly large percentage have criminal histories and appear to commit multiple offenses. Most occupational criminals start offending in adulthood and commit relatively few offenses throughout their lives, but a small minority (between 5 and 10%) are stereotypical criminals who commit a variety of types of crime, some of which happen to be occupational in nature. Research, thus, suggests that occupational criminals can be categorized according to four standard
trajectories: (i) standard white-collar offenders, who have no criminal activity as adolescents or young adults but start to offend in their mid-30s (albeit at a very low rate); (ii) adult-onset offenders, who also start offending in early adulthood but commit crimes at a higher rate than standard white-collar offenders; (iii) adult persisters, who start offending as adolescents but who switch to white-collar type crimes in adulthood and continue to pile up criminal records at a higher rate than the other two groups; (iv) finally, there is a small group of offenders, called Stereotypical criminals, who commit a variety of types of crime, some of which happen to be occupational in nature.

Since most occupational criminals begin offending as adults, they pose special problems for traditional theories of criminal behavior, which by and large assume that the causes of crime lie in early childhood and young adolescent experiences. With a few exceptions, this does not appear to be the case for most occupational criminals. Rather, the causes of their behavior appear to arise in adulthood. One of the primary causes – and one that may be unique to occupational criminals – is the fear of falling (Benson and Moore 1992; Wheeler 1992). Because they are adults, occupational criminals have often worked hard to achieve a certain level of social and occupational status. When that status is threatened by some external event, the individual may respond with some kind of occupational crime. As one example, consider a small businessperson who, because of a miscalculation about cash flow, is in danger of not being able to pay his or her employees and therefore is faced with losing their business. That such a person might cheat on their taxes or lie on a loan application should not seem surprising. However, it is not exactly clear yet how the fear of falling is related to white-collar offending. For people who are doing well and who are not threatened by a loss of status, the fear of falling may restrain them from offending even when they have access to an attractive risk-free criminal opportunity to enrich themselves (Piquero 2012). But for people who really are threatened with a loss of status, the fear of falling may motivate them toward criminal activity.

Besides the fear of falling, a small body of research suggests that weakened social bonds and informal social controls in adulthood are also associated with occupational crime (Engdahl 2011; van Onna and Denkers 2018). These findings need to be replicated in other samples and other countries, but they are intriguing because they suggest that, as some have claimed, variation in social bonds and informal controls are truly general causes of variation in criminal behavior and they apply to all types of offenders and all types of offending (Sampson and Laub 2005). This possibility is one that can be confirmed and extended by more research on occupational criminals.

In her highly regarded dual-taxonomy theory of delinquency, Moffitt (1993) makes a distinction between what she calls adolescence-limited offending and life-course-persistent offending. She argues that these distinct offending patterns have their own unique etiology and natural history. It is a mistake, Moffitt argues, to think that variation in the rate of criminal offending (from low to high) is caused by variation in the strength (from low to high) of a single cause or set of causes. Rather, in Moffitt’s view, the causes of adolescent-limited offending are distinctly different from the causes of life-course-persistent offending. In other words, because crime is not an undifferentiated unitary phenomenon, different causal factors may be at work to either intensify or mitigate different patterns in offending (Blumstein et al. 1988).

A similar sort of distinction may need to be made in the case of white-collar offending. A majority of white-collar offenders are either single incident or exceedingly low-rate offenders, but a notable proportion, somewhere in the range of 30%, are repeat offenders, who have criminal careers in the traditional sense in which that term is used to refer to a
longitudinal sequence of offenses (Blumstein et al. 1988). The causes of single incident (or very low-rate) offending may be qualitatively different from those that lie behind repeat offending, because they represent different types of criminal careers (Blumstein et al. 1988). For example, repeated white-collar offending may result from weak social bonds or a stable psychological trait, such as psychopathy or low self-control. The causes of single incident offending, on the other hand, may be situational in nature. Situational factors, however, need to be considered very carefully. Fear of falling, for example, may work to restrain offending in some cases but promote it in others, depending on whether an attractive criminal opportunity is available and whether the individual is threatened by a loss of status or not. To complicate matters further, it is also possible that certain types of people are more threatened by a loss of status than others and thus more likely to respond with white-collar offending, which would mean that both individual and situational-level factors are involved in some types of white-collar offending. All of these questions need to be explored and their answers clarified by white-collar crime scholars.

Notes

1 The Wheeler study included the following federal districts: Southern New York, Maryland, Northern Georgia, Northern Texas, Northern Illinois, Central California, and Western Washington. The Forst and Rhodes study was conducted in New Jersey, Eastern New York, Connecticut, Northern Ohio, Middle Florida, Western Oklahoma, Northern New Mexico, and Northern California. For two of the offenses, antitrust and securities fraud, the Wheeler data include everyone convicted nationwide for those two offenses, because there were not enough cases in the individual districts.

2 At the time of the study, approximately half of the population in the districts studied by Wheeler were female, just over three-quarters were white, and the average age of the population was 30 (Wheeler et al. 1988).

References


Who Commits Corporate Crime?

Mary Dodge

Introduction

Determinations about who commits corporate crime should present a plausible and straightforward explanation of companies that, for example, introduce dangerous consumer products, spill toxic substances, endanger employees, or engage in illegal actions outlined in regulatory, statutory, and case law. In reality, corporate crimes can be difficult to identify and how a company might be held responsible is much more complex than imaginable. First, definitions of what constitute corporate crime vary among academic and legalistic perspectives, though unarguably illegal and unethical actions fit within the framework of white-collar crime. Corporate crimes are wide-ranging and may include (according to some scholars) a massive number of regulatory violations, criminal acts, and immoral behavior. Second, determinations about who is responsible may stymie the best of investigators and onlookers. Third, the effects of corporate crime on members of the public and communities may be hidden by efforts to uphold the reputations of companies, Chief Executive Officers, and employees. Finally, corporate crime may involve both criminal and civil actions that further complicate prosecution, punishment, or restitution for victims. The following chapter explores these issues and uses specific case examples that illustrate the complex nature of who commits corporate crime.

This chapter first explores the lack of reliable data available to white-collar researchers, which demonstrates many of the problems encountered in determining who commits corporate crime. While data collection may be problematic, numerous scholars have developed datasets through secondary resources and interviews, conducted meta-analyses, and used case study methods to more fully explore incidents of corporate crime (e.g. Cressey 1953; Lewis 2012; Rorie et al. 2018; Wheeler et al. 1988; Zeitz 1981). Second, the early efforts of journalists to expose corporate wrongdoing are detailed to
demonstrate the strength and development of case studies in corporate crime. Third, an explanation of definitional issues surrounding the concepts of white-collar and corporate crime reveal the difficulties of traveling through a maze of “fuzzy” notions of offender identification and responsibility. Fourth, an exploration of historical and current research is presented along with identification of the hidden and obvious harm caused by corporate crime. Fifth, throughout the chapter, relevant case studies offer contextual understanding of the types of offending and consequences, including pharmaceutical, automobile, environmental, and financial crime. Finally, the failure of regulatory and legal entities to control and deter corporate crime, in concert with offender rationalizations and culture, are examined. This examination demonstrates that deterrence efforts appear to be failing.

As discussed in more detail in Chapter 3 of this volume, a lack of quantitative data has long stifled research on white-collar crime. Information on corporate crimes often is scattered among secondary sources and a central database is unavailable. A primary database on corporate crime similar to the Federal Bureau of Investigation’s (FBI) Uniform Crime Report (UCR) or the National Crime Victimization Survey is nonexistent. White-collar crimes reported in the UCR are aggregated in categories: fraud, forgery/counterfeiting, embezzlement, and other offenses. In most studies, researchers go to great lengths to collect reliable and valid data for corporate crime using secondary data sources such as court documents, archives, newspaper accounts, surveys, and interviews. The case study method often is used to understand elite and corporate wrongdoing.

The Journalistic Roots of Corporate Crime Studies

Historically, speculations and scholarship about corporate malfeasance began during the Progressive Era that emerged in the 1890s. During this time, activists worked to promote corporate transformation, political reform, and social justice throughout institutions in the United States. Investigations of corporate wrongdoings at this time often involved muckraking journalists who garnered headlines in popular media on the evils of corporate, political, and professional misdeeds. The term “muckraker” has both positive and negative attributes. Many observers believe that muckrakers are uncovering social ills and corruption. Other people, however, view their exposés as scandalous gossip that promoted discontent and undermined legitimate businesses.

Early muckrakers include Upton Sinclair, who authored The Jungle (1904, reprinted 1988), a novel intent on exposing the exploitation of immigrants in Chicago and the horrendous health violations of the meat packing industry. Sinclair’s work is credited with instigating the passage of the Pure Food and Drug Administration Act in 1906. Similarly, during this Progressive Era emerged the work of Ida Tarbell. Her book The History of the Standard Oil Company (1904) exposed the underhanded business practices of the corporation’s founder, John D. Rockefeller. Tarbell’s two-volume tome that documented Rockefeller’s bellicose and illegal practices led to a US Supreme Court decision that Standard Oil violated the Sherman Antitrust Act (Standard Oil Co. of New Jersey v. United States 1911). The court’s decision resulted in a breakup of the monopoly into 34 separate companies, which ironically remained under the stewardship of
Rockefeller. Kallet and Schlink’s (1933) book *100,000,000 Guinea Pigs: Dangers in Everyday Foods, Drugs, and Cosmetics* revealed that many goods sold to consumers, especially pharmaceutical products, were unsafe with serious adverse side effects. The authors argued that the dangers from corporations that introduced dangerous products continued to cause egregious harm to consumers, despite passage of the Pure Food and Drug Act.

Many present-day white-collar crime scholars attribute the common use of the case study method to the rise of muckraking investigations. Though muckraking is a journalistic weapon, the case study is often used by academics to identify, understand, and develop theoretical explanations of corporate crime. Case studies may focus on one or more incidents to develop a narrative and initial understanding of a phenomenon. Researchers using exploratory methods tend to cast aside specific research hypotheses (i.e. explicit predictions that “X causes Y”) and, instead, seek a broad amalgam of information to understand the event that will assist in developing future, perhaps quantitative, areas of study. Descriptive or explanatory cases studies also may better define the need for additional research and contribute to theoretical explanations (Glaser and Strauss 1967; Yin 1993). All three of these approaches (i.e. exploratory, explanatory, and descriptive) offer rich narratives of what transpired and inspire the use of grounded theory.

This chapter presents a variety of cases studies to illustrate wrongdoing by corporations. In some explanatory research the focus is on questions about “what?” or “who?” – these cases might act as a pilot study that can inform theory development and qualitative research. An exploratory study, for example, may focus on car tires that blow out at high speed with no explanation. In this case, a researcher thinking this may be the work of corporate malfeasance may gather all available information on manufacturing processes and what transpired. An exploratory study asks “how?” or “why?” questions. Exploratory studies may involve all aspects of a case, such as Gregg Barak’s (2012) book on the 2008 financial crisis. While these approaches may overlap, Diane Vaughan’s (1996) seminal book on the space shuttle Challenger explosion may be viewed as a descriptive study.

Gilbert Geis’s work, like that of other academics, exemplified the rich tradition of the case study method in detailed explorations of corporate crime. Geis’s well-known and often reprinted article examined the heavy electrical equipment antitrust cases of 1961. General Electric and Westinghouse Electric Corporation were major actors in the wide-ranging antitrust conspiracy. According to Geis (1967), the federal government issued 20 indictments that involved 45 defendants and 29 corporations. Surprisingly, seven of the defendants (ranging from vice-presidents to division managers and sales managers) received 30-day jail sentences. The most costly result of the violations was the almost $2 million in fines against the defendants, including individual actors and the corporations. General Electric and Westinghouse paid the heftiest fines, $437,500 and $372,500, respectively. Geis noted that the major economic consequences resulted from civil lawsuits and wryly wrote that “[for] General Electric, a half-million dollar loss was no more unsettling than a $3 parking fine would be to a man with an income of $175,000 a year.” This astute observation recognized that corporations viewed regulatory and civil fines as merely part of the cost of doing business.
Definitional Issues

A major obstacle in understanding corporate offenders is the lack of a clear definition of what constitutes offending. Perspectives of corporate crimes are somewhat fluid, though a white-collar crime purist might argue that Edwin Sutherland's definition (1940) is sufficiently encompassing. Sutherland's 1939 presidential address to the American Sociological Society (later changed to the American Sociological Association) described a white-collar offense as “a crime committed by a person of respectability and high social status in the course of his occupation.” Commentators criticize this definition as vague, overly inclusive, and dismissive of legal codes (Geis et al. 1995; Hartung 1950; Tappan 1947). Disagreements over the inclusion of unethical or immoral acts as white-collar crime also remain unresolved in most definitions. Current definitions of corporate wrongdoing may reject one or more concepts presented by Sutherland.

Influential white-collar crime scholars Marshall Clinard and Richard Quinney (1973) noted that corporate crime should be viewed as “offenses committed by corporate officials for their corporation and the offenses of the corporation itself.” The conundrum, as logically noted by distinguished scholar David Friedrichs (2009, p. 60), is “whether corporations can be said to commit crimes and whether harmful acts involving corporations are crimes even if they are not prohibited by the criminal law …” Peter Yeager (2007, p. 26) focused on lawbreaking (rather than crime) by corporate personnel who attempt to meet “the goals of their private sector economic organizations.” Numerous research and case studies have explored these corporations that commit white-collar crimes as nonhuman entities focused on profit and market share. In some cases, however, the focus is on employees who commit crimes to assist the organization and seek personal financial gain. In both types of incidents, corporate cultural underpinnings contribute to what happens and why.

Yeager and other scholars challenge the notion that characteristics such as respectability and status of corporate lawbreakers involve only the elite (see also Clinard and Quinney 1973; Pontell and Rosoff 2009; Vaughan 1992). In fact, offenders may include all levels of corporate employees, including blue-collar and pink-collar workers (i.e. manual laborers or lower-level male and female employees; see Dodge 2008; Freeman 2000; Wickman 2012). As with other types of crime, men commit the majority of corporate offenses. Steffensmeier et al. (2013) found that offenders in corporate conspiracies were typically men in their mid-40s, top executive or upper to mid-level officials.

The debate over definitional issues continues, though a full discussion is beyond the scope of this chapter. In many respects, one characterization of corporate criminality appears to fit best with US Supreme Court’s Justice Potter Stewart’s dissenting opinion in the pornography case Engel v. Vitale (1962):

I shall not today attempt further to define the kinds of material I understand to be embraced within that shorthand description [hard-core pornography]; and perhaps I could never succeed in intelligibly doing so. But I know it when I see it [emphasis added] …

This sentiment is widespread in observations of the vast number of corporate offenders who engage in illegal or immoral activities, but may hamper empirical investigations. More recently, Schell-Busey et al. (2016) recommended that scholars and practitioners engage in
efforts to consistently and clearly define corporate crime. One persuasive argument, based on a meta-analysis of published studies, is that corporate crime research should focus on for-profit companies, employ only violations subject to punishment, and examine decisions made by top managers (Rorie et al. 2018). Despite the controversy over definitions, consensus exists that corporate crime is pervasive and ultimately more destructive and costly than street-level crime.

Who Is Responsible?

One major problem associated with corporate crime is who can be held accountable. The most common-sense approach is to hold the corporation accountable through civil laws and regulatory mandates, which often are associated with large fines targeting the company as a whole. Criminal sanctions against a corporation may focus on the executives, board members, high-ranking administrators, or low-level employees, though most companies have a limited liability status whereby individual employees cannot be held liable for the financial obligations of the corporation (i.e. the personal assets of the company’s top management are distinct from the business assets of the company; see Halpern et al. 1980). Importantly, while the corporation can be held liable for criminal activity under some circumstances, only the individual employees may serve jail or prison sentences.

The Department of Justice (DOJ) claims that corporate crime prosecution is a high priority, despite a myriad of cases that suggest otherwise. According to the DOJ guidelines, “corporations should not be treated leniently because of their artificial nature nor should they be subject to harsher treatment” (Department of Justice 2015). The goals established by the DOJ include prosecutions under four critical public interests. The first objective is to enforce the rule of law to protect the economy. Second, criminal prosecutions are necessary when violations occur that endanger consumers, investors, and businesses. Third, the DOJ is committed to preventing and prosecuting violations of environmental law. Finally, corporations engaging in illegal business practices at the expense of the public are appropriate for prosecution. In practice, however, the DOJ focuses on individuals who conduct wrongdoing while employed in the corporation to maximize the deterrence potential of prosecution as well as to recognize the “special nature of the corporate ’person.’”

The difficulties of pursuing criminal sanctions against a corporation as a whole are best exemplified by the infamous Ford Pinto case. In 1978, one of the first Pinto automobile explosions occurred in Indiana and was explored in depth as a case study of corporate crime by Francis Cullen and colleagues. When the vehicle was rear-ended by a van, the car quickly exploded into flames killing two of the passengers. An article on “Pinto Madness” authored by Mark Dowie (1977) revealed that the placement of the gas tank made it susceptible to punctures by the fender’s bolts causing fuel leakage and fires (Cullen et al. 1984). Evidence emerged that Ford Motor Company’s cost–benefit analysis showed the cost of fixing the Pinto’s defect was more detrimental to profits than paying lawsuits associated with injuries and fatalities.

The significance of this case lies in the actions by an Indiana prosecutor, who decided to charge Ford under the criminal code for reckless homicide. The decision was contro-
versial and viewed by many legal commentators as risky based on legislative intent and criminal codes. Ultimately, a grand jury issued indictments on three counts of reckless homicide and – after endless legal wrangling – a trial occurred. The jurors returned a not guilty verdict after four days of deliberation. One point of contention for several members of the jury was that the prosecutor failed to prove the corporation was “reckless in its recall efforts during the 41 days in which it was criminally liable” (Cullen et al. 1984). While the criminal trial was hailed as a historic event associated with corporate malfeasance and was seen as setting a precedent for future efforts to hold corporations criminally liable, the case appeared to have established little or no deterrence effect.

Other instrumental case studies have examined, for example, poor working conditions, dangerous drugs, and harmful medical devices. Friedricks (2009) has defined a variety of corporate crimes in violent and non-violent categories. In this typology, corporate violence against the public includes unsafe environment practices like air pollution or illegal dumping. Corporate violence against consumers consists of unsafe products, food products, drugs, medical devices, and automotive and transportation crime, while violence against employees involves unsafe working conditions. Other corporate crimes, according to Friedricks, often fall under the abuse of power, fraud, and economic exploitation. The extensive list of what may constitute corporate crime and who commits it, as previously mentioned, is one of many complexities in grasping the serious and sometimes violent nature of the wrongdoing.

**Hidden Harms**

Sutherland’s 1949 pioneering work examined 70 corporations over a 40-year time span. He discovered at least one law violation for every corporation, including false advertising, patent abuse, wartime trade violations, and price-fixing. His research also identified repeat offenders who averaged eight violations. Geis’s (2007) historical account of Sutherland’s work noted the absence of corporate identities. Specific names were omitted from the initial printing of the book, *White Collar Crime*, because of publisher concerns that lawsuits would be leveled against the company. Also, the pharmaceutical company Eli Lilly was one of the corporations that engaged in crimes and was a large financial contributor to Indiana University. The possible backlash was a great concern. An unredacted version of the book was published in 1983. Corporate corruption, according to Sutherland’s analysis, resulted in civil or administrative violations.

Research in 1979 by Marshall Clinard and Peter Yeager took on the onerous task of establishing a database conducive to exploring and developing theoretical explanations for white-collar crime. Their examination of illegal corporate behavior involved 477 organizations. The results showed that 60% of the largest corporations had at least one legal action. Like Sutherland’s results on corporate recidivism, Clinard and Yeager (1980) discovered that 8% of the corporations committed 52% of all offenses. Repeat offenders that rose to the top included oil, pharmaceutical, and automobile companies, which accounted for half of all violations.

Pharmaceutical companies represent one of the largest groups of corporate offenders. John Braithwaite (1993), in fact, argued this industry has the worst record
of serious corporate crime, particularly at an international level. Braithwaite’s 1984 (reprinted 2013) book, *Corporate Crime in the Pharmaceutical Industry*, revealed bribery as a major problem and that in an examination of 20 of the largest American companies 19 had been involved in bribery. Additionally, he discovered that the marketing of impure, over-strength, and out-of-date drugs, as well as non-sterile product frauds, was widespread.

Pharmaceutical frauds continue to be rampant and may include behaviors like price inflation, kickbacks, or off-label marketing. FBI investigations in 2005 discovered numerous cases of massive fraud by companies, including one of the largest pharmaceutical companies in the world (Benson and Simpson 2009).

In 2015, two companies, Heritage Pharmaceuticals and Mylan Pharmaceuticals, Inc., became embroiled in an antitrust law case after allegedly conspiring to fix the prices of generic drugs. Jeffrey Glazer, the Chief Executive Officer of Heritage Pharmaceuticals, faced at least five criminal charges. In a particularly egregious scheme, the Mylan Corporation obtained the rights to EpiPens in 2009. EpiPens are a hypodermic device that can save the lives of people with acute allergic reactions. When Mylan purchased the rights to the medication a two-pack of EpiPens cost $104. The company then spent almost $8 million lobbying to make EpiPens mandatory in schools and $4 million successfully lobbying for a federal EpiPen law. The company then dramatically increased the price of the medication to $600.

A great deal of corporate pharmaceutical fraud results in overwhelming levels of harm to women. Many of the most serious and common cases target women related to reproductive health care. Unsafe birth control, diet drugs, and medical devices have prioritized corporate profit by exposing women to unacceptable risks (Simpson and Elis 1996). Corporate crime related to reproductive health has an extensive history of causing infertility, cancer, and death.

Eli Lilly, for example, marketed the drug involved in the most notorious medical scandal, Diethylstilbestrol (DES), in the 1940s. DES was advertised as a cure-all for menopause symptoms, contraception, and pregnancy enhancement. Millions of women were prescribed DES from 1938 through the early 1970s, resulting in a generation of daughters who developed a rare form of vaginal cancer (Dodge 2009).

More than 50,000 lawsuits were filed against Wyeth-Ayerst Pharmaceutical after the company minimized the risks of the Norplant contraceptive. Over 5 million women used the surgically implanted capsules worldwide. Though the company denied any wrongdoing, which is usually the case in these types of fraud, the parent company, American Home Products, settled many of the lawsuits, at a cost of over $50 million. Wyeth also faced thousands of lawsuits after the hidden risks of hormone replacement drugs Prempro and Premarin became public.

The companies involved in the highest number of corporate scandals continue to be pharmaceutical companies, financial institutions, and the automotive industry, which shows information from an internet search of the major corporate scandals (see Table 8.1). While the data are anecdotal, the number of incidents and fines demonstrate that corporate crime continues at an alarming rate. Future understanding of corporate crime and how offenders are held accountable will likely reveal that these types of offenses may be increasing, especially because of deregulation under the Trump administration.
Corporate Violence

Historically, corporate crime was viewed as non-violent actions with minor and diffuse harm. This perspective no longer holds true, and scholars recognize violent corporate crimes that include offenses like toxic dumping, unsafe working conditions, and environmental pollutants cause extensive harm. Violent corporate crime is estimated to cost billions of dollars in damages. Superfund sites in America, for example, include almost 1300 areas of toxic waste across the county, and almost 90 of the sites are “unacceptable for human exposure,” which may result in cancer and birth defects (Whitehouse 2017). Love Canal is one of the most familiar toxic sites, used as a dumping area by chemical manufacturers in 1953. Houses, schools, and

<table>
<thead>
<tr>
<th>Industry</th>
<th>Year</th>
<th>Company</th>
<th>Offense(s)</th>
<th>Offense type</th>
<th>Known penalties</th>
</tr>
</thead>
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<tr>
<td>Industrial</td>
<td>2015</td>
<td>British Petroleum</td>
<td>Deepwater Horizon disaster</td>
<td>Civil</td>
<td>$20 billion</td>
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<td></td>
<td>2015</td>
<td>Anadarko Petroleum</td>
<td>Toxic dumping</td>
<td>Criminal</td>
<td>$4 billion</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$5 billion</td>
</tr>
<tr>
<td>Automotive</td>
<td>2015</td>
<td>Volkswagen</td>
<td>Evasion of emission standards</td>
<td>Pending</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2015</td>
<td>General Motors</td>
<td>Safety violations</td>
<td>Civil</td>
<td>$900 million</td>
</tr>
<tr>
<td></td>
<td>2015</td>
<td>Takata</td>
<td>Safety violations</td>
<td>Civil</td>
<td>$105 million</td>
</tr>
<tr>
<td></td>
<td>2018</td>
<td>Fiat Chrysler</td>
<td>Corruption</td>
<td>Criminal</td>
<td>15 months (chief financial officer) 1 year in prison (executive)</td>
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<tr>
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<td>2015</td>
<td>Honda</td>
<td>Safety violations</td>
<td>Civil</td>
<td>$70 million</td>
</tr>
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<td></td>
<td>2015</td>
<td>JPMorgan Chase</td>
<td>Conspiracy to manipulate exchange markets</td>
<td>Civil</td>
<td>$2.5 billion</td>
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<td></td>
<td></td>
<td>Barclays</td>
<td></td>
<td></td>
<td>$1.8 billion</td>
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<td></td>
<td>Royal Bank of Scotland</td>
<td></td>
<td></td>
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</tr>
<tr>
<td></td>
<td></td>
<td>Citibank</td>
<td>Deceptive marketing practices</td>
<td>Civil</td>
<td>$700 million</td>
</tr>
<tr>
<td></td>
<td>2016</td>
<td>Wells Fargo</td>
<td>Improper mortgage lending</td>
<td>Civil</td>
<td>$1.2 billion</td>
</tr>
<tr>
<td>Consumer</td>
<td>2016</td>
<td>Utz Quality Foods</td>
<td>Kickback scheme</td>
<td>Criminal</td>
<td>51 months (purchasing director)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>ConAgra</td>
<td>Distribution of a salmonella-tainted product</td>
<td>Civil</td>
<td>$11.2 million</td>
</tr>
<tr>
<td>Pharmaceutical</td>
<td>2015</td>
<td>Johnson &amp; Johnson</td>
<td>Adulterated medication</td>
<td>Civil</td>
<td>$25 million</td>
</tr>
<tr>
<td></td>
<td>2015</td>
<td>Purdue</td>
<td>OxyContin risks</td>
<td>Civil</td>
<td>Pending</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Turing</td>
<td>Securities fraud</td>
<td>Criminal</td>
<td>Pending</td>
</tr>
</tbody>
</table>

Table 8.1 Corporate crime case examples.
playgrounds were built over the canal and residents became sick – studies have found an elevated risk of certain cancers among the residents there many years after exposure (e.g. Gensburg et al. 2009). Congress passed a special tax on oil and chemical companies to establish the Superfund cleanup projects, but the tax ended in 1995. The Environmental Protection Agency (EPA) has estimated the costs for future cleanups will exceed $300–$700 million annually (Adams 2011). A former EPA general counsel, however, claimed the cleanup of all the remaining sites will cost over $1 trillion (Elliot 2018). The future of financial responsibility for Superfund cleanup is unsettled. In 2017, former EPA Administrator Scott Pruitt transferred $50 million from regional offices to the federal government to ensure more accountability, though his motivation may be questionable (Elliot 2018). Scott Pruitt resigned his position after numerous ethical misdeeds emerged in 2018. Congress continues to introduce bills hoping to hold corporations responsible for the pollution, but future funding for cleanup is elusive at best and many of the sites are likely to remain contaminated.

*A Civil Action* by author Jonathan Harr (1995) and a subsequent movie starring John Travolta resulted in a higher public awareness of the disastrous effects of corporate crimes. From 1969 to 1979 the actions of the W.R. Grace Corporation in Woburn, Massachusetts, brought widespread attention to the violent nature of these violations. A hazardous waste site contaminated the water because of corporate actions associated with toxic dumping. A medical cluster developed in which 12 cases of childhood leukemia (i.e. in youth 15 years old and younger) were diagnosed. Six of the cases of leukemia were located in one census tract, which was almost eight times more than expected (Cutler et al. 1986). By 1986 an estimated 21 children were diagnosed with leukemia and 12 died (Contamination in our communities n.d.). After a lengthy legal battle, W.R. Grace eventually settled with the families. The company also pled guilty in the US District Court to making false statements on waste disposal practices to the EPA (Benson and Simpson 2009; Rosoff et al. 2014).

Financial Crimes

The most comprehensive coverage of financial crime and corrupt banking is the research on the Savings and Loan debacle in the 1980s. Many commentators and scholars have labeled the scandal as one of the “worst financial disasters of the 20th century” (Calavita et al. 1997b, p. 19). According to extensive work by Calavita and colleagues, this time period represented unbridled wrongdoing involving insurance fraud, junk bonds, insider trading, and securities fraud. An extensive analysis of secondary data and 105 interviews with government officials showed that the manipulation of money by the savings and loans associations entailed corporate “collective embezzlement.” The findings included three types of abuse: hot deals, looting, and covering up. Hot deals were land flips, nominee loans, and linked financing. Looting, according to the researchers, was accomplished by the siphoning off of funds by insiders, shopping sprees, and appropriating excessive bonuses. Cover-ups were developed to misrepresent the solvency of the institutions. The estimated costs of the crimes exceeded $500 billion (see also Calavita and Pontell 1990, 1993; Calavita et al. 1997a).
Corporate criminality after the failure of major businesses (including the collapse of Enron, WorldCom, and Adelphi) changed public perceptions of white-collar crime and its level of seriousness. Steffensmeier et al. (2013) noted that corruption scandals contributed to the 1990, 2001, and 2007 economic recessions in the United States. They collected data post-Enron using secondary sources for 83 corporations and 436 defendants from July 2002 to 2009. The researchers found that it was important to distinguish conspiracies committed for the benefit of the company and those for personal benefit. A total of 57 cases were committed for the benefit of the company, while 26 cases were committed primarily for personal gain (including cases of insider trading, Ponzi schemes, and “looting”). Financial losses associated with the scandals ranged from $206,000 to $14 billion.

Conclusion

The extant literature on corporate crime has grown since the work of Sutherland, though empirical research remains scant compared to other areas of criminology. Social and legal perspectives argue that attempts to hold corporations criminally liable have failed (Laufer 2006). The Sarbanes–Oxley Act (SOA) was developed to uncover fraud and raise penalties, but it appears to have only widened the net for discovering small fraud (“Go directly to jail” 2009). The SOA includes a white-collar crime Penalty Enhancement Act that allows judicial discretion for higher penalties, though judges appear reluctant to use harsh sentencing, which undermines specific and general deterrence. Laufer’s (2006, p. 42) reflections on the subject are insightful and telling: “Knowing the history of corporate criminal law, it seems likely that popular writers who tell the ‘inside’ story of Wall Street’s near boundless greed and den of thieves are far too generous in their prognoses for reform.”

Deterrence is one corporate crime area under current exploration and is a fruitful area for future research. The journal Criminology & Public Policy (2016) published an issue exclusive to the topic. Ray Paternoster opens his editorial with a well-chosen and insightful quote by Matt Taibbi: “The world's most powerful investment bank is a great vampire squid wrapped around the face of humanity, relentlessly jamming its blood funnel into anything that smells like money.” This statement may easily be applied to all types of corporate crime. Additionally, an ambitious meta-analysis of corporate crime deterrence discovered that from four areas (law, punitive sanctions, regulatory policy, and multiple treatments) only regulatory policy and studies involving multiple enforcement strategies resulted in some deterrence effect (Schell-Busey et al. 2016). Schell-Busey and colleagues suggested that deterrence policy must include a mixture of agency interventions, including consistent inspections and educational programs.

Numerous studies of guilty corporate executives have demonstrated the common use of rationalization or neutralizations to justify questionable decisions. Sykes and Matza (1957) introduced the idea of techniques of neutralizations that allow a person who might otherwise be law-abiding to engage in criminal behavior. Rationalization, though at times used as a synonym with neutralization, is used after the commission of a bad act (whereas neutralizations come before the action as a way of alleviating anticipated guilt). Michael Benson's (1985) interviews with convicted white-collar criminals found that they justified their actions as everyday practices, denied any criminal intent, and blamed
Who Commits Corporate Crime?

the behavior on mistakes or extraordinary circumstances. Piquero et al.’s (2005) research discovered that students in a MBA program justified taking illegal actions when the corporate climate and attitudes of co-workers endorsed unethical acts. Additionally, their results showed that the respondents used the “denial of injury” neutralization – they justified offending by responding that harms to consumers were exaggerated in the scenarios provided. Participants in the study also showed use of the “denial of responsibility” when they reasoned that the majority of products are safe and a corporation should not take blame for a few bad apples.

Benson and Cullen (2018) provide an excellent overview of the societal and economic culture that promotes white-collar crime in a capitalistic society. Coleman (1987) attributed corporate offending to a culture of competition that is individualistic and universal. The integration of individualism and ongoing financial success results in a never-ending search for the American Dream. In other words, the corporation must continue to be financially successful, hence crimes committed on its behalf, while the executives and workers become ever more greedy for a lifestyle that benefits the elite. The idea that corporate crime goes unpunished is echoed in current research. Ray Paternoster (2016) noted that continued corporate offending is intricately tied to the unlikelihood of punishment. Peter Yeager (2016) agreed that the real and perceived risks of legal penalties for corporate offenses are low.

After several major corporate scandals (e.g. Enron, WorldCom, Tyco, and Arthur Andersen), sentencing for corporate executives was severe. Ken Lay, the chief executive of Enron, may have been imprisoned for 45 years; however, he died before the final hearing. Another Enron employee, Jeff Skilling, was sentenced to 24 years and fined $630 million. Increasing punishment, such as prison time, for corporate offenders may serve as a deterrent, though the expectation of fines is unlikely to hinder offenders who believe they are acting in the best interest of the company and who only see profit as the bottom line. Also, many corporate executives believe the odds of being detected are low. While some executives and corporations are held accountable for serious wrongdoing, in many cases, current sanctions have failed to change behavior. As aptly noted by scholar Peter Yeager (2016, p. 656), obstacles to protecting the public from social harms are “the power of large companies: their organizational complexity and the political prowess that comes from their large financial resources and presumed centrality to economic health.”

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State-Corporate Crimes
Ignasi Bernat and David Whyte

Introduction

Over the last 10 years we have witnessed a never-ending economic crisis. This crisis has provided research on the crimes of the powerful with a huge resource of raw material to study the deep dynamics of state-corporate crimes. In the intervening years we have seen some of the most important global banks collapsing, ecological disasters neglected in the name of economic development, indigenous lands razed for natural resources, car companies defrauding consumers and harming the environment, major cases of tax evasion by notorious politicians and entrepreneurs, and the sacrifice of workers and housing tenants at the altar of profit. All these phenomena are given names that obscure their status as crimes: accidents, spills, disasters, deregulation, incidents, malpractice, abuse, and so on. The task for critical social sciences is to unveil and comprehend the nature of societies in which these crimes are possible. But in order to “see” those phenomena as crimes, we need to be able to explain how they are produced and who produces them.

In this chapter, we set out one approach that some critical criminologists have adopted in order to do precisely that: to uncover the way that the crimes committed by governments and by corporations are produced. This growing body of literature on state-corporate crimes takes as its starting point the mutually reinforcing relationship between state institutions and corporations. It is this approach that this chapter will explore. It begins by revisiting debates on state-organized crime and state-organized violence as a way of framing the debates that followed. The chapter then sets out the key tenets of the state-corporate crime approach, before developing a critical reflection on the literature. Finally, the chapter will conclude by arguing that we need to see state-corporate crime as a normal outcome of the process by which capital accumulation is more generally reproduced through government/regulatory structures.
In his seminal article *State-Organized Crime*, Chambliss (1989) analyzed the routine involvement of state officials in criminal markets: piracy, smuggling, assassinations, criminal conspiracies, selling arms, and state-corporate terrorism. More than a decade earlier, Frank Pearce (1976) had similarly outlined a closely interconnected and mutually re-enforcing relationship that existed between politicians, corporate elites, and organized crime syndicates (see also Beare 2003; Rawlinson 1997; Ruggiero 2000). Pearce and Chambliss argued that the inter-connections between organized crime, political factions, and corporations are long standing and ever-present systemic characteristics of state power. Indeed, a very similar observation that “crimes of the state” and “crimes of the market” do not exist in empirically or ontologically distinct spheres has been made in an emergent literature on political crime (for example, Ross 2003; Turk 1982) and state crime (Green and Ward 2004, etc.).

Beyond the field of criminology, studies of the process of state-building provide some empirical/historical context to the interrelationship between states and criminal markets. Charles Tilly and Thomas Gallant are writers who are both concerned with the centrality of markets in violence to the origins of the nation-state system. Their studies of the processes involved in early state formation both emphasize the centrality of direct violence and the use of warfare to the process of state-making from the Middle Ages onwards. Their work, from different perspectives, shows clearly how the very foundations of the modern state are underpinned by markets in violence.

For Tilly, this process is best characterized as part of a continuum that “[b]anditry, piracy, gangland rivalry, policing and war making all belong to …” (1985, p. 170). This continuum represents a scale of activities that, for Tilly, are analogous to organized crime. If a racketeer is someone who creates a threat and then charges a fee or tax for alleviating or guarding against this threat, then, according to Tilly, this describes precisely a core function of governments. Governments and the security apparatus of the state offer protection from the threat of external invasion, crime, antisocial behavior, terrorism, and so on. For Tilly, a protection racket is maintained by a process of extracting financial support from its citizens (i.e. the economic means to pay for protection); this extraction effort “ranges from outright plunder to regular tribute to bureaucratised taxation” (1985, p. 181). In order to ensure that states have an ongoing capacity for state-making, war-making, and protection, the state must maintain a violent process of extraction. The ability of governments to run an efficient protection racket is therefore closely connected to their ability to legitimately monopolize violence and to fend off rivals. In order to guarantee unhindered and efficient means of extraction, those “outlaws” who continued to trade in and deliver violence had to be brought “inside” the state; they had to be incorporated into the state’s regular military and police forces. This process is summed up by Tilly as follows: “Robin Hood’s conversion to royal archer may be a myth, but the myth records the practice. The distinctions between ‘legitimate’ and ‘illegitimate’ uses of violence came clear only very slowly, in the process during which the state’s armed forces became relatively unified and permanent” (1985, p. 173).

The relationship between violent “outlaw” groups and the emerging nation-states for Tilly was relatively passive – the function of outlaw groups was reduced to that of the outsider that needed to be brought fully “inside” the state. The eradication of outlaws was therefore essentially a process of modernization – the displacement of primitive violent groups by state-organized violence. But for Gallant, markets in violence were much more centrally implicated in the process of state formation: “rather than being archaic remnants
of the pre-modern world, bandits and pirates were ... both the products of and contributors
to the advancement and consolidation of capitalism and modern states.” (1999, pp. 50–51).
Gallant uses the term “military entrepreneurs” to describe the violent bands – including
“bandits” and pirates – who took up arms and stood outside, often directly in opposition to,
state forces. Those military entrepreneurs significantly contributed to the formation of
states in the sense that they provided the basis for the penetration of markets into the most
remote peripheral geographical areas: the borderlands and rural hinterlands. Thus, they
were used for border patrol, as guards to enclose the land, and to facilitate property strug-
gles between elites. They were deployed in remote areas on behalf of states and were used in
wars between competing elites, particularly in the rural hinterlands and on the seas.

Just as military entrepreneurs were key to the penetration of the countryside by states,
the markets in illegal goods these entrepreneurs controlled, together with the proceeds of
banditry, acted to elevate the level of marketization in rural economies. Gallant therefore
ascribes to military entrepreneurs a central and active role in the process of war making and
state-making. Importantly, he also highlights how this role was equally important whether
they operated “inside” or “outside” of regular state forces. Sometimes military entrepre-
neurs were fully incorporated, and sometimes it suited the state to keep them at arm’s length
or at a formal distance whilst employed to do the state’s dirty work. There are comparisons
to be made here with the proliferation of private and para-security to support police and
military forces in modern states, whereby those forces often fill a vacuum of power, act in
“proxy” for states, or more simply supplement state prison capacity, the police and military
forces, and provide a means of extending surveillance (Coleman 2004; O’Reilly and Ellison
2006; Ryan and Ward 1989; Whyte 2003). Just as in the case of the myriad of examples we
could draw upon today (the use of paramilitaries in Colombia or Northern Ireland for
example, Larkin 2004; Stokes 2004), some of Gallant’s military entrepreneurs were never
fully incorporated into state mechanisms, yet remained instrumental as allies or agents of
the state. And just as in the oft-cited example of the Mujahadin alliance with the United
States in Afghanistan, some of Gallant’s military entrepreneurs ended up switching sides in
wars between elites.1

Gallant’s article made another significant contribution in so far as it provided a modified
In this study, Hobsbawm argued that bandits had an organic base in rural peasant commu-
nities and that they could be seen as acting in opposition to feudal elites and state bureau-
cracies. Hobsbawm therefore positioned many of the bandit groups he documented as the
class enemies of landowning and political elites, redefining them as “social bandits.” Gallant
recognizes that his military entrepreneurs (of which Hobsbawm’s bandits can be thought of
as a subset) did play a role in popular insurrections and often had an organic link to, and
enjoyed support from, rural peasant communities. However, his repositioning of bandits as
(in some cases) the allies of elites and (in other cases) as intimately connected to struggles
between elites, meant that the picture was somewhat more complex than that offered by
Hobsbawm or his critics (Blok 1972; O’Malley 1979).

State-Corporate Crime

This ever-present feature of modern capitalist states – the closely interconnected relation-
ship between state/public actors and private actors – is the theme of a growing body of lit-
erature on “state-corporate crime” (Aulette and Michalowski 1993; Friedrichs 1996;
This literature takes the mutually reinforcing relationship between state institutions and corporations (normally large corporations) as the point of departure for its analysis (Kramer et al. 2002). There are three major challenges to criminology that this approach implies. First, by developing an analysis of power relations beyond the immediate circumstances of a particular moment, fixed in time, with very particular circumstances, it takes us beyond a paralyzing fixation that mainstream criminology has with criminal “events,” a fixation that is of limited value because it does not allow us to view the conditions that produced those crimes as rooted in more ongoing and ever-present social conditions of unequal power (Pearce 1976). The state-corporate crime literature thus points consistently to a structure of political economy (i.e. the interplay between politics and the market in societies; Adler 2011) which creates the particular conditions that shape the relationship between states and corporations (Kramer and Michalowski 2005; Kramer et al. 2002). In this sense, the literature seeks to develop an understanding of the social content of the relationship between states and corporations in modern liberal democracies. A similar critical observation is made consistently in feminist analyses of male violence, conceived of as a form of violence that can only be understood as part of an ongoing state of gendered power relations (Walklate 2003, pp. 127–129). Second, moving from event to process poses a difficulty for more statist or administrative criminological approaches, since it shifts the terrain on which we search for who might be held “criminally” responsible. Third, this literature locates the production of crime in the structures of capitalism, not least in the drive for accumulation that shapes the relationship between states and corporations (including the motivations for crimes, the lack of control over industries, inadequate or missing regulatory structures, and the relative impunity granted to corporate actors). The literature that points to “empire crime”2 is particularly illuminating in this respect, highlighting as it does the deep historical origins of state-corporate collusion (e.g. Iadicola 2010, 2011; see also Kauzlarich and Matthews 2006). In many ways, the history of Imperialism is a history of state-corporate crime. Colonial European states all used colonial corporations to do their dirty work: to seize land, to settle colonizing forces, to plunder resources, to impose regimes of non-wage and wage slavery, to establish labor camps, and so on. Such companies were seen as the most expedient means of colonizing Africa because they could administer trade, run local affairs, and conduct military operations without over-exposing the state either financially or politically. History showed that those companies had little moral compunction and embarked upon brutal campaigns of terror wherever they met local resistance to the imposition of regimes, which Patrick Bond (1999) has called “racist capitalist superexploitation.” Such histories reveal to us a central dynamic in the development of Imperialism: modern states have consistently facilitated strategies of capital accumulation that are underpinned by systematic violence and corruption (Litvin 2004).

The term “state-corporate crime” first appeared in 1990 (Michalowski and Kramer 2006, p. 14). Defining state-corporate crimes as “illegal or socially injurious actions that occur when one or more institutions of political governance pursue a goal in direct co-operation with one or more institutions of economic production and distribution” (2006, p. 15), those authors foreground two core features of the concept. First, it directs our attention to deviance as the “outcome of relationships between different social institutions” rather than as discrete acts committed by individuals; second, through focusing upon “the relational character of the state,” rather than viewing either business or government as closed systems, it locates potential for crimes and harms in “the horizontal relationships between economic and political institutions” (2006, p. 21).
The conceptual lens of state-corporate crime has been applied to a diverse range of events and processes, from the explosion of the space shuttle Challenger (Kramer 1992) to the technological underpinnings of the Holocaust (Matthews 2006) and the contemporary seizure of natural resources in occupied Iraq (Michalowski and Kramer 2006). At the global level, international financial institutions such as the World Bank or the International Monetary Fund can play the same role as public institutions or nation-states in facilitating or initiating corporate crimes (Friedrichs and Friedrichs 2012; Wonders and Danner 2002). A variation in the literature points to corporate-facilitated and corporate-initiated state crimes, a modification which brings to light the deliberate nature of corporate crimes and the primary role of capital accumulation in causing state-corporate crimes (Lasslett 2014; Matthews 2006; Whyte 2009).

Beyond State-Corporate Antagonism

In some respects, the emergent literature on state-corporate crime marks an early attempt to bring into criminology fundamental questions about the nature and structure of states. And to delve further into those questions is something that lies outside the scope of this chapter. But it is important to look briefly at debates on the nature and structure of the relationship between the “public” and “private” spheres in order to understand how the state-corporate crime perspective proposes crimes of the powerful are produced.

Indeed, the ways that governments, criminal enterprises, and private corporations interact as “partners in crime” raises the possibility that particular groups and institutions that are normally regarded as existing “outside” of the state can be used to enhance state power. Indeed, we can question the extent to which an institution or group can be considered to exist “outside” the state if it is committing acts on the state’s behalf, or if there exists a symbiotic relationship between “public” and “private” sectors. The distinction between the “private sector” and a “public sector” is one that is defined in law. It is the formal definitions and powers prescribed in law, as well as custom, that decide which institutions are regarded as “public” and which are regarded as “private.” As Louis Althusser put it: “the State … is neither public nor private; on the contrary, it is the precondition for any distinction between public and private” (1971/2008, p. 18).

So what exactly is the state then? The prominent state theorist Bob Jessop (1990) argues that the state is not a “thing” that possesses or concentrates power but an ensemble of institutions and processes that provide a basis for the organization of social forces. Schools, churches, and business organizations, as well as police forces and armies, are part of the ensemble that projects state power. They contribute to a projection of state power by providing leadership and guidance in the dominant morals and political ideas, or they contribute to the institutional ordering of a society. The state mediates power relationships in society through key institutions (workplaces, the family, the market, and so on), and as such the state can be more usefully thought of as a complex of mechanisms and apparatuses that mediate and organize social relations of power. Corporations play a crucial role in this process.

To say that private institutions can be defined as part of the state ensemble is not to say that they are under the spell of governments or that their interests always coincide with those of public institutions. Corporations enjoy some measure of real autonomy from the states – they have their own histories, customs, and belief systems. Indeed, many of the largest corporations in the world today exist on the same scale – in
economic terms – as some national governments, and this makes them formidable power structures in their own right. Corporations have become (in some cases) so powerful that we might argue that the concept of state-corporate crime should include the category of “corporation-facilitated” crime (Lasslett 2014), crimes in which relatively powerful corporations fail to intervene or act with willful blindness in the face of government or state crimes.

We should therefore be very wary of over-simplifying the relationship between governments and corporations as competing sources of power. States and corporations do not have separate, autonomous existence outside of each other and they do not stand in opposition to each other. Neither do they necessarily act in concert with each other. The relationship is far more complex than this. Corporations are given life by the state ensemble: they can only make profits and make investments because of the existence of a complex of rules and infrastructures that give them the ability to act. They are relatively autonomous in the sense that they make their own day-to-day business decisions, formulate their own strategies, and project particular images of themselves to the outside world. But they also require the legal and market infrastructures organized and maintained by states. In this sense, we can say that private corporations exist both “inside” and “outside” of the state. Rather than representing two separate and antagonistic elements of a society, the relationship between public and private in capitalist societies can be understood as a complex and frequently contradictory institutional form through which state power is projected.

Neither does recognizing that private institutions are part of a state ensemble mean that there are not important features that separate the “public” from the “private” sphere. For one thing, there are entirely different mechanisms of accountability applied to each and they can mean a great deal in terms of how we are able to observe or question those institutions. It is this point that brings us squarely back to the issue of state legitimacy. One of the reasons for the constitutional separation of powers in liberal democracies is to ensure that the political system is not corrupted by particular interests and to make sure that private interests are not used to wield political power. This is inscribed in the work of early liberal thinkers like Montesquieu (1748/1989) and Locke (1662/1988) who proposed a clear separation of powers in the state and in the apparatuses of government. Thus, the political sphere is supposed to represent the will of the people, whereas the private sphere is where individuals and institutions are supposed to pursue their own private interests. What this section has argued, however, is that liberal democracies in fact do not operate according to those principles in practice. Moreover, it is not merely the fact that they do not operate according to their own principles that causes problems here, but also the fact that the institutional structure of liberal democracies produces criminal relationships. This is a phenomenon that is not particular to Western liberal democracies or capitalist societies more generally – we can find forms of state-corporate crime in China or the former Soviet Union (Cheng Yang 1995; Orland 1986).

Generally, when we analyze state-corporate crime, we are looking for a flaw or crisis in the system of regulation. In other words, we are impelled to look for a breakdown in the relationship between two, potentially antagonistic, parties (the state and the corporation). Yet, as the literature on state-corporate crime illustrates clearly, often there is no clear antagonism or opposition of interest in those relationships, since those crimes often occur as a result of commonly shared or mutual goals (Aulette and Michalowski 1993; Kramer 1992; Kramer et al. 2002).
Beyond Moments of Rupture

The state-corporate crime framework advances this approach by identifying two types of institutional relationships: those that are state-initiated and those that are state-facilitated (Bruce and Becker 2007; Kramer et al. 2002). It is this duality that the literature uses to explore the full complexity of state involvement in, and contribution to, the circumstances that lead to corporate crimes. In the case of the former – state-initiated crime – state institutions pursue proactive strategies that play a leading role in the commission of state-corporate crimes. Here, the state not only fails to regulate the private sector, but it has a paramount role in fostering the criminal activity that benefits corporations (see, for example, Rothe 2006; Whyte 2007). In the latter case, state-corporate crimes are the result of negligence or inactivity on the part of the states or their regulatory agencies in ways that collusively facilitate corporations in the commission of state-corporate crime. Thus, the state fails to provide the necessary mechanism to effectively balance or control corporate activity. Often, a concept of “nested contexts” (whereby individuals are nested in larger entities such as corporations, which are in turn nested in larger settings such as markets) is introduced to show the complexity of the political economy that shapes the conditions for state-corporate facilitated crime, particularly when failure of regulation is discussed (Aulette and Michalowski 1993; Crucciotti and Matthews 2006; Kramer 1992; Matthews and Kauzlarich 2000).

The concepts of state-initiated and state-facilitated crime are based on a recognition of what might be called moments of rupture in how the public/private relationship is supposed to work (Whyte 2014). In other words, those concepts impel us to look at where public authorities have either colluded in ways that breach the normal constraints of their “public” role, or have failed to protect us, the public, from the harmful activities of the private (corporate) sector. In this sense, scholars have not tended to examine state-corporate crime as arising from the existing political-economic structure itself; they generally assume that the political order is based upon the formal constitutional segregation between public and private spheres. Regulatory collusions and failures occur where this constitutional segregation is “ruptured” (for example when regulators fail to uphold the law because their close relationship with a company has weakened their enforcement strategy). When corporate crime is produced from a “state-initiated” relationship, then it is the material of criminal conspiracy: state servants and agencies involved, “at the direction of, or with the tacit approval of, the government” (Kramer et al. 2002, p. 271). When corporate crime is produced from a “state-facilitated” relationship, it is generally located in the failure “to restrain deviant business activities” or in states’ unwillingness to pursue “aggressive regulation” due to shared state-corporate goals (2002, p. 272).

The state-corporate crime approach has been subject to some critique on the basis that it does not go far enough in revealing the social content of state-corporate crimes. As Tombs (2012, p. 175) has argued, for example, the state-corporate crime literature retains a tendency to focus upon the immediate circumstances of:

- discrete joint ventures between corporations and states, either at specific moments or towards specific ends, thus abstracting these from a more generalized set of social relationships, which are on-going, enduring and more akin, in fact, to a process.

Similarly, Lasslett (2010, p. 212) has noted that this literature is characterized by its inability to concretize state-corporate crimes as part of a broader system of production and
“orient the researcher to less evident, but extremely important social realities that inform
the crimes of the powerful.”

Both Tombs and Lasslett make a powerful case. State-corporate crimes are “crimes of the
economy” (Ruggiero 2013) in the sense that their circumstances are rooted in a classical
academic understanding of the human consequences of shifts in political economy – spe-
cifically the political economy of markets – that are shaped and coordinated in a global
economy (Crucciotti and Matthews 2006). The abstraction that both Tombs (2012) and
Lasslett (2010) point to in their critique of state-corporate crime, however, is something
beyond the observable features of political economy. They are concerned with the way that
particular approaches to studying political economy fail to recognize the larger interplay
between corporations and governments.

Indeed, much of the scholarship in what Lasslett (2010) calls orthodox studies of crimes
of the powerful tends to develop its analysis around a particular flaw or problem in the
institutional relationship between the “state” and the “corporation,” or what we call in
the discussion that follows, a regulatory pathology. Indeed, it is this understanding of the
regulatory process that constitutes a primary example of the tendency to abstract social
relationships that those previous critiques have identified.

Discussion

The implication of what we are arguing here is that the state-corporate crime approach use-
fully draws attention to some kind of constitutional flaw or breakdown in the relationship
between public (state) institutions and private (corporate) institutions. It is this tendency in
the literature to focus upon what might be called moments of rupture in the constitutional
public/private relation that leads us to analyze state-corporate crimes in a particular way,
impelling us to look at obvious, observable situations where public authorities have either
colluded in ways that breach the normal constraints of their “public” role, or have failed to
protect us, the public, from the harmful activities of the private (corporate) sector (Bernat
and Whyte 2017; Whyte 2014).

We therefore argue that state-corporate crime should not be pathologized. That is to say
that state-corporate crimes are not necessarily accurately described as “wrongful interac-
tions” because they are not necessarily deviations from a normal social path or social state
in which a “better” relationship between government and corporation can guarantee pro-	ection from the process of capital accumulation. Rather, corporate crimes are better under-
stood as interruptions or unplanned phenomena that arise from the normal conditions of
doing business. In order to fully understand the formative conditions of state-corporate
crime, it is not enough to look to regulatory pathologies; it is not enough to limit our anal-
ysis to the empirical conditions of regulatory “collusion” and “failure.”

State-corporate crimes cannot be explained by a breakdown in the regulatory function of
the state; they occur not because the state is disobeyed, but either because the state was
obeyed, or merely because the actors involved conform to a pattern of social rela-
tions – embedded in particular social and economic practices – that pre-date the immediate
conditions of the criminogenic “event” (an “event” with its origins in particular decisions
and actions, or non-decisions and inactions, of state or government institutions).

How, then, could we think about the deeper architecture of corporate power in order
to take us beyond the immediately observable conditions of those regulatory pathologies?
We approach corporate crime and its regulation as a distillation of a range of social relationships, institutions, and practices that exist prior to the immediately observable conditions and relationships that produced the criminal event. In doing so, this shifts our focus away from the moment of rupture toward a concern with recovering the social content and the historical context of those immediately observable relationships. We therefore need to think through the following research questions when we come across state-corporate crimes: what are the normal conditions of capitalist systems of production that produced those crimes; and what forms of intervention can we take that might alter the normal conditions that produce state-corporate crimes? If we are limited to dealing with the conditions of “rupture” then all we can do is offer solutions that will allow the system to “self-correct” rather than dealing with the conditions that produce state-corporate crimes in the first place.

We therefore note at this stage something that few of the state-corporate crime scholars we cite would disagree with: that states or governments do not merely facilitate or initiate criminal and harmful practices. Rather, capitalist states produce the entirety of the social conditions that enable criminal and harmful practices to occur. Corporate crimes emanate from an architecture of power in which states guarantee corporations various privileges and infrastructural capacities. Governments establish the juridical and administrative framework for corporations, provide transport and communication infrastructures, and organize diplomatic relationships with states to enhance opportunities for import, export, investment, and so on. They also help to constitute capital, commodity, commercial, and residential property markets; help to produce different kinds of “human capital”; constitute labor markets; regulate the employment contract; constitute corporations through the rules that permit particular forms of ownership; specify the rules of corporate liability; establish and maintain fiscal systems, and so on (Tombs and Whyte 2015).

The corporation, in the sense that it is established formally, is permitted through its legal and political status to structure its activities in particular ways. Those include: its ability to trade as a separate entity; its ability to structure ownership in particular ways; its ability to attract investment through a range of incentives, and so on. Those privileges are generally guaranteed by the rules of incorporation in a given national state. Corporations are normally registered by the state for commercial purposes and are granted a legal identity. This legal identity enables corporations to exist as an entity wholly separate from the individual identities of its owners or stockholders. It is this identity that enables corporations to assume a status as holder of particular rights, to own property, and to exploit particular privileges such as “limited liability.” As part of this process of incorporation, companies are permitted to establish complex ownership chains in which their operations are spread across a number of “formally separate” companies.

By foregrounding this deeper, constitutional, relationship, we are beginning to probe the a priori – historically constituted – architecture of state-corporate power as part of what Tombs calls “a more generalized set of social relationships.” In this sense, we need to place what Lasslett calls, “a broader system of production,” organized around a process of capital accumulation in capitalist economic systems at the centre of our analysis. In order to do so, we see the observable institutional relationship between “state” and “capital” as being caused by a broader regime of permission and therefore as an outcome of the processes by which capital accumulation is more generally reproduced through regulatory structures (Bernat and Whyte 2015, 2017). It is this understanding that can more fully illuminate the social content of state-corporate crimes.
Notes

1 To the extent that those “mujahadin” who affiliate themselves with al Qaeda do exist in a recognizable organized form – and there are debates about the extent to which al Qaeda can be said to exist in a conventional sense, with some form of internal coherence (Burke 2004) – there are groups of armed fighters associated with al Qaeda that in the past enjoyed a close relationship with the US state for many years, particularly when both had a common interest in fighting a war against the Soviet-controlled government in Afghanistan and eventually rebuilding the Afghan state.

2 The concept of “crimes of empire” seeks to place processes of colonialism and Imperialism at the center of our understanding of state crime. Thus, as Iadicola (2010) notes, war crimes, crimes against humanity, and state-corporate crimes at the global level are part of the process of empire.

References


Blurred Lines: Collusions Between Legitimate and Illegitimate Organizations

Wim Huisman

Introduction

“In traditional crime investigations, the police are searching for the criminal, but in cases of white-collar crime they are searching for the crime,” Alvesalo quotes a police investigator as saying (Alvesalo 2002, p. 158 as cited by Friedrichs 2009, p. 278). This quote grasps one of the key features of white-collar crime: the ambiguities in defining what constitutes a “crime” in criminalizing harmful business conduct. In no field of study in criminology is the notion of criminalization and the regulation of potential harmful activities and conduct of greater importance than in the study of white-collar crime. As is widely known, Sutherland’s main message in coining white-collar crime is that we should not limit the definition of crime to criminal offenses, but should include violations of civil and administrative law regulating business (Sutherland 1949). While this position was not without controversy (Tappan 1947), critical criminologists later scrutinized any definition of white-collar crime based on the law. Especially in a globalizing world, multinational corporations and transnational business activities can escape the boundaries of any domestic legal system. This leads to the question: “Must we use the law to draw the line?” (Nelken 2002).

Such ambiguity about the defining criterion for criminalization might explain why various adjectives are being used to indicate norm transgression in the field of business activities: lawful versus unlawful, legal versus illegal, legitimate versus illegitimate, and licit versus illicit (Paoli and Vander Beken 2014). Although there is considerable overlap in the meaning of these adjectives, namely being in accordance with law or not, each adjective also has a different connotation. According to the Merriam-Webster dictionary, the term “lawful” may apply to conformity with law of any sort, the term “legal” applies to what is sanctioned by law or in conformity with written law, “legitimate” may apply to a legal right or status but also, in extended use, to a right or status supported by custom or accepted standards, while “licit” applies to a strict conformity to the provisions of the law and applies especially to what is regulated by law.1 Considering the debate on the need for a hard law-based definition of crime in criminalizing white-collar crime, in this chapter the dichotomy of legitimate versus illegitimate will be mostly used in trying to identify the line between the two.
Adding to the conceptual conflation is the question to what object should these adjectives be attributed: to actors or to activities? Daily speech as well as academic literature refer to, for instance, (il)legitimate activities as well as (il)legitimate organizations. A core question in the criminological study of corporate crime – crimes committed by or on behalf of corporations – is whether these crimes should be viewed as individual or organizational agency (Friedrichs 2009). Organizations are qualified as illegitimate when their activities are illegitimate. For business organizations this would mean that their goods or services are not in accordance with the law as such or that the way these products are produced or marketed is not in accordance with the law. Goods and services are traded on economic markets where buyers and sellers meet. For this reason, markets for illegal goods or services (such as narcotics and prostitution, depending on regulation) might be referred to as “illegal markets” (Beckert and Dewey 2017). So what is legitimate or illegitimate: organizations, products, or markets?

Finally, from an academic point of view, any dichotomy should be viewed with suspicion, especially when such dichotomy is used to create a moral order and to distinguish right and wrong. According to the dichotomy, actions – and therefore their actors – are either legitimate or illegitimate. “A little bit legitimate” does not exist. The ultimate metaphor for creating such a moral order is that of the underworld and the upperworld. The underworld is a strong and often used metaphor for the world of crime and criminals, for it allows us to contrast the underworld with the realm of us, law-abiding citizens, living in the “upperworld” (Galeotti 2001; Van Duyne et al. 2002). It allows us to neatly order society into two categories: the good and the evil. The upperworld–underworld divide is also reflected by the existence of separate schools in criminology, whereby scholars study either white-collar crime or organized crime. Yet, this metaphor for differentiating white-collar crime and organized crime is also highly contested in academia, for it is a false dichotomy. In reality, the lines between the legitimate and the illegitimate are blurred and the legal/illegal divide should better be viewed as a continuum with many shades of gray between them. In light of this, various models have been suggested for understanding the intersections and interfaces between legal and illegal actors and between legal and illegal markets (Passas 2003; Paoli and Greenfield 2017).

The aim of this chapter is to review the research on collusions between legitimate and illegitimate organizations. Based on previous research and theorizing in criminology, this chapter tries to answer the following question: what are the differences and similarities of legitimate and illegitimate organizations? For this, the chapter will discuss organizational characteristics and organizational activities. Organizational characteristics include: organizational strategy, organizational structure, and organizational culture. This chapter focuses on business organizations whose activities lie in the area of the supply of goods and services – and the markets on which these goods and services are traded. This chapter will end with some conclusions on the blurred lines between legitimate and illegitimate organizations.

**Characteristics of Legitimate and Illegitimate Organizations**

A number of organizational characteristics have been identified in corporations that break the law (Huisman 2016). Also, certain organizational characteristics of criminal organizations have been attributed to the purely illegal nature of their business (Albanese 2011). According to organizational science, an organization's strategy, structure, and culture are
key elements in any organizational design (Morgan 2006). Strategy refers to the goals of an organization and the means and processes by which it aims to achieve these goals. Structure refers to the way the corporation is organized and the division of tasks and responsibilities between the organizational members. Culture refers to the set of beliefs, values, and norms that represents the unique character of an organization, and provides the context for action in it and by it (Morgan 2006).

In white-collar crime criminology, criminogenic properties have been attributed to these organizational characteristics in order to explain crime committed within or by otherwise legitimate organizations. Especially for the study of corporate crime, insights from organizational sciences were introduced in criminological frameworks. “Corporate crime is organizational crime, and its explanation calls for an organizational level of analysis. […] The task for criminologists is to identify and examine the organizational factors that account for the illegal and/or socially harmful acts of individuals within corporations on behalf of the corporations themselves” (Kramer 1982, pp. 79–80). In the study of organized crime, these same organizational elements have been used to understand the dynamics of criminal organizations (Albanese 2011; Paoli 2003).

**Organizational Goals and Strategy**

An organizational strategy tells us what the goals of organization are and by what means the organizational members should attain these goals. A strategy is “the determination of the long-term goals and objectives of an enterprise, and the adoption of courses of action and the allocation of resources necessary for carrying out these goals” (Chandler 1962, p. 13). In the allocation of goals and means, motivation and opportunity for corporate crime can be found.

According to some scholars, the goal-seeking character makes organizations inherently criminogenic regardless of what the goal is (Box 1981; Gross 1980; Punch 1996). The goal-seeking nature itself provides organizational members with a reason to violate laws in circumstances when this violation would be beneficial for the achievement of the organizational goals. The latter is particularly powerful when corporate strategy puts a strong emphasis on attaining goals and little on using the appropriate means. In these circumstances, the risk exists that the ends will justify the means. “Whatever the goals might be, it is the emphasis on them that creates the trouble” (Gross 1978, p. 209). In this view, it is not so much the nature of the goals that is criminogenic, but the pressure to attain them. Criminologists have connected criminological strain theory to organizational strategy, explaining corporate crime by blocked or strained goal-attainment (Passas 1990; Wang and Holtfreter 2012). Overly ambitious goals, scarcity of resources, and ambiguity about appropriate means are relevant variables in such strain theory explanations of corporate crime (Agnew et al. 2009).

Other scholars attribute particular risk to the goal of profit-making, which differentiates for-profit organizations (companies, business enterprises) from non-profit organizations (Barnett 1981). Numerous studies have suggested that the pursuit of profit is the single most compelling factor behind corporate crime (Kramer 1982; Slapper and Tombs 1999; Shover and Hochstetler 2006). The underlying idea is that in capitalist economies, self-interest and the effort of striving for maximum wealth is a dominant value and cultural goal, of which attainment is operationalized and measured in the amount of profits gained (Coleman 1987).
The pursuit of profit is what legitimate and illegitimate organizations have in common. However, it is the organizational strategy that differentiates between organizational crime and organized crime, or between legitimate and illegitimate organizations. Legitimate corporations have an organizational strategy in which they try to attain profit goals by legitimate means, although they sometimes find themselves in situations in which they opt for illegitimate means. In contrast, illegitimate organizations set out to use illegitimate means for making a profit, such as trafficking narcotics. So, it is the lawfulness of the envisioned means to achieve goals that separates legitimate organizations from illegitimate organizations, and corporate crime from organized crime.

While this divide in organizational strategy may seem obvious and clear, in reality there may be a gray area. On the one hand, when legitimate corporations opt for illegal means for solving certain problems that block or challenge goal attainment, they may do the same when these problems reoccur. Alternatively, they may simply get used to the taste of making profit in an illegal manner. As far as these illegitimate business activities become structural and even come to dominate the overall business activities, the legitimate corporation moves along a continuum toward being an illegitimate corporation, and the nature of its illegitimate behavior also transforms from corporate crime to organized crime. On the other hand, organized crime groups make use of and set up shell companies to create a legal façade or to be able to launder their criminal proceeds. For maintaining these purposes, these shell companies may undertake legitimate activities that become profitable on their own.

As illegitimate organizations are also driven by profit and deploy courses of action and allocate resources for this purpose, economic models have become popular to understand and explain organized crime. In this approach, organized crime had been redefined as “illegal enterprise” (Haller 1990). Economic models (as opposed to hierarchical and ethnic-cultural models of organized crime) describe organized crime as being governed by business and economic considerations and by market dynamics (Albanese 2011; Le 2012; Williams and Godson 2002). Williams and Godson (2002) argue that criminal organizations will behave and think according to rational business needs. They will consider factors such as new product opportunities, changes in the market, profit margins, competition, and risk management (Williams and Godson 2002).

This popular analogy between organized crime groups and business enterprises also has its limits. Kleemans criticizes the theoretical foundations of the economic analysis of organized crime since two key explanatory principles, of “homo economicus” and of “efficient markets,” do not seem to fit the empirical phenomena to be explained (Kleemans 2013). The findings from the Dutch Organized Crime Monitor – an ongoing research project based upon systematic analysis of extensive police investigations into organized crime – highlight social embeddedness, social relations, work relations, leisure activities and sidelines, and life events shaping involvement in organized crime and developments in criminal careers, as well as manipulation and violence embedded in social relations. The latter demonstrate that offender behavior is not so much driven by market mechanisms (or the “invisible hand”), but rather by the “visible hand” of social relations, and the “visible hand” of manipulation and violence (Kleemans 2013). And according to Paoli, the Italian mafia’s growing involvement in entrepreneurial activities does not mean that they subscribe to the rules of modern capitalism (Paoli 2003, p. 154). Especially in the role of violence, organized groups differ from business enterprises. Violence constitutes one of the routine resources employed by organized crime groups to gain or maintain their market positions and to increase the competitiveness of their commercial enterprises (Paoli 2003, p. 155).
Organizational Structure

Various aspects of organizational form and structure are related to common explanatory factors for corporate crime such as: the size and complexity of corporations, the levels of hierarchy and autonomy of subunits, and the allocation of responsibility and accountability along with lines of internal control (Slapper and Tombs 1999, p. 126). Similarly, organizational structure has been identified as an important factor in understanding organized crime (Le 2012).

Size and Complexity

Research on the relation between organizational size and complexity and organizational law-breaking is equivocal (Huisman 2016). On the one hand, the complexity of an organization is seen as a potential contributing factor to misconduct and fraud. Complex organizations are, in general, more difficult to control and generate a diffusion of responsibility, which may create ambiguity with regard to desired behavior or opportunities for offenses (Van Erp 2018). On the other hand, these organizations may have the capacity and professionalism to set up specialist compliance management departments that safeguard corporate compliance and prevent organizational law-breaking. A limitation of most criminological research into corporate crime is the dominance of case studies of law-breaking in very large corporations, as these draw most attention from media and law enforcement (Shover and Hochstetler 2006). There is much less research on small and medium-sized enterprises (SMEs), raising the question whether the findings on complex organizational dynamics as causes of corporate crime are also valid for explaining law-breaking in SMEs.

Except for some rare cases, such as those concerning the banks BCCI and Banco Ambrosiano (Passas 1996; Punch 1996), it is in a way obvious to expect that illegitimate organizations do not have the size of large corporations. Large organizations are more visible, while illegitimate organizations want to stay below the radar of law enforcement. As illegitimate organizations may not be officially registered and may not keep employee records, the actual size of illegitimate organizations will be hard to determine. Also, the demarcation of the organizational boundary may not be clear. For instance, is the Sicilian Cosa Nostra one criminal organization, or should every cosca (clan) be counted as one? Notwithstanding these issues, Paoli found that Italian mafia organizations can have over a thousand affiliates equaling the size of a large corporation (Paoli 2003). In short, size does not seem to be a relevant variable in trying to demarcate the lines between legitimate and illegitimate organizations.

Organizational Structure

A central dogma in organizational sociology is how to optimally align an organizational structure to the organizational strategy and the organization's environment (Mintzberg 1977). Founding fathers such as Weber viewed the bureaucratic type of structure as ideal for modern corporations (Weber 1922). Until the mid-twentieth century, larger companies generally followed this functional form, which resembles a pyramid with integrated levels of management (Chandler 1962). In such a centralized structure, decision-making power is concentrated in the top layer of management, and tight control is exercised over departments
and divisions. Activities are divided into specialized departments with unique functions, but department heads report to a chief coordinator who continuously reconciles the sub goals of each department (Caves 1980). Efficiency is achieved by a fixed division of tasks and a limited autonomy of the execution of these tasks, while being guided by hierarchical supervisions and detailed rules and regulations (Dugan and Gibbs 2009).

With economic growth and globalization in the second half of the twentieth century, and the subsequent opening up of new markets, multinational corporations faced higher degrees of external and internal uncertainty. Therefore, many corporations shifted to a more decentralized, independent structure referred to as the corporate multidivisional form (Chandler 1962; Dugan and Gibbs 2009). In such a decentralized structure, decision-making power is distributed, and the departments and divisions have varying degrees of autonomy. In these loosely coupled systems the number of hierarchical levels is decreased and subunits are permitted more autonomy (Keane 1995).

Both ideal types in organizational sociology (bureaucratic and loosely coupled systems) have been associated with risks of rule-breaking and white-collar crime. The rigidity of bureaucratic structures might create strains at the middle-management level, when top managers put high pressure on attaining set goals while limiting the resources to achieve these goals (Clinard 1983). Furthermore, the long lines between the shop floor and executive offices might provide the opportunity to diffuse responsibilities for rule-breaking. Subsequently, multiple hierarchical levels and highly divided structures can create barriers to the discovery or reporting of illegal activity (Dugan and Gibbs 2009). In a loosely coupled system with great autonomy for subunits, a parent company might not be attentive to illegitimate practices of distant subsidiaries. Furthermore, decentralization and autonomy can create institutionalized “willful blindness” and mobilize techniques of distancing and neutralization, making corporate crimes more possible and more likely (Tombs 1995, p. 141). Also, a very loosely coupled system might lack internal control, which can leave it vulnerable to illegal behavior.

While each organizational form can bring its own criminogenic risks, more generally, a “misfit” between the way an organization is structured and the challenges an environment brings for meeting regulatory requirements can bring unintended noncompliance with such regulations. Organizational structures may, however, not only facilitate crime by organizational failure. Organizational structures can also function as the weapon for corporate crime (Wheeler and Rothman 1981) – in other words, not as the environment for misconduct, but its purposive instrument (Van Erp 2018). Such misuses of organizational structures are especially found for purposes of laundering the proceeds of illegitimate business practices. For instance, through case studies of corporate bribery in international businesses and corporate tax fraud, Lord et al. (2018) reveal how the legitimacy and anonymity of corporations provides cover for illicit practices, and how third-party professionals facilitate these. In a similar fashion, legitimate organizations may be misused to launder the proceeds of organized crime. Further, decoupling may be used to distance or even outsource business activities that have a high(er) risk of not being in accordance with the law (Keane 1995). This implies that a corporation may be able to uphold its public image of being a legitimate organization by creating an illegitimate shadow corporation, as was standard business practice in the Enron accounting fraud case (McLean and Elkind 2004).

The significance of organizational structure in organized crime is demonstrated in numerous studies, which have also documented the changing operational structure of organized crime groups from hierarchies to loose networks (Le 2012). The United
Nations Office on Drugs and Crime (UNODC) suggested five models of organized crime: standard hierarchy, regional hierarchy, clustered hierarchy, core group, and criminal network (UNODC 2002). The standard hierarchy – the “most common form” (UNODC 2002, p. 34) – is characterized by a sole leader, a distinct chain of command, and clearly defined roles. Regional hierarchies have similar characteristics to standard hierarchies but differ in the decentralization of power to local leaders to wield considerable independence and autonomy over a specific geographical region. A clustered hierarchy consists of smaller groups that operate under a central coordination body. Core groups are unstructured groups of organized criminals surrounded by a larger network of associate members. Criminal networks are highly adaptable and fluid networks comprised of individuals with various skills and characteristics, who are recruited for the purposes of particular jobs.

Like that of early corporations, the organizational form of traditional organized crime groups is often depicted as a bureaucracy, with a strong emphasis on hierarchy. Cressey (1969) introduced the bureaucratic model in his study of Italian American criminal organizations – most notably, La Cosa Nostra. The official ruling structure of the Sicilian Cosa Nostra is similar (Paoli 2003, p. 40). That said, there is a distinct trend in organized crime research away from studies on bureaucratic, hierarchical structures to loosely organized, flexible, criminal networks (von Lampe 2005). This is a result of empirical research into the organization of organized crime, while it also flows from organization theory and the analogy to legitimate business enterprises as discussed above. Illegitimate organizations follow similar principles to legitimate organizations for designing optimal organizational structures to meet organizational goals in a particular environment. Again, organization structure may be dependent on the organizational strategy and the environment in which the criminal organization operates. Kleemans and Van de Bunt suggested that criminal organizations involved in traditional racketeering activities (which require having control over a certain geographical area or branch of industry) can be organized in a hierarchical, military-like manner. However, criminal organizations involved in trafficking of contraband on transnational and highly volatile international markets need to be organized in flexible and fluid networks (Kleemans and Van de Bunt 1999).

Diffusion of Responsibility and Internal Oversight

A key criminogenic element of organizational structures is the diffusion of responsibility (as mentioned above). Long lines of hierarchy can be used by executive officers to deny knowledge and therefore to deny responsibility of illegal practices occurring on the shop floor to meet the ambitious goals set by the same executives. The recent diesel emission fraud scandal at Volkswagen and other car manufacturers appears to be a very good illustration of this. When the fraud was uncovered, Volkswagen’s Chief Executive Officer (CEO), Martin Winterkorn, denied knowing anything and blamed the fraud on a handful of “rogue engineers” (Benson and Simpson 2018, p. 42). Likewise, top management at a parent company might claim not to be responsible for the actions of autonomous subsidiaries in which they might even have a minority share. Subcontracting partners might even be used to designate a scapegoat “when shit hits the fan” (Keane 1995). Vice versa, lower-ranking employees may use hierarchical complexity or subunit autonomy to escape oversight, to claim they were just
following orders, or to claim that they are just a cog in the machine and missed the bigger picture of the organization’s illegal practices.

Executives and employees of legitimate organizations may seize the opportunities for diffusing responsibility provided by the organizational structure when they find themselves in situations where they feel the need to break the law to attain corporate goals or when such rule-breaking is detected. As crimes are at the core of the business activities of illegitimate organizations, diffusing responsibility and escaping accountability need to be built into the organizational design. For legitimate organizations, on the other hand, denying responsibility is only necessary when denying the illegitimacy of controversial business activities has failed. As law enforcers first need to “search for the crime” (see quote by Alvesalo at the very beginning of this chapter), denying the unlawfulness of business activities will be the first line of defense in many white-collar crime cases. For the criminal activities of illegitimate organizations — such as drug trafficking or extortion rackets — this might not be feasible. The ultimate defense then is escaping detection altogether, and the organizational structure needs to facilitate this.

Research into organized crime shows that illegality influences organizational form as actions and their actors need to be hidden. And while organized crime groups are sometimes presented as regular business enterprises (Albanese 2011), legitimate corporations may also adopt organizational forms of organized crime when law-breaking becomes embedded in their business practices. When corporate crimes are embedded within the firm’s social and professional environment, organizations can collaborate to commit and conceal crime (Bertrand et al. 2014; Lord and Levi 2017). The perspective of networks can also be applicable for understanding such cases of corporate crime (Greve et al. 2010). According to Van Erp (2018), this perspective can be highly valid for the explanation of inter-organizational illegal activities, such as cartels and illegal price fixing (Baker and Faulkner 1993). Jaspers explicitly draws comparisons to organized crime when trying to explain the longevity of such business cartels (Jaspers 2017). Just like in organized crime, a challenge for business cartels is how to organize collective illegal activities without the use of formal control, such as binding legal contracts or arbitration. While one might expect that a lack of formal legal control leads to mutual conflicts and opportunistic behavior resulting in short-lived cartels, firms often manage to continue their illegal conduct for years. Jasper shows how informal social controls and non-violent forms of dispute settlement, found in organized crime literature, are also common in business cartels. As in organized crime, social relations and the strengthening of these by mutual dependency contribute to the building of trust within the illicit network (Jaspers 2017).

Organizational Culture

Organizational culture is very difficult to define, operationalize, and measure. Finding a causal relationship with corporate crime is therefore even more difficult. Yet, there is widespread recognition that organizations have their own, distinctive culture and that this culture matters in explaining crime and wrongdoing by organizational members. Various scholars have tried to assess the characteristics of such “criminogenic” corporate cultures (Cohen 1995; van Rooij and Fine 2018). The most relevant question for the purpose of this chapter is: do the organizational cultures of legitimate and illegitimate organizations differ?
Ethical Versus Criminogenic Cultures

The opposite of a criminogenic organizational culture would be an ethical organizational culture. Organizational ethical culture is a specific dimension of organizational culture that describes organizational ethics and predicts organizational ethical behavior (Key 1999). This assumed relation between ethical culture and ethical conduct has been tested using various validated models, such as the Ethical Climate Model (Victor and Cullen 1988) and the Corporate Ethical Virtues Model (Kaptein 2011). Most dimensions of these models are strongly related to self-reported unethical conduct and rule-breaking (Gorsira et al. 2018; Kaptein 2010, 2011). This suggests a continuum, with on the one side companies with highly ethical cultures and on the other side companies with unethical cultures. Previous research shows that especially on the latter side, rule violation could be expected (Gorsira et al. 2018; Kaptein 2010, 2011; Peterson 2002). In contrast, a strong ethical culture would create a moral threshold for managers and employees, preventing them from getting involved in law violation and other unethical conduct. Research shows that a company culture that promotes integrity increases the chance of a successful anticorruption program (Bussmann et al. 2016) and that effective ethics management reduces illegal behavior (Trevino et al. 1999).

Corporate cultures can change. Changing criminogenic corporate cultures into ethical corporate cultures has become a priority in high-level corporate crime cases and for which the conditions of a deferred prosecution agreement are used, in the United States as well as other Western countries (King and Lord 2018). This process of making organizational cultures more ethical is still poorly understood (Van Rooij and Fine 2018), while elements of the reverse process have been better theorized in criminology. Sutherland (1949) viewed criminal behavior as a result of social learning processes. Not only the techniques to execute illegal practices but also the motivations and rationalizations for these practices are transferred among colleagues and peers. The LIBOR fraud case, in which bankers learned from each other how and why to rig the LIBOR interest rate, provides a recent and powerful example of this (Benson and Simpson 2018). Coleman (1987) described the processes of normalization of deviance within organizations that create a moral numbness of employees to the unethical aspects or harmful consequences of their actions when they become part of daily routines. Normalized deviance is deviant behavior that is not recognized by actors as being deviant. Even a process of legitimization may take place, blurring the separation between what is right and wrong, legitimate and illegitimate. Legitimization has been described as “the process whereby certain sorts of action and actors in social settings such as organizations become imbued with legitimacy – that is, that they exhibit a sense of propriety, are correct, and according to rule, whether these are formal or more informal” (Clegg et al. 2005, p. 500). As the definition suggests, the process of legitimization contributes to the formal or informal transformation of categories and may help justify why something illegal may (within the given setting) be seen as acceptable and even legitimate (Pina E Cunha and Cabral-Cardoso 2006, p. 215). When illegalities become a structural and substantial part of standard business practices, organizations slide further down the legitimate–illegitimate continuum.

At the end of this continuum, the organizational cultures of traditional organized crime, such as Italian mafia and Japanese Yakuza, have been extensively studied and described. Moreover, criminal organizations are defined by their cultures in one of the three traditional models used to define organized crime (besides hierarchical and economic models; Albanese 2011). These criminal cultures make members aware of their outlaw condition,
sometimes even after symbolic rites of initiation. This notion may, however, not be devoid of an inner sense of morality, but in this case morality is oriented toward the in-group. The group may even view itself as more virtuous than the society as a whole (Pina E Cunha and Cabral-Cardoso 2006). In contrast, the fluid networks found in contemporary studies of organized crime may lack coherent and deterministic systems of shared values and beliefs, making organizational culture less relevant to understand these contemporary forms of organized crime.

The Tone at the Top

Referred to as “the tone at the top,” it is generally assumed that organizational leaders play a crucial role in the formation of organizational cultures. Through various mechanisms, they have a strong influence on the organizational culture: the issues that capture the attention of leaders (what is criticized, praised, or asked about), the way they respond to crisis (as crisis tests what the leader values and brings these values to the surface), their role modeling and signaling behavior (action speaks louder than words), the allocation of rewards (rewarding is a powerful instrument to communicate desired behavior), and the criteria they use for selection and dismissal (showing what is important and what is not; Schein 1983, 1992). This means that personal morality and personality traits of organizational leaders must have an impact on the organizational culture, even when this is a criminogetic culture. However, individual characteristics of executives have received little attention in white-collar crime criminology. White-collar crime is generally seen as strongly determined by the specific criminogenic context of businesses and industries, in which individual differences have relatively little importance or even relevance for understanding white-collar crime involvement (Braithwaite 1984; Coleman 2002; Sutherland 1949). Only recently have white-collar crime scholars shown an increasing interest in the psychological make-up of white-collar offenders (Benson and Manchak 2014). Two propositions can be made that are relevant for this chapter: (i) the same personality traits of corporate leaders predict both business success and corporate crime and (ii) leaders of legitimate and illegitimate organizations share the same personality traits.

Research on personality traits of white-collar offenders reveals increasing evidence of particular personality traits and psychological disorders among white-collar offenders. Especially elevated levels of narcissism and psychopathy are found in white-collar offenders (Johnson et al. 2012; Ragatz et al. 2012; Rijsenbilt et al. 2013). Notwithstanding the relevance of such findings, these white-collar offenders might not be the same as the executives setting the tone at the top of a criminogenic organizational culture. Bucy et al. (2008) found subtypes of white-collar offenders, each with particular personality traits, such as “leaders” and “followers” – the former having higher levels of narcissism.

Babiak and Hare (2006) found higher levels of psychopathy in CEOs of large corporations compared to the general population. Psychopathy is a multifaceted personality profile that includes superficial charm, insincerity, egocentricity, manipulativeness, and narcissism, but the core characteristics are lack of emotion and remorse. Some of the characteristics of psychopathy emulate those features that make a successful businessperson. Psychopaths are intelligent and can be charming but they lack a sense of morality and do not care about others, plus they tend to be capable of focusing very intensely on their objectives (Perri 2011). The ability to charm others and to make difficult decisions without being overly bothered by how their decisions will affect others can be advantageous in a corporate
boardroom. However, managers with psychopathic traits can also produce harm to the corporation. Although no direct relation with corporate crime has been established yet (except for Lingnau et al. 2017), studies do show that these psychopathic traits of leaders impact organizational culture, leading to a culture characterized by unethical values, bullying, and fear (Boddy 2017; Valentine et al. 2018).

Similar research on the executives of illegitimate organizations is even more scarce. Reports drafted by clinical psychiatrists about distinct criminal categories are typically about murderers, fraudsters, and shoplifters – but not about organized crime bosses (Bovenkerk 2000). Past work on the personality profiles of organized crime leaders generally relies on biographical appraisals. For example, Sammy Gravano (an underboss within the Gambino crime family until he became an informant in the trial of the family’s boss) might be described as a psychopath as he appeared to demonstrate little remorse or conscience (Morselli et al. 2010). Considering the use of violence as a routine resource in organized crime, one would expect such traits to be present in organized crime groups, but these unique biographical accounts cannot indicate whether the majority of individuals within such a crime group would be typified by those traits.

Bovenkerk (2000) reviewed numerous biographies to explore how organized crime figures view themselves. These bosses are in their fifties, and their ascendance to the top was a challenging and long-term struggle. The work they do requires ample knowledge of international trade and financial markets. Bovenkerk constructed a theoretical portrait of organized crime leaders using the Five-Factor Personality Model well known in psychology. He suggests that personality traits that predict leadership success in the legitimate business world – such as extraversion, controlled impulsiveness, a sense of adventure, megalomania, and narcissism – are all equally suitable traits for a career in organized crime. Bovenkerk found that his biographical subjects viewed themselves as superior beings and that they displayed many of the characteristics of a narcissistic personality such as: the attitude of omnipotence and self-assurance, a feeling that the rules of society do not apply to them, and a feeling that they are above the responsibilities of shared living (Bovenkerk 2000).

If one assumes that organizations have distinctive organizational cultures, it follows that illegitimate organizations have organizational cultures similar to those of legitimate organizations. As legitimate organizations have more formalized and clearer structures, it may be easier to identify such a distinctive culture than in the networks found in organized crime. Yet, loosely coupled structures found in modern corporations with autonomous subunits allow for distinct intra-organizational cultures – and the same might be true for illegitimate organizations. The contribution of organizational culture to explaining crime might differ for the two types of groups, as legitimate organizations may have criminogenic elements that facilitate the commission of crimes to achieve corporate goals while illegitimate organizations might be typified by criminal culture in which committing crimes is a cultural value as such. The importance of “the tone at the top” for the organizational cultural may be equal for both types of organizations, although much more research needs to be done on the personality traits of leaders of legitimate and illegitimate organizations.

**Organizational Activities**

As mentioned in the introduction, the ultimate divide between legitimate and illegitimate organizations is based on the legal status of their activities. The core activity of business organizations is the sale of goods or services. So these products might be either legal or
illegal. However, this divide is more complicated than it appears. The legal status of goods and services may change, and while a good or service by itself may be legal, the way it is produced, processed, distributed, or marketed might not be in accordance with legal provisions standardizing these processes. Also, the legality of products may affect the markets on which these products are traded.

**Products and Processes**

Even organized crime groups can be involved in the supply of both legal and illegal goods and services. Traditionally, the Italian American mafia reaped profits by exploiting legal markets ("racketeering"). Next to that, they also got involved in the trade of prohibited goods ("vices"), such as narcotics, and prohibited services, such as prostitution. Other groups specialize in counterfeiting otherwise legitimate products, because of the added value of the (fake) brand name. For this, production processes and facilities are needed that mimic the legitimate production of these counterfeited goods (Spink et al. 2013). In many European countries without a strong tradition of organized crime, such as the Netherlands, the main source of income for organized crime groups originates from vices and illegal markets and not so much from racketeering practices in legitimate branches of industry (Kleemans 2007). Whether these activities occur on legal or illegal markets may shift due to regulatory change, but one might expect illegitimate practices to occur all the same. For instance, the legalization of the sex industry in the Netherlands has allowed sex traffickers to transform from offering vices (illegal services on a black market) to profiting from racketeering (i.e. by criminally exploiting a *de jure* legal market with basically the same practices – the violent exploitation of sex workers; Huisman and Kleemans 2014).

As legitimate organizations have the goal – at least initially – to make a profit from supplying legitimate goods and services, they will not easily be involved in the supply of prohibited products. Exceptions include reputed corporations violating international sanctions legislation by supplying arms or other strategic goods to outlawed regimes (Huisman 2010). Corporate crime, however, mostly takes the form of violating legal requirements or standards that regulate the production, distribution, or marketing of legal products. Products can become illegal when certain legally proscribed qualities of the end product or the production process are not met. The use by car manufacturers of fraudulent software to manipulate diesel emissions is a good example, as is the rigging of the LIBOR interest rates (Benson and Simpson 2018). Food fraud may consist of both substandard production and deceptive marketing and sales techniques. And while illegitimate organizations are also involved, perpetrators of food fraud are mainly found in the legitimate food industry (Lord et al. 2018).

A common feature of corporate crime cases is an omission to perform a regulatory obligation to take certain precautions to prevent harm to consumers, workers, the environment, or competitors. Business regulation frequently imposes a duty on firms to take protective measures in their regular business processes. These measures involve extra time and money and therefore complicate business processes, thus creating opportunities to earn money by executing or offering services below the desired compliance level. Many law violations by legitimate organizations are therefore not crimes that require action: they are violations because a required action is not taken. Corporate offenses, in other words, are often crimes of omission rather than crimes of commission. It therefore seems relevant to distinguish between predatory white-collar crime (such as fraud) and regulatory crime.
Blurred Lines: Collusions Between Legitimate and Illegitimate Organizations

The categorization of predatory and regulatory crimes might run parallel to the distinction of illegitimate and legitimate organizations. As mentioned above, the crimes of omission may be due to organizational failure, but omissions may be more or less purposeful – sometimes, preventative action is purposefully left behind and rules are willfully resisted and, sometimes, a daily routine is continued without paying attention to rules that require extra investments.

Corporations face a dilemma when general rules do not apply well to specific situations they find themselves in – to act correctly, managers need to follow the rules but, if they follow the rule and the rule is not adequate, they are doing the wrong thing. In this sense, by complying they will have a negative impact on the organization's functioning. The discrepancy between abstract rules and material contingencies is inevitable in organizational life (Pina E Cunha and Cabral-Cardoso 2006). This becomes more evident when the rules are more detailed, which is why both regulators and business communities have collectively and worldwide embraced the shift to “principle-based” regulation, away from traditional “rule-based” regulation. Principle-based regulation means moving away from reliance on detailed, prescriptive rules and relying more on high-level, broadly stated rules or principles to set the standards by which regulated firms must conduct business (Black et al. 2007). However, regulatory agencies and law enforcers find that the substantive norm (and therefore compliance with that norm) is more difficult to find in the general duty-of-care provisions found in such principle-based regulation. This response to the problem of legal ambiguity therefore actually increases the ambiguity in the legitimacy and illegitimacy of organizational activities. The moral and legal ambiguities that typify white-collar crime (Nelken 2002) may bring several scenarios of business practices being legitimate and illegitimate at the same time, including the following.

- Practices may be illegitimate according to legal statutes but legitimate according to socially embedded norms in the business community.
- Practices might be qualified as unethical and therefore illegitimate by society in general, while not constituting a violation of the law (so-called crimes without law-breaking; Passas and Goodwin 2004).
- Practices might be in violation of some civil or administrative regulation but not be a criminal offense.
- Practices might be not in accordance with the law and therefore illegal, but are condoned by regulatory agencies and therefore not subject to law enforcement.

These ambiguities may be further amplified from a dynamic and transnational perspective, as when regulations and/or morality in business communities or society at large change and/or when laws and regulations and societal morality differ from one country to another.

Black, White, and Gray Markets

Depending on the legal status of products, the markets on which these products are traded have been labeled as being either white, black, or gray markets. White markets are wholly legal; black markets include illegal trade in either legal or illegal products, while gray market segments violate terms of distribution, but neither the channels nor products are illegal per se. In gray markets the product or services may be illegal in some countries, while being legal in others and – if legal – likely highly restricted by regulation. Examples are the markets...
for cigarettes (Antonopoulos and von Lampe 2016), arms (Feinstein and Holden 2014), gambling (Spapens 2014), and prostitution (Weizer 2011). Due to current trends of decriminalization, cannabis might be added to this list. Paoli and Greenfield (2017) conceptualized the market for doping products as a “quasi-illegal market” – i.e. a market characterized by its players’ and products’ shifts across different shades of (il)legality. The legal status of doping products suffers from ambiguity of contextual specificity; in some contexts, the products – including their supply – are legal and in others they are not.4

Legitimate and illegitimate organizations may meet on gray and even black markets. A well-known case is the involvement of the tobacco industry in cigarette smuggling and the production of counterfeit cigarettes by organized crime groups (Antonopoulos and von Lampe 2016). Paoli and Greenfield (2017) identify the involvement of state (-funded) sports bodies and officials as an interesting peculiarity of the doping market. The internet facilitates the blurrification of the legitimacy of transactions and actors on international markets. In both illegal drugs and doping markets users bypass domestic distribution chains using the internet, while legal goods and services are also traded via the internet. In other words, the internet is a largely unregulated space for transactions with variable degrees of legality. The anonymity of the “dark web” facilitates and may even create black markets, such as for illegal digital products (Soska and Christin 2015).

Notwithstanding these entanglements, different market segments – characterized by different shades of (il)legality – are the realm of different kinds of actors, rooted in either the “upperworld” or the “underworld.” Certain markets have traditionally been perceived as belonging to organized crime, such as services in the nightlife economy (Hobbs et al. 2000, 2003) and wildlife trade (Van Uhm 2016), while rule-breaking on other markets, such as pharmaceuticals (Braithwaite 1984) and food (Lord et al. 2017), has traditionally been perceived as forms of corporate crime. A branch of industry services a particular market for products or services. Early studies into corporate crime have shown that some branches of industry are more prone to corporate crime than others (Clinard and Yeager 1980). Other studies have shown that traditional organized crime groups have greater familiarity with certain legitimate branches of industry, which are therefore considered to be more prone to organized crime involvement (Jacobs et al. 1999).

Conclusions

The aim of this chapter was to review the research on collusions between legitimate and illegitimate organizations. For this purpose, the differences and similarities of legitimate and illegitimate organizations were studied. Even before studying these differences and similarities, we first observed the conceptual conflation created by the various synonyms of legitimate and illegitimate used in literature and the various topics these adjectives are attributed to. This conceptual conflation complicates de-blurring the lines of study from the start.

While the “upperworld” of white-collar crime and the “underworld” of organized crime represent different fields of study in criminology, we found that similar organizational characteristics are used to analyze and explain both types of crime. Insights drawn from organizational science have been used in the study of corporate crime and organized crime – specifically, in the study of the roles of strategies, structures, and cultures of both legitimate and illegitimate organizations. The analysis has shown that it is somewhat difficult to demarcate the lines between legitimate and illegitimate organizations by looking at
these organizational characteristics. Legal and illegal enterprises share the pursuit of profit as a goal, although the latter mainly aim to achieve this by using illegal means. Trends in changing organizational structures have been typified in literature as a shift from bureaucratic, hierarchical structures to more flexible and autonomous networking structures for both types of organizations. The illegality of certain business activities affects the organizational form for both types of organizations, creating the need for structural secrecy, although this is stronger for illegitimate organizations involved in organized crime. As organizations become more loosely organized in networking structures, it becomes harder to identify distinct cultures at the organizational level. Organizational culture has been identified as a strong explanatory factor for corporate crime, while some traditional, ethnically based forms of organized crime are also strongly culturally determined.

What sets legitimate and illegitimate corporations apart is the legal status of their activities, although there is considerable overlap. By definition, in corporate crime, legitimate organizations break rules in producing or marketing legitimate goods or services, or they might be involved in selling illegal products. For this reason, using the adjective legitimate/ illegitimate (or any of their synonyms) makes more sense for differentiating activities than for differentiating organizations.

Theoretical models have been suggested to help us understand the gray area in which it is difficult to differentiate legitimate and illegitimate activities and organizations. Instead of demarcating clear lines between the two, these models reconfirm the ambiguities in the ethical and legal status of many organizational activities. Pina E Cunha and Cabral-Cardoso (2006, p. 221) even suggest that the difficulties of dealing with illegitimate behavior result from the very nature of life in organizations. The gap between general rules and specific situations sometimes pushes people to gray areas, filled with ambiguity. It is here where we find the collusions between legitimate and illegitimate organizations and where the lines between the two become blurred. However, organizations that reside in the “upperworld” of legitimate business and organizations that roam in the “underworld” of organized crime might have more in common than this metaphorical dichotomy suggests.

Yet, critics warn us not to overrate the analogies between legitimate and illegitimate organizations. Illegality brings many challenges in business processes, resulting in a lack of reliable management information and the use of violence to resolve business conflicts. As researching white-collar crime and corporate crime are separate traditions in criminology, insights from both traditions should be further combined in future research. It is also worth noting how globalization and digitalization make it easier for business activities to escape the boundaries of national business regulation and will continue to exacerbate current ambiguities. The importance of these landslide developments for facilitating transnational illegitimate business in the fields of corporate crime and organized crime has already been acknowledged (e.g. Friedrichs 2009), but a better understanding of these developments for the blurred lines between and the collusions of legitimate and illegitimate organizations requires further research.

Notwithstanding the warning not to overemphasize either dichotomies or analogies between the legitimate and the illegitimate, regulatory and law enforcement agencies may be inspired by techniques and instruments used to tackle the crime problem “at the other side.” In the first systematic review on corporate deterrence, Schell-Busey et al. (2016) concluded that “Single treatment strategies … have minimal-to-no deterrent impact at the individual and company levels. However, studies examining multiple treatments produce a significant deterrent effect on individual- and corporate-level offending … Based on our results, we determine that a mixture of agency interventions is apt to have the biggest impact.” Such
mixes of instruments could also be used to target illegitimate organizations in the sphere of
organized crime. Regulating gray and even black markets has been used and seems prom-
ising in preventative approaches against organized crime, using civil and administrative law
as a tool that is normally used to regulate legitimate organizations and practices (Huisman
and Kleemans 2014; Jacobs et al. 1999). In the opposite direction, interventions used to
break the code of silence in organized crime groups are increasingly used on collective
illegal activities within legitimate industries and organizations, such as price-fixing cartels
(Jaspers 2017). While the legitimate/illegitimate divide may be questioned for analytical
reasons, it may serve as an inspiration to find innovative ways for crime control.

Notes
2  Pina e Cunha and Cabral-Cardoso (2006) even reverse the adjective–noun relationship when ana-
alyzing “organizational legality and illegality.”
3  The scope of this chapter is limited to illegitimate organizations with a goal of making profit and
which are traditionally presented as organized crime. This excludes illegitimate organizations
with political and ideological goals, such as terrorist organizations.
4  For a current PhD research project on such quasi-legal markets, see https://www.kuleuven.be/
onderzoek/portaal/#/projecten/3H170661.

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Blurred Lines: Collusions Between Legitimate and Illegitimate Organizations


11
Explaining White-Collar Crime: Individual-Level Theories
Rachel E. Severson, Zachery H. Kodatt, and George W. Burruss

Introduction

Criminological theories explain offending behavior from three perspectives or levels. The macro level focuses on large-scale patterns of behavior across countries, states, or cities. The next perspective, meso level, focuses on group-level patterns of behavior across clusters of people, such as organizations, professions, or industries. Finally, the micro level focuses on individual-level patterns of behavior within or across people. To put them in the context of white-collar crime, the macro level would involve an examination of differences in embezzlement rates across states within the United States, considering how changes in structural factors such as unemployment and gross domestic product increase the motivations or opportunities for embezzlement. At the meso level, one might examine embezzlement within banks considering the level of oversight within each firm. For the micro level, individual employees could be surveyed about their attitudes and intention to report an embezzler, if they detected one.

In this chapter, we explain white-collar criminality at the micro level. Several theories of criminality have been offered to explain white-collar crime at this level and we discuss them each in turn: rational choice theory, social learning theory (SLT), a general theory of crime, general strain theory, and subcultural theory. Before explaining each theory, it would help to briefly explain what a social science theory is and why having one is necessary to explain crime.

The public tends to think about causes of crime at the individual level because media accounts or popular fictional stories offer plenty of examples of people committing crime and their unique circumstances. Also, most people will know of someone who has offended or been victimized. These kinds of anecdotes inform most people’s opinions about why others offend. But anecdotes or journalistic accounts cannot tell us the ultimate causes of crime because they cannot be accounted for beyond each individual case. Only when criminologists aggregate many criminal offenses, and then try to explain the commonalities, can we know if an explanation is generalizable. The systematic explanations for classes of behaviors are called theory.
More formally, we can define theory as a supported explanation of some phenomenon through a series of relational statements, called propositions. Propositions connect concepts, which are abstract ideas, such as crime, poverty, or self-control. To be more specific, a theory of criminal behavior would include a statement that links a cause and its effect, both of which are concepts (Paternoster and Bachman 2001). For example, a very simple theory might propose that a lack of material needs (i.e. food, shelter, clothing) increases the probability of someone stealing to fulfill the missing needs. In this theory, the relationship between material needs and theft is linked by the prediction of an increase in the likelihood of the crime happening. This suggests a prediction that can now be tested empirically. If a researcher finds people who lack material needs are more likely to steal compared to those whose needs are satisfied, then the theory is supported. The theory is not necessarily considered true because a theory requires considerable empirical support to be accepted by scientists. Linking this discussion with the three levels of explanation above, the kind of concepts (e.g. materials needs, offense decision-making) determines the units from which we collect data (countries, groups, individuals) and, thus, the level of explanation: macro, meso, or micro.

Theory is important to criminologists for three reasons (Paternoster and Bachman 2001). First, criminological theories are simplified models of complex human behavior. In any one person’s life there are uncountable factors that contribute to daily decisions, including the decision to commit crime – genetic predispositions, hormones, learned behavior, peer influences, structural factors, and many others. To make sense of what factors are the most important explanations of criminal behaviors, theories isolate the few factors that contribute the most to our understanding. A scientific principle that good theories follow is the law of parsimony (or sometimes referred to as Occam’s razor): the explanation with the fewest assumptions is often the most useful. Note that the theories discussed below have a few concepts and propositions that attempt to explain most of the variation in criminality.

Second, theory sets up the conditions by which criminologists can test an explanation’s accuracy. Each relationship between cause and effect concepts is called a hypothesis, which we can test through various kinds of analyses. It is important to note a theory that is valid at one level may not be as valid at a different level of explanation; what an individual-level theory predicts about the causes of crime may not hold up at the macro level. For example, our ad hoc theory of needs and theft might explain individuals’ motivations, but it might fail to explain rates of theft among cities or states. Therefore, as we discuss the individual-level theories, know that other causes may be examined at the meso or macro level not covered here.

Third, theory is important because it suggests which phenomena would be the most useful for policy and crime control. For example, rational choice theory (discussed below) would suggest crime control strategies emphasizing punishments that are swift, severe, and certain would be more effective than those where the possibility of punishment is unclear. Again, this allows criminologists to not only recommend policies but also test their effectiveness. A policy that includes all three elements of punishment might show that only certainty is effective at reducing criminal motivation. A theoretical crime control strategies, those unguided by theory, tend to include many elements that leave policymakers unable to recommend what does and does not work.

Unlike street crimes, white-collar crime suffers from a dearth of empirical research. The reasons for this are complex, but a root problem is the difficulty in finding a sample from the general population on which one can survey or experiment. Because anyone is capable of committing a street crime, samples taken from the general public work fairly well. But for
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white-collar and corporate crimes, only people with the opportunity to commit white-collar crimes can serve as potential subjects (for a discussion, see Benson and Simpson 2014). For example, not everyone employed in an organization has the means or access to commit embezzlement. Furthermore, getting access to a sample of potential white-collar offenders can be problematic. Corporate executives are typically unwilling to be subjects in research and are averse to give researchers access to employees (see, for example, Braithwaite 1985). The research on individual-level theories of white-collar crime is therefore fairly limited.

Another problem with testing criminological theories on white-collar crime is the definition debate. In his 1939 presidential address to the American Sociological Society, Edwin Sutherland first defined the concept of white-collar crime as “a crime committed by a person of respectability and high social status in the course of his occupation.” In limiting the concept to those from high social status and respectability, Sutherland left out many kinds of scams and frauds that many others would consider the same kind of behaviors; however, Sutherland would have ignored them in his classification. There have been many attempts since Sutherland to define white-collar crime across different dimensions: harm, legality, offender status, means, and motive (Friedrichs 1992; Geis 1991; Rorie et al. 2018; Shapiro 1990; Simpson 2013). Unfortunately, no consensus to date has emerged. This is a problem because without agreement on the outcome of interest, researchers cannot know the extent of applicability of the theory. Rather than take a stand on a definition, we allow whatever definition researchers have used to apply to the specific individual-level theory.

**Rational Choice Theory**

White-collar crimes often involve concealed, elaborate schemes for personal, financial, or business gain. Unlike some street crimes where the motivation to offend comes from sudden urges, such as craving drugs or violently settling disputes, white-collar offenses typically require planning. For example, embezzling from one’s employer requires stealing funds covertly, often over a lengthy period. Thus, white-collar crimes tend to be instrumental in nature rather than expressive. Some white-collar crimes, however, are opportunistic and do not require advanced planning, such as fraudulent statements in sales. The central proposition of rational choice theory is that offenders weigh the costs and benefits of their actions before acting. Given the plotting nature of most white-collar offenses, rational choice appears to be a reasonable explanation for white-collar crime.

Rational choice theory comes from the nineteenth-century legal reform movement known as the Classical School. Legal philosophers and reformers, such as the utilitarian philosopher Jeremy Bentham and magistrate Robert Peel, sought to control growing urban crime by influencing the way potential offenders weighed the costs associated with their actions, even when the rewards were invaluable. Previous societal attempts to punish and deter criminal behavior were maintained by the church, but the massive social changes brought by the Enlightenment and industrial revolution would prove difficult for the post-Medieval system to control. The Classical School thinkers, therefore, promoted legal reforms that would make the punishments associated with various crimes more rational. In addition to punishing offenders more swiftly, more severely, and with more certainty, the justice system needed to apply punishments consistently (Beccaria 1764; Bentham 1789, reprinted in 1970). To improve deterrence, the policing and prison industries were created to detect and punish offenders publicly and therefore deter future crimes (Nagin et al. 2018).
According to rational choice theory, humans engage in a rational calculus that pits the potential costs of behavior against the potential benefits. When the benefits outweigh the costs, a person is more likely to commit a crime. An underlying assumption is that human beings are highly rational and they can accurately and consistently predict a contemplated action's outcome. In the nineteenth century, this assumption appeared logical. However, by the modern age, social science had shown that humans are quite bad at making accurate probabilistic judgments (see for example Tversky and Kanneman 1983). Beyond being poor at estimating probability, humans are also motivated by emotional considerations that often interfere with rational decision-making. The Classical School was eventually overshadowed by the Positivist School, which put forth such theories of crime as differential association, atavism, social disorganization, and anomie. The Positivist School looked at external factors to explain the motivation to break the law (Lilly et al. 2010).

Rational choice theory includes several key concepts. The original formulation centered on the concept of cost–benefit analysis (sometimes called the rational calculus). This cost–benefit analysis is a process that considers the costs associated with the criminal act against the potential benefits; thus, a cost is one concept, and a benefit is another. In deterrence research, only the costs of crime are considered. Opportunity is another specific concept that is generally applied in rational choice theory. Finally, the concept of moral beliefs against a particular act is also considered as part of the rational choice model.

Paternoster and Simpson (1996) lay out a model for applying rational choice theory to white-collar crime, which applies to individual decision-makers who make decisions within organizations. In this model, costs and benefits must be considered in the context of white-collar offending, specifically in a corporate environment. The costs that potential offenders consider can be informal or formal. Informal sanctions, however, are proposed to be more effective than formal ones. Informal sanctions in a white-collar context include negative publicity, loss of business reputation, or disapproval from significant others (Paternoster and Simpson 1996). In addition, informal sanctions can include the loss of self-respect. Formal sanctions include incarceration, loss of employment, or fines. Like the Classical School version of rational choice, white-collar costs are most effective when they are certain and severe. Because Paternoster and Simpson (1996) focus on the individual offender, it is the individual's assessment of certainty and severity that matters more rather than the public's consensus estimation.

The benefits from committing white-collar crime certainly include monetary gain, but breaking the rules can result in a business advantage such as lower production or labor costs. If everyone else is following rules that limit production, then skirting those rules can provide an advantage to the violator; that is, following the rules can be considered a cost, or breaking the rules, a reward. Consider the Enron Corporation scandal from the beginning of the twenty-first century. Much of the offending at Enron resulted from corporate executives remaking the company from a US natural gas wholesaler into a global energy-trading firm. The offenders used innovative finance and accounting schemes to remove liabilities from Enron's books, which pumped up its stock value. The Enron offenders, namely Jeff Skilling and Andy Fastow, saw the act of breaking the rules as a reward itself (McLean and Elkind 2003).

While losing prominence in the early twentieth century, choice theories have reemerged in the past several decades. Current manifestations of choice theory incorporate the rational calculus idea with existing beliefs, external factors, and opportunity. Much recent work on rational choice theory focuses on deterrence, whether in policing (such as hot spots patrols) or in penology (such as three-strikes laws). Many studies of rational choice now take a
potential offender’s personal beliefs, or morality, into consideration. For example, faced
with an opportunity for reward with few or no associated costs, a criminal act will likely be
avoided when it is considered anathema to one’s personal beliefs. Thus, personal belief is
often used as a mitigating factor: holding a rational calculation constant (i.e. the balance
tips toward reward), those who think the act is wrong or shameful will avoid doing it while
those without such belief would be so motivated (see for example Smith et al. 2007).

As mentioned, opportunity is an important consideration in explaining white-collar
crime because only those in a position of trust or with material access to resources can com-
mit a white-collar crime. Opportunity is often conceptualized using “routine activities
theory,” which argues that opportunities for crime exist when a suitable target, a motivated
offender, and the absence of a capable guardian converge in the same time at the same loca-
tion (Cohen and Felson 1979). When merging rational choice theory with routine activities
theory, the motivated offender is engaging in a rational calculus to commit crime.

Typically, routine activities theory explains victimization for street crimes, especially when
the victim’s activities change so they encounter motivated offenders, or when objects become
more suitable because they are more portable and easily accessible. However, Shover and
Hochstetler (2005) have applied the concepts of target suitability and capable guardianship to
white-collar crime within a choice context. In their discussion of choice and opportunity, suit-
ability of white-collar targets is thought of as “lure” – the situation or potential reward that
turns the head of a motivated offender toward a lucrative reward with little investment.
Guardianship, or costs of white-collar crime, is thought of as “oversight” – the ability of regu-
lators or law enforcement to intervene when white-collar schemes are detected. When a
scheme is alluring with little oversight by authorities, a white-collar crime is likely to happen.

Beyond the rational calculus, morals or ethical beliefs have been used as a contributing
factor in the choice to commit white-collar crime (Heath 2008; Koller et al. 2014; Naso 2012;
Paternoster and Simpson 1996). Ethics, as defined by Koller et al. (2014), are the principles
that govern the conduct of a particular group or individuals which are obtained through the
socialization process (Paternoster and Simpson 1996). Through this, criminality is explained
as an individual’s failed ethical code. The considerations of an act’s costs and benefits will not
affect the decision to act if the behavior has already been strongly discouraged by a person’s
ethics. For example, McKinney and Moore (2008) analyzed the effects of a written ethical
code on employee perceptions of permissibility of international bribery. They used survey
responses from a random sample of 10,000 businesspersons in the United States from firms
of varying sizes and ages. They found that the presence of a written ethical code significantly
influenced employee opinions that bribery was not acceptable.

Furthermore, Paternoster and Simpson (1996) tested the relationship between sanction
threats (formal or informal penalties applied to an action) and morality on the choice to
commit an offense. They found that the decision to offend was significantly affected by the
“moral climate” of the company and that employees were more likely to report an attitude
favorable to committing crime if it was described as being common practice in the company.
Sims and Keon (1999) also found a relationship between an employee’s perceived organiza-
tional environment and decision-making: supervisors’ ethical expectations were significant
in the employee’s perceptions of the workplace environment. Appelbaum et al. (2005)
 Further support these findings as they found a relationship between the business environ-
ment and the decision to commit deviant acts in the workplace.

Ethics can be undermined, however. As shown originally by Zimbardo in the Stanford
prison experiment, average individuals became abusive or passive depending on the ran-
domly assigned role of guard or prisoner. This suggests people take on a role into which
they are thrust, regardless of existing ethical codes. Koller et al. (2014) point out that we cannot blindly rely on employees to follow an ethical code put forth by superiors in a work environment. The implications for choice theory and white-collar crime are that one’s calculus depends on the employees’ work environment. Additionally, people are capable of neutralizing ethical beliefs in order to justify illegal behavior.

Techniques of Neutralization

Sykes and Matza’s techniques of neutralization (1957) suggest one aspect of choosing crime is the need for offenders to get permission, in their eyes, to violate the law. Neutralizations are cognitive devices that allow an offender to minimize any liability from actions turning costs into benefits in their own self-interests. In employing such devices, would-be offenders thus retain their allegiance to consensus norms and values (Koller et al. 2014; Sykes and Matza 1957); yet, they can engage in a specific instance of criminal behavior.

Sykes and Matza (1957) focus their attention on five primary categories of neutralization techniques that explain traditional crimes as well as white-collar crimes. These include: denial of responsibility, denial of injury, denial of the victim, condemnation of the condemners, and appeal to a higher loyalty. In addition, two other techniques have been proposed that uniquely apply to white-collar offending: everyone else is doing it and claim to entitlement (Heath 2008).

The denial of responsibility is defined as the offender not believing he or she is blamable for the criminal act (Sykes and Matza 1957). For example, an offender might claim that the action was unintentional, or it was necessary to prevent a more costly outcome. Within white-collar crime, this is a very common tactic because it is difficult to place the blame for the action on solely one employee. A corporation is hierarchical in nature so a metaphorical finger can be pointed toward others with a degree of plausibility. Subordinates will blame their superiors saying they were ordered to violate the law. Superiors can blame subordinates claiming the illegal acts were independent of any decisions made by the superior (Heath 2008).

In the denial of injury, an offender seeks to justify their actions by minimizing harm done to others through their actions (Sykes and Matza 1957). Often white-collar offenders claim victims gave consent in the scheme and, therefore, are blameworthy for their own victimization. Because white-collar crime is often anonymous in nature (Heath 2008; Piquero, Exum et al. 2005), most offenders will never meet their victims. In addition, harm is often diffused over many victims so that each criminal act becomes trivial, which can be used as grounds for denial by the offender.

When offenders deny the victim, they acknowledge the injury but claim the victim either deserved it or is unworthy of public sympathy. This category of neutralization is of particular importance in the occupational crime context (Heath 2008). Offenders can convince themselves that they are not committing a crime or stealing, but taking what is owed to them.

When condemning the condemners, an offender will attempt to dispute the motives of those who condemned the actions (Sykes and Matza 1957). Business leaders often dispute a law’s or regulation’s legitimacy and suggest that the illegal act was done for the interests of the public while the government has special interests to the contrary (Heath 2008). Appeal to higher loyalties is a denial that the act was motivated purely by self-interests, instead declaring it was performed because of obedience to some other moral obligation. In the corporate world, this would include loyalty toward the company, co-workers, political motives, or even the fiduciary relationship held with the shareholders (Heath 2008).
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Two more neutralizations have recently been offered as unique justifications for white-collar offending (Klenowski et al. 2011). Specifically, offenders will often point toward the fact that others are violating the law and are escaping prosecution, so they should as well (Heath 2008). This neutralization is called *everyone is doing it*. Finally, offenders claim a form of entitlement to act because of some sense of moral obligation (Clinard and Yeager 2011). This sense of entitlement can also be justified by the company having done many charitable acts that outweigh a few unethical or criminal wrongdoings.

In addition to techniques of neutralization, the offenders’ choice to commit a white-collar crime can be based on keeping the status quo. The “fear of falling” hypothesis states that the fear of potential losses will be a strong predictor of the decision to commit white-collar crime (Heath 2008; Piquero 2012; Wheeler 1992). Piquero (2012) found that the fear of falling heightened the perceptions of the study respondents. These perceptions included what they had to lose financially or socially, the formal penalties and sanctions associated with the crime, the risks of detection, and their own moral stance against the criminal act. Piquero (2012) also found that the fear of falling did not heighten the perceived benefits associated with committing the crime nor the likelihood of committing crime.

It has been shown that respondents would be more likely to commit corporate crimes if they believed that their actions would directly improve the overall corporation's standing compared to competitors (Paternoster and Simpson 1996). It has also been suggested that the rationalizations, or neutralizations, as discussed earlier, are deeply rooted in the “culture of competition” (Koller et al. 2014). Heath (2008) found that the respondents felt they had no choice but to violate the law given the competitive nature of the marketplace; this also meant that the respondents felt that if they did not comply with these requests, they would be replaced by someone who would.

In sum, choice theory has been offered to explain white-collar and corporate crime. The original idea of rational choice has been modified since its initial offering by the Classical School of criminology to include the subjective assessment of costs and rewards, moral and ethical considerations of the considered behavior, and techniques of neutralization to overcome the perceived costs and moral inhibitions. We next discuss what the empirical literature says about how rational choice theory does in explaining white-collar and corporate crime.

Some of the current empirical research that has been conducted on choice theory's relationship to white-collar crime has been conducted by Paternoster and Simpson (1996), Piquero (2012), and Piquero, Exum et al. (2005). Paternoster and Simpson (1996) studied choice theory by examining four groups comprised mostly of individuals with corporate experience. Three groups were first- and second-year graduate students from three universities and the fourth group was a party of corporate executives who were attending a business school executive education program at a fourth university for a total of 96 individuals. Piquero's (2012) sample consisted of 87 adults with business experience who were returning to further their education, and Piquero et al. (2005a) utilized a smaller sample of just 46 persons for their study.

As has become common practice with studying choice theory and white-collar crime, Paternoster and Simpson (1996), Piquero (2012), Piquero, Exum et al. (2005), and Piquero, Tibbetts et al. (2005) all used vignettes, or hypothetical scenarios, involving a different white-collar crime. The respondents were asked to imagine themselves as the individual depicted in the scenario and how likely they were to engage in the corporate crime depicted in the respective vignette. Paternoster and Simpson's (1996) findings were consistent in support for many of the hypotheses put forth by the rational choice model. For example, the decision to commit corporate crime is significantly affected by the organizational
context, the moral climate of the firm, and the perceived incentives of the act. Piquero (2012) included Wheeler’s fear of falling hypothesis and tested if this would affect the respondent’s rational calculus to perpetrate the white-collar crime depicted in the vignette. The results indicated support for choice theory as respondents who perceived benefits from the act reported increased intentions to perpetrate the crime depicted in the survey. Furthermore, the fear of falling, instead of exacerbating the probability of offending, appeared to serve as a reminder of what the respondent had to lose, which reduced the probability of offending. Piquero et al. (2005a) sought to expand the choice model using the desire for control hypothesis. Overall, it was found that not only did choice theory motivate the decision to commit corporate crime, but desire for control also exerted a positive influence on the rational choice.

There is much empirical support that white-collar and corporate offenders choose to commit their crimes; however, the choice depends on many additional factors beyond simply weighing costs and benefits. Those additional factors, discussed below, clearly are important influences. For example, Akers’s SLT states that criminal behavior is learned, and this learning process includes the influence of differential reinforcement. Differential reinforcement consists of the punishments and rewards (i.e. costs and benefits) associated with a particular action that a potential offender experiences, either personally or vicariously, from others. In Gottfredson and Hirschi’s (1990) general theory of crime, a person with low self-control is said to be more likely to commit a crime when the opportunity presents itself. Opportunity includes a calculation of detection and punishment. A discussion of integrated theory (combining causal concepts from two or more theories) is beyond the scope of this discussion (but see Chapter 13 in this handbook). However, it is possible rational choice theory can be integrated into other individual-level theories for a more nuanced explanation of white-collar crime.

Social Learning Theory

SLT is one of the core contemporary theories within the field of criminology. This theory assumes that crime is learned through social interaction among individuals. As an extension of Edwin Sutherland’s Differential Association Theory (DAT), SLT posits criminal behavior is not only learned, but is also reinforced through certain social interactions (Akers 1977; Burgess and Akers 1966; Pratt et al. 2010). The four major concepts of this theory are differential association, definitions, differential reinforcement, and imitation.

Differential association was first developed by Edwin Sutherland as an explanation of the process through which adolescents engage in delinquency (Matsueda 1988). The propositions for differential association predict that an individual interacting with others will learn definitions and attitudes that are favorable to committing crime as well as the means involved in engaging in delinquent behavior. In terms of white-collar crime, Sutherland (1940) argues that white-collar offenders learn this behavior in the same way that other behaviors are learned: in institutions where criminal behavior is the norm, employees learn the skills to engage in white-collar crime and the attitudes favorable toward the criminal acts. Therefore, the concept of differential association involves more than mere association with delinquent others; it also involves the learning of criminal behavior from symbolic interactions with others.

DAT has been criticized for being too vague and for its concepts being difficult to measure. In response to these critiques Burgess and Akers (1966) reformulated the theory to combine differential association with the principles of operant conditioning to specify how
the learning process occurs in regard to both criminal and conforming behaviors (Bandura and McDonald 1963). In the development of SLT, the concept of differential association is expanded to refer to individuals we come in contact with who provide models for our behavior as well as the rewards and punishments to reinforce behaviors; thus, differential association with others determines our definitions regarding behaviors (Akers 1977; Burgess and Akers 1966; Pratt et al. 2010).

In the context of DAT and SLT, definitions refer to an individual's perceptions, attitudes, or rationalizations regarding both criminal and conforming behavior. These definitions are developed through communications with others in intimate personal groups: they can be positive or favoring violating laws; negative or not favoring violating laws; or neutralizing or justifying violating laws. When an individual learns more definitions favorable to violating the law than definitions unfavorable of law violation, that individual will engage in crime. Therefore, the definitions one learns from delinquent others are weighed against the definitions one learns from conforming others to determine one's criminality (Akers 1977, 2007).

Differential reinforcement involves the principles of operant conditioning applied to learning of criminal behavior. Differential reinforcement involves both rewards and punishments. Reinforcements involve the addition of positive consequences (positive reinforcement) or the removal of negative consequences (negative reinforcement) to strengthen certain behaviors; reinforcements determine the initiation or refraining of new behaviors as well as the continuance of or desistance from current behaviors. Punishments involve the removal of positive stimuli (positive punishment) or the addition of negative stimuli (negative punishment) to decrease or repress certain behaviors. Punishments may impede new behaviors or cease current behaviors (Akers 1977, 2007; Burgess and Akers 1966). Acts that are reinforced through the principles of operant conditioning are more likely to be repeated, whereas acts that are punished are less likely to be repeated. Furthermore, these behaviors can be reinforced both socially and nonsocially; social rewards include recognition, status, acceptance, and monetary gain, whereas nonsocial rewards include psychological stimuli such as the satisfaction of hunger, thirst, and sex drives. However, SLT assumes that most behaviors including criminal or deviant behaviors are reinforced socially (Akers 1977; Pratt et al. 2010).

The final concept that Burgess and Akers (1966) offer is that of imitation. As defined in SLT, imitation involves the observation and modeling of the behavior of others. According to Akers (1977, 2007), imitation is most important in the initiation of new behaviors rather than the persistence of current behaviors as reinforcement is the key modality for strengthening or weakening current behaviors (Akers 1977, 2007; Pratt et al. 2010; Warr 2002). According to Akers (2007), imitation plays an important role in the initiation of white-collar offending in that individuals will model or imitate the behavior of others in the organization when they first enter into a position where the opportunity for crime is available.

SLT has been applied to explain white-collar crime by stating that individuals not only learn definitions favorable of white-collar crime, but they also learn the drives and motivations needed to engage in this type of crime. When the definitions favorable to white-collar crime outweigh those against violating the law, white-collar crime is likely to occur. Sutherland (1937) was the first to test differential association as it applies to white-collar crime. In his qualitative study of the professional thief, Sutherland found that individuals learned both the techniques required to be a successful thief and definitions favorable to crime, helping to develop his DAT (Burgess and Akers 1966; Sutherland 1937). Similar to Sutherland, Cressey (1953) conducted a study of embezzlers and found that the embezzlement
A General Theory of Crime

A general theory of crime was introduced by Gottfredson and Hirschi in (1990). This theory posits that the level of self-control in individuals accounts for differences in the extent to which people are vulnerable to temptations to engage in crime. In short, low self-control, a psychological trait, is what determines criminal behavior. According to Gottfredson and Hirschi (1990), there are six characteristics of individuals with low self-control: impulsivity, insensitivity, preference for physical activity, risk-taking, short-sightedness, and non-verbal communication. Furthermore, self-control is developed early in the life course and then is stable throughout the rest of one's life. For this reason, the best predictor of future criminal behavior is past criminal behavior. The major cause of low self-control is ineffective parenting; conversely, effective parenting establishes self-control in children. There are three elements necessary for parents to establish self-control in their children: monitor children's behavior, recognize their deviant behavior when it takes place, and appropriately punish deviant behavior. People who lack self-control are therefore free to commit crime and analogous acts (such as smoking or promiscuous sex) because they cannot appreciate the potential long-term costs associated with risky behavior.

In terms of white-collar crime, Gottfredson and Hirschi (1990) assert that white-collar offenders are no different than traditional offenders. Much like those who engage in violent and property crime, white-collar offenders will likely have prior criminal records, and the crimes they engage in share certain characteristics with violent and property crime: they do not require specialized knowledge and they provide limited profits (Gerber and Jensen 2007). While Gottfredson and Hirschi argue that their general theory of crime can be applied to white-collar crime, and the theory has garnered some support in this regard, the theory has also been widely critiqued in relation to white-collar crime (Benson and Moore 1992; Piquero et al. 2010; Reed and Yeager 1996; Simpson and Piquero 2002). Specifically, in their assertions regarding white-collar crime and its similarities to street and property crime, the authors studied primarily low-level crimes such as fraud and forgery (Gerber and Jensen 2007). Moreover, the theory states that those who engage in crime will possess the characteristics of low self-control listed above; however, several researchers have noted many white-collar offenses are deliberate and planned, requiring self-control (Reed and Yeager 1996).
Explaining White-Collar Crime: Individual-Level Theories

Simpson and Piquero (2002) find that indicators of low self-control are unrelated to corporate offending. Similarly, Benson and Moore (1992) find evidence that white-collar offending contradicts the premises of the general theory of crime. The authors find that the careers of white-collar criminals differ from those who engage in street crime – a finding that directly contradicts the assertion that all offenders share similar characteristics.

**General Strain Theory**

Another individual-level explanation of criminal behavior is general strain theory, put forth by Robert Agnew (1992). This theory purports that individuals experience certain psychological stressors – called strains – that may increase the likelihood of engaging in criminal behavior. There are three sources of strain: the inability to achieve positively valued goals (i.e. money, status, autonomy, etc.), the loss of positively valued stimuli (i.e. loss of property or romantic partner), or the presentation of negatively valued or aversive stimuli (i.e. verbal or physical abuse). When one experiences these strains one may cope with them in a positive or negative manner. According to Agnew (1992), criminal behavior is one negative way individuals may cope with strains they experience. Specifically, individuals may engage in criminal behavior to escape strain, seek revenge, or alleviate negative emotions they experience as a result of strain. Strains most likely to cause crime are those perceived by the individual as high in magnitude or unjust, those associated with low control, and those that create some pressure or incentive to engage in criminal coping. Strains increase the likelihood of crime through their impact on emotional states. Agnew (1992, 2001) states anger is the key negative emotion through which strain impacts criminal behavior, but that other emotions such as depression, anxiety, or frustration may also be important. Furthermore, chronic or repeated experiences of strain may lead to emotional traits that increase a person's disposition toward crime. The likelihood that an individual will respond to the strain they experience with crime depends on several factors: the ability of the individual to engage in legal or illegal coping, the costs of engaging in crime, and the individual's disposition toward crime (Agnew 1992, 2001).

Agnew’s (1995) revision of general strain theory purports the theory can be applied to all types of offending at all levels of social class. Specifically, general strain theory has been applied to white-collar offending through the “fear of falling” (Langton and Piquero 2007; Schoepfer and Piquero 2006; Weisburd et al. 1991; Wheeler 1992), which, as mentioned in the section on rational choice theory, is the notion that white-collar offenders engage in crime because they fear losing what they have achieved. Additionally, Agnew (2001) acknowledges strain may result from inability to achieve one's goal of monetary success, and this strain can be applied to white-collar offenders of the middle and upper classes, particularly those who desire more money than they have or can obtain through legitimate means. This desire for money may result in white-collar crime.

Some support has been garnered for the application of general strain theory to white-collar crime. Specifically, strain has been linked to financial motivations for engaging in white-collar crime (Langton and Piquero 2007). However, little empirical research has explored the relationship between strain and white-collar crime. Indeed, the study conducted by Langton and Piquero (2007) appears to be the first application of general strain to white-collar offending. This gap in the literature regarding general strain and white-collar crime indicates that much more research should be conducted in regards to the theoretical explanations of white-collar offending.
Subcultural Theories

Subcultural theories developed from the Chicago School of criminology and posit certain subcultures in society have values that are conducive to crime. Most subcultural theories have been applied to violent crime, particularly homicide. In Miller’s (1958) study of gang delinquency, for example, he stated the lower and middle classes have distinct and separate cultures, where the lower class values characteristics such as toughness, excitement, and autonomy. The elements of this culture interact with social conditions in poorer areas, such as female-headed and crowded households, and this interaction leads young men to join gangs and engage in delinquency (as cited in Vold et al. 2002). Similarly, Wolfgang and Ferracuti (1967) proposed the subculture of violence perspective, where individuals in this subculture value honor more than the dominant culture, but value human life less. These values conflict with the dominant culture and are passed on from generation to generation to create a subculture that is accepting of violence (as cited in Vold et al. 2002).

While subcultural perspectives have been popular in explaining violent crime, they have also been used to explain white-collar crime, particularly organizational culture (Apel and Paternoster 2009). This perspective states that cultures develop within organizations that turn a blind eye to law violation if that violation benefits the organization as a whole. Moreover, businesses develop a culture with a set of normative guidelines that regulate how workers behave in regards to criminal or unethical behavior; this culture can be one of compliance or of resistance (Braithwaite 1989). When individuals work in an environment with an ethical climate or culture, they learn cultural norms that encourage compliance; the reverse is also true. Those organizations that have unethical climates and cultures that turn a blind eye toward law violation allow workers to learn cultural norms of misconduct that lead to violation of laws and regulations (Apel and Paternoster 2009). While subcultural theory explains crime as a sociological phenomenon (i.e. crime is learned through group norms), it is an individual-level theory because (like social learning) individuals learn to commit crime by association with the subculture. How the norms develop within and across subculture would require a meso-level theory (Vold et al. 2002).

Conclusion

In this chapter we have described several individual-level theories and how they have been applied to explain white-collar crime. The current state of the empirical support for any of these theories remains scant because of limited access to data. Furthermore, criminologists continue to debate about the definition and nature of white-collar and corporate crime without reaching any kind of consensus. A recent meta-analysis of white-collar offending found the definitional ambiguity of white-collar and corporate crime hampers scholars’ ability to evaluate empirical support for particular theories or to recommend effective policies (Rorie et al. 2018). Until these two problems with the social science are resolved, we will be limited in our ability to determine which individual-level theory best explains white-collar crime or what policies are most effective at reducing it.

As to the data problem, criminologists should continue to collect data at various levels of analysis (micro, meso, and macro), sample from offending and general populations, collect data longitudinally, survey victims and offenders, and lobby government and non-government agencies to publish reliable official data. Despite producing valuable scholarship, the current availability of data remains limited at best. Compared to research on
traditional crime, white-collar crime research has barely scratched the surface of testing traditional theories or developing theory to explain elite deviance. Some of this discrepancy arises from the government’s priority on funding traditional crime research. While there have been some well-funded white-collar crime studies, most federal dollars are spent on traditional crime research. A noted exception was Clinard and Yeager’s 1979 study on corporate offending that was supported with a grant from the Law Enforcement Assistance Administration (LEAA) for $247,839 (Clinard et al. 1979, p. xviii, footnote 1), which would be approximately $900,000 today. Nowadays, such an investment in white-collar crime research is highly unlikely.

Beyond funding white-collar crime research, federal and state agencies should make offense and offender data open-sourced. Much insight has been gleaned from research using data from offenders sentenced in federal courts. A trove of useful data at the state and local level remains sequestered in various state and local agencies. Attorneys general in particular are unwilling to release data because they fear it could be used to criticize them and undercut their political ambitions. Chiefs of police and sheriffs also live under this same information Sword of Damocles, but they are motivated to report crime incidents to the Federal Bureau of Investigation’s Uniform Crime Reports and National Incident-Based Reporting System by their affiliation with the International Association of Chiefs of Police and the National Sheriffs’ Association. Other professional organizations of government officials could commit to collecting and disseminating white-collar crime data under federal or professional management. The clearinghouse for juvenile court data housed at the National Juvenile Court Data Archive established by the Office of Juvenile Justice and Delinquency Prevention would be a good model to follow.

References


Organizational and Macro-Level Corporate Crime Theories

Jay P. Kennedy

Introduction

Corporate crimes are acts of organizational deviance that take place within the normal course of business activities and are intended to benefit the corporation in some way. While corporate criminal liability did not emerge within US law until the early 1900s (Fischel and Sykes 1996), violations of ethical business standards have existed since the formation of commercial organizations. Before the adoption of corporate criminal statutes, unethical acts and fraudulent dealings were matters for civil courts (Canfield 1914); criminal laws did not protect consumers from being duped by corporate actors. The term caveat emptor, or buyer beware, came about as an admonition that the buyer of a good or service is responsible for ensuring they are getting what they have been promised.

The adoption of criminal codes for corporate misdeeds acknowledged not only the power and influence of corporate actors in society, but also the calculated nature and sometimes detrimental results of their actions (Edgerton 1927; Elkins 1976). Furthermore, the expansion of corporate criminal liability reflects the fact that consumers today rely upon corporations not only for essential products and services, but also for assurances that these products and services will perform as advertised. The consumer is beholden to the corporation in many ways that make them unable to discern quality, a potential for harm, or when they are being taken advantage of.

In his book Managing for Results, Peter Drucker stated that for an organization “results are obtained by exploiting opportunities, not by solving problems” (2009, p. 5). In this statement, Drucker was not using the negative connotation of exploitation or suggesting that corporations should utilize illegal means to achieve their business objectives. Rather, he was stating that organizational challenges offer opportunities to grow the business and push beyond perceived limitations. His argument was that solving problems is simply a way of responding to resource and environmental constraints, while sustained business success is obtained by seizing upon emerging opportunities.

Unfortunately for Drucker (2009), it is all too common for businesses facing challenging environments and resource constraints to engage in illegal corporate behaviors. Corporations
operate, and ultimately thrive or wither, within an environment that is bounded by the availability of resources. These resources are not infinite and they are not equally distributed. If a business is unable to obtain the inputs needed to satisfy customer demands or if it is unable to efficiently and effectively develop a suitable customer base, it withers or it finds other ways to respond. Corporate crime is one potential response to organizational challenges.

The challenge for corporate crime scholars is to apply appropriate theories of crime to explain why a corporation would choose to respond to strategic opportunities through criminal behaviors. While these activities may ultimately allow the company to reach its goals and to mitigate many of the risks related to their business activities, they also expose the company to the risk of prosecution. At this point it is appropriate to note that the language commonly used to discuss corporate crime, and corporations more generally, presents a picture of corporations as living entities that undertake decision-making processes to further their interests. Yet, corporations are not living entities nor are they criminal per se.

Legitimate corporations, be they for-profit or not-for-profit organizations, exist to maximize returns through the efficient and effective conduct of commerce, trade, or the provision of legitimate services. These organizations are not inherently good or bad, and when the organization commits a corporate violation, the “corporation” does not actually engage in an act of crime or deviance. It is the officers, employees, and agents of the corporation that commit crimes on behalf of the company, which just happens to be the entity charged with violating the law. Accordingly, theories of corporate crime that operate beyond the individual level must consider the interactions of employee, company, and other, higher-level external influences that affect opportunities for corporate crime.

Chapter Structure

This chapter is structured to provide a brief yet comprehensive discussion of theories of corporate crime that exist beyond the individual level of analysis. The following section discusses the problem of corporate crime generally, paying particular attention to the important distinction between occupational and organizational offending. In the succeeding sections, I discuss theories of corporate crime that operate at the organizational-, macro-, and multi-levels of abstraction. The chapter concludes with thoughts on the future of corporate crime theory and research, as well as a brief discussion of the impact globalization and increasing transnational trade and commerce will have upon these issues.

Overview of Corporate Crime

Corporate crimes generally lead to increases in financial returns from business operations, place the business in a favorable market or economic condition relative to its peers, or help the firm to avoid some economic loss. Yet, at times violations of corporate laws are the unintended consequence of regular business activities (Baucus 1994). Laws, regulations, and administrative rules related to corporate behavior are at some level intended to control individual and organizational motivations to engage in organizational deviance. However, in certain circumstances the law protects corporate behavior that, under other
circumstances, would be considered corporate deviance. A prominent example of this practice can be found in corporate monopolies. The federal government, through the issuance of pharmaceutical patents, allows drug companies to obtain a form of monopoly over a portion of the pharmaceutical marketplace. While these monopolies are limited in their duration, they nonetheless reflect that same behavior that in other circumstances would rise to the level of anti-competitive practices.

In the case of sanctioned monopolies and illegal anti-competitive monopolies, corporations are essentially engaging in the same type of behavior. This suggests that – in order to be effective – theories of corporate crime need to be able to distinguish a corporation's intent behind their actions, as well as discern when certain behaviors are approved compared to times when those behaviors are considered illegal. This distinction is oftentimes shaped by the corporations themselves, as they are typically acting in ways that promote their own self-interests.

For example, by the early 1970s, AT&T had become a powerful “government-sanctioned monopoly” that controlled access to telephone networks across the country, maintaining their grip on telecommunications by refusing to sell access to competitors (Katz 2004). However, these actions were sanctioned by the US government, who saw value in allowing AT&T's monopoly on such a vital infrastructure to persist, arguing that lower prices and advances in technology were the ultimate benefit (Pollack 1984). By the early 1980s the federal government had changed course and forced the dismantling of AT&T, which saw the company divest its interests in local telephone servicing and reduce its role in the provision of long-distance telephone access. Recently, AT&T has been facing increasing resistance from the federal government for its attempts to expand its market share and operations through acquisitions that are now deemed anti-competitive, with “appreciable dangers” for a monopoly to reemerge (Granville and Hsu 2017; Sherman 2018).

Corporations are powerful and prominent features of every society, and nearly everything that is essential to life and our economy is the result of corporate activities. This includes the homes in which we live, the food that we eat, the medical care that we receive, and the technology that is so omnipresent in modern society. While some may lament the ubiquity of, or tactics used by, corporate giants such as Apple, Microsoft, GM, Pfizer, or Monsanto (Charles 2017; Elstrom 2018; Goozner 2005), their activities have positive effects in nearly every part of the globe, and people the world over have come to rely upon these organizations. Unfortunately, this reliance (or as some might say dependence) means that when corporations engage in crime there can be serious and long-lasting impacts upon people and society.

While it is typical to think of large, multinational conglomerations when considering issues of corporate crime, reality presents a much different picture as these entities are the minority of firms operating in society. Considering the United States alone, just over 98% of all registered companies have fewer than 100 employees. The overwhelming majority of companies in the United States, and likely around the globe, are smaller firms that operate within local and regional markets – they are not national or international in scope. Yet, these companies still commit corporate crime and the theories used to understand their deviance are, in many ways, identical to the theories that can be used to understand the crimes of much larger firms.

While it is true that larger companies may have many more opportunities to commit crimes due to their size and the number of people they employ, smaller firms enjoy many opportunities to commit crime as well. The localized nature of these firms may mean that
the impacts of their crimes are quite localized as well, yet they engage in the same types of deviance as their larger counterparts. The types of crimes committed by corporations typically include, but are not limited to, the following:

- **Bribery** – both domestically and internationally, although some latitude is given internationally. Under certain circumstances payments to foreign entities that might otherwise be considered a bribe are allowed by law.
- **Environmental offenses**
  - Illegal dumping
  - Air and water pollution
  - Unauthorized disposal of hazardous waste
- **Antitrust offenses**
  - Bid rigging
  - Price fixing
  - Market division
- **Health and Safety offenses**
  - Unsafe working conditions

Threatening businesses with the use of corporate criminal liability is one way that governmental agencies attempt to keep illegal corporate activities in check, yet these agencies also have the ability to use non-criminal means of enforcement such civil lawsuits. Additionally, governments have the ability to charge individuals alongside the corporation when violations occur. This is typically seen as an attempt to deter corporate crime through the use of general deterrence strategies that make individuals liable for corporate misdeeds. Yet, at times it can be difficult to distinguish those crimes that are committed through the business or for the benefit of the business from those that are committed for the benefit of an individual.

**Distinguishing Between Occupational and Corporate (Organizational) Crime**

Traditional crimes make no distinction between acts committed for self and acts committed for others, so long as those acts violate the law. Stealing from a neighbor to provide for one's family is viewed to be the same as stealing from a neighbor to provide benefits for oneself. However, corporate crime, as a form of white-collar crime, makes a substantive distinction about the entity to which the benefits of crime accrue. Specifically, corporate crimes are a form of white-collar crime that primarily benefit the corporation, though they are committed by an individual; crimes committed through the corporation for the benefit of the individual are referred to as occupational crimes (Braithwaite 1985).

Occupational crimes are offenses committed by an individual, using the skills, knowledge, and access granted to them by their legitimate occupation, to obtain for themselves some financial gain (Friedrichs 2002; Kennedy 2015, 2018). Corporate crimes may ultimately provide the employee with some tangible benefit, such as a promotion, merit-based pay raise, or financial bonus for exceptional performance. Yet, the primary purpose of committing a corporate crime is to provide a benefit to the corporation. Accordingly, corporate crimes have a distinctly organizational focus irrespective of whether they are committed by one person or 100 persons.
Despite this distinction in the focus of crimes committed through business activities, scholars have argued that the same theories used to explain occupational crime can be used to explain organizational crime (Braithwaite and Fisse 1990). While a critique of this assertion is beyond the scope of the present chapter, a recognition of this approach is essential to understanding the current state of corporate crime theorizing. In particular, the legal fiction that created the concept of corporate personhood influences the way in which criminological theory is used to explain corporate crimes.

For criminological theory, corporate crime presents a dilemma of identity. Specifically, corporations are viewed legally and popularly to be individual actors within society; however, their behavior is actually the result of individuals and groups acting on behalf of the larger organization (Simpson 2002). Given this situation, it makes more sense to think of corporate-level, or organizational, crimes as a result of both individual- and group-level deviance occurring in the course of organization-focused decision-making and action (Carroll 2012; Minkes and Minkes 2008). In essence, the individuals and groups within the corporation undertake a type of altruistic behavior, whereby they commit crimes/deviance so that the organization, something greater than themselves, may benefit.

Individuals can be (and oftentimes are) charged with corporate crimes due to their role in corporate offenses, yet the organization is considered to be the primary offender. Just as with organizational success, criminal acts ultimately accrue to the business, despite the fact that it is the employees who undertake the day-to-day activities of the business. Corporate crimes, like any other form of organizational behavior, are a result of employee behaviors aimed at maximizing business activities, as well as the returns realized from these activities. This highlights an important feature of corporate crime: both legitimate and illegitimate organizational decision-making and behavior are intended to increase legitimate business outcomes.

Thinking back to Drucker’s (2009) statement earlier in this chapter, the exploitation of a business opportunity may come through the use of legitimate and accepted means, through the use of deviant and unapproved of yet legal means, or through the use of illegal means. For employees, the ultimate perpetrators of corporate crime, the high value placed on the financial returns that derive from business operations can blur the line that exists between legal and illegal or deviant activities.

As Geis (2007) highlights, this paradox of corporate crime – that an entire organization is held accountable for the actions of one (or a few) individual(s) – creates questions about the culpability or guilt of other organization members:

> If the father in a family burglarizes a neighbor’s house, no criminal charge will be framed in terms of *State v. The Olivers*, with the accused being not only the particular violator, but also the entire family that was accorded its identity by means of a state-granted license. (p. 80)

This analogy aptly frames the paradox of charging an organization with the acts of an individual or group of individuals, yet what must also be highlighted is the fact that organizations, or families, have cultures or common ways of behaving and responding to situations. The organization helps to frame for employees what are accepted and unacceptable ways of addressing problems and issues within the firm. If employees believe that deviance is an acceptable response to resource constraints or market pressures, they may feel as though certain deviant acts will be overlooked by the business should they provide for the greater good of the firm.
Organizational Theories

As history has shown, many corporations do (either actively or unintentionally) exploit legitimate business opportunities by engaging in criminal activities that ultimately harm consumers, the market, and themselves. The nature of corporations – i.e. that of profit-generating entities operating within social and economic systems that rarely question how those profits are produced – provides a forceful and constant source of criminal motivation. This motivation exists whether the corporation is publicly traded or privately owned, and whether the firm operates domestically or internationally. Furthermore, this motivation exists within for-profit corporations as well as not-for-profit organizations where profits are still necessary to organizational growth and survival.

It is important to recognize the fact that discussions of organizational theories related to corporate offending are in reality theories of individual and group actions occurring within an organizational context. While individuals and groups may act on behalf of the organization, it is the decision-making and action of an employee, or a group of employees, that become the actions of the corporation (Cressey 1989; Fisse and Braithwaite 1986). Accordingly, an organization’s behavior is simply a reflection of the multitude of actions undertaken by its employees and, therefore, organizational theories are simply a way of describing employee actions and interactions that benefit the organization. However, it must be acknowledged that some corporations hold offending employees responsible for their involvement in organizational crimes (Braithwaite and Fisse 1985), which can serve as a way to separate the employee’s actions from those of the larger organization.

Organizations do not have agency in the way that other nonhuman actors may have agency within social interactions; organizational behaviors are the result of employee action rather than an organic product of the inanimate corporation. Even in the most egregious cases of corporate crime, such as those committed by Enron, the company was simply a vehicle through which a multitude of crimes were committed. Organizational theories of corporate offending describe, in various ways, how group-level factors influence individual-level decision-making.

At times it is the employees of the corporation who, through their actions and beliefs, create a climate conducive to deviant and criminal behavior. At other times it is the management and leadership of the corporation who fail to send proper signals about the acceptability or unacceptability of illicit behavior. Organizational theories that explain the occurrence of corporate crime can be found in many disciplines, including sociology, criminology, and organizational behavior.

Sociological/Criminological Approaches

Jack Katz’s (1979) work on concerted ignorance highlights the ways in which organization members ignore identified or suspected deviance to insulate themselves or the organization from liability. Concerted ignorance affects organizational behavior by socializing individuals and organizations to actively avoid acknowledging information that confirms the existence of illegal activities. The officers and directors of a firm have competing obligations both to root out illegal behavior and to ensure the firm achieves its goals despite internal or external challenges and obstacles. This can lead organization members to question the legitimacy of accusations made against other members. For example, Katz (1979) states that
“leaders have diminished obligations to investigate charges against their own if the allegations come from outside sources with suspect motives” (p. 299).

Competitive business environments can breed a natural suspicion about the motives of outsiders who raise questions about an organization’s practices. Meeting this suspicion by willfully ignoring signs of deviance can send signals to other members of the organization that deviant behavior is at the very least ignored, if not outright accepted, so long as it benefits the firm. Practicing concerted ignorance, particularly when such practice becomes a part of normal organizational behavior, creates organizational norms supportive of silencing or hiding information that may harm the business. These practices may be viewed to be acceptable if blowing the whistle on internal deviance would substantially affect the achievement of organizational goals (Van De Bunt 2010).

Overarching goals of organizational performance can lead to organizational norms that support the suppression of negative information that may disrupt or inhibit goal attainment. It is also the case that organization members’ uncertainty about the illegality of an organizational action or their inability to determine the best way to speak up about these issues inhibits whistleblowing and similar internal actions (Near and Miceli 1985). However, whether they are formalized or simply a part of the informal structure of the organization, norms tolerant of concerted ignorance can become part of the culture or may help to define the climate of an organization when left unchecked (Cohen 1995).

The organization’s climate, and in turn employee behavior, is heavily affected by the types of behaviors and activities that are rewarded or sanctioned by the organization (Neal et al. 2000; Pritchard and Karasick 1973). According to Katz (1979), “managers develop interest in not enforcing their authority because deviance in their domains would reflect failure in their leadership” (p. 303). This suggests that managers within a firm can create a climate conducive to the suppression of negative information and knowledge of deviant acts when admission of such behavior would not reflect well on the manager or the business. It is unclear whether this approach can be applied to issues of interpersonal deviance that occur within the workplace, occupational offending that may ultimately hurt the corporation, or organizational deviance that benefits the firm.

By exercising concerted ignorance and ignoring deviant acts within the business, the company is allowed to profit from the deviant or criminal behavior without violating informal organizational norms. In these instances, overlooking or suppressing knowledge of deviant acts occurs not because managers or employees are actively ignoring illegal or unethical behavior, but rather because deviance has become part of the organization’s normal behavior. Diane Vaughan’s (1997) discussion of the normalization of deviance highlights the ways in which certain acts can lose their deviant or criminal nature through their normal occurrence as part of otherwise legitimate organizational behavior. In essence, organization members do not see harmful acts as either deviant or criminal, nor do they see them as harmful to the organization. Rather, the normalization of deviance allows well-intentioned people to engage in behaviors that in other circumstances would be recognized as deviant.

Normalizing deviance within an organization allows members to create neutralizations or justifications (Sykes and Matza 1957) for their behaviors that are accepted by other organization members. At the same time, organization members who recognize patterns of deviance may be afraid to speak up because they are afraid of confronting co-workers about behaviors viewed within the group to be normal (Maxfield et al. 2011). This pattern of deviance normalization has its most impactful effects, internally and externally, when organization members normalize deviant behaviors that subvert processes designed to protect those
who rely upon the organization for essential products or services (Banja 2010). The external influence of normalized deviance can be substantial in other ways, as it can affect how an organization interacts with strategic partners during the course of business relationships (Pinto 2014).

It has been argued that the normalization of deviance occurs because organizations are in search of new ways to achieve their goals of efficiency, increased productivity, and economic gain (Prielipp et al. 2010). In particular, it is an increased focus on achieving increases in these goals without a matching concern for the implementation of appropriate methods used to obtain the goal that leads to normalized deviance. All that matters is the goal, and reward systems that emphasize goal attainment without a concomitant focus on emphasizing the proper ways to achieve that goal leave open opportunities for a normalization of deviant organizational activities.

The normalization of deviance within organizations is not always a reflection of deviant intentions by organization members or attempts by the organization to find creative ways around regulations that may increase costs or seem onerous. Rather, deviance can become normalized over time as alternative processes or practices, which are ultimately deviant, replace accepted practices or processes that are either inefficient, ineffective, or flat out inhibit an organization’s ability to achieve its goals (Price and Williams 2018). Deviance that becomes normalized can, therefore, simply be a result of misguided organizational adaptations to blocked goals or means of goal attainment (Bogard et al. 2015).

Theories of Organizational Behavior and Strategic Management

The study of deviant and criminal organizational behavior, as with the study of crime more generally, has been undertaken by multiple disciplines. However, it has not always happened that these disciplines have sought to integrate knowledge as a way to advance understanding of this phenomenon generally. This has led to a range of theories seeking to understand and explain how organizations develop, grow, and persist over time, as well as theories seeking to understand how people interact with organizations. Of particular importance to the study of corporate crime are theories that discuss organizational development, adaptation, and change, as well as theories that address the ways in which employees of a firm interact with, make changes to, and are eventually changed by the organization.

Ultimately, theories of organizational behavior and strategic management contribute to our understanding of corporate crime by describing the conditions under which organizationally driven opportunities for crime develop. Furthermore, these theories can be used to understand the ways in which organizational factors influence employees to engage in crime and deviance that benefits the company. For example, climates that promote or normalize deviance say to employees that illegal practices are approved so long as they lead to organizational goal attainment (Reichers and Schneider 1990). Organizations may have a “deviant climate,” whereby the use of illegal or unethical practices becomes a learned employee behavior that is passed throughout the organization via formal and informal socialization.

An important theoretical tradition that addresses not only the ways in which organizations develop and choose goals and objectives but also how they adapt to challenges and environmental constraints is institutional theory. Accordingly, institutional theory provides quite a useful means of investigating the ways in which organizational activities can
affect the development of internal opportunities for corporate crime. Scott’s (1987) review of research on institutional theory describes how organizations use established processes, belief systems, and shared norms to create stability and a shared sense of purpose. Importantly, Scott notes that “all social systems – hence, all organizations – exist in an institutional environment that defines and delimits social reality.” The term “social reality” reflects the notion that members of organizations come to a shared view of the organization, seeing current organization behaviors as “the way things are to be done” (Scott 1987, p. 496).

Organizations that develop within these institutional environments defined by a social reality that places organizational performance and outcomes ahead of ethical or legal conduct are likely to develop systems and processes that are deviant or criminal in nature or outcome. Because the institutional environment influences the ways in which organizations behave, the types of goals they set, and how they interact with their environment, strong external controls can shape the organizations’ environment in such a way that deviance is seen as less of a legitimate response to organizational challenges.

It has been hypothesized that the institutional environment in which corporations operate has a significant impact on the occurrence of irresponsible corporate conduct. Specifically, a lack of external stakeholder engagement and a lack of external controls in the form of legislation or regulatory authority will lead to higher likelihood of organizational deviance, in part because the organization will perceive they have wide latitude in their actions (Campbell 2007). When superordinates embrace deviance as a legitimate response to an organizational issue, they can put pressure on subordinates to follow these processes, which tends to lead to submission to authority (Townley 2002).

It should be clear by this point that individual decision-making within an organization is influenced by organizational factors. The structure of an organization, including its norms and values and the emphasis placed on goal attainment, have an effect on employee decision-making and development (Trevino 1986). Importantly, Trevino highlights the influence of organizational factors on a person’s overall development, stating that “work experiences may provide the stimulus for further adult moral development” (p. 607). This suggests that organizational conceptualizations of what is right and wrong can influence a person’s moral compass and affect the way they make decisions within other environments.

Because corporate crime is ultimately an issue of employee decision-making, either at the individual or group level, organizational theories of corporate crime that assess employee behavior must take into account ethical factors. One such approach is the interactionist model of ethical decision-making (Trevino 1986), which takes under consideration the role of individual and situational factors in an individual’s organization-focused decision-making. According to the model, individual factors such as one’s ego have the greatest influence on ethical decision-making within an organizational setting, with situational factors like features of the organization’s culture moderating these relationships.

**Macro-Level Theories**

Macro-level theories of corporate crime address factors that exist beyond the level of the organization by incorporating issues that affect groups of corporations. When considering organizational performance and success, corporations are generally compared to their industry peers – other firms operating within the same general line of business (e.g. automotive,
While all companies seek to maximize their financial returns, corporations operating within the same industry directly compete with each other over resources such as access to materials, raw inputs, and market share. While some large corporations operate in multiple industries, they tend to divide their operations and activities (and evaluate their overall business success) by industrial segment. While not heavily researched, industry-level theories of corporate crime have been proposed and studied. These theories examine how groups of corporations are affected by market-level conditions that, under the right conditions, create organization-level motivations for corporate crime.

Under the perfect business conditions, all companies would have the resources and customers needed to produce and sell their products and services in ways that return consistent profits to the company. Product differentiation and differences in marketing and advertising strategies will lead consumers to make brand-specific choices from a range of high-performing products. Lower quality or less reliable products may still find market share as a substitute good, but the best products would command the greatest market share. Yet, the scarcity or finite nature of most resources, as well as limits on the amount of customers within a given market or industry, forces companies to continually compete with each other for access to resources and customers. This competitive business environment provides ample motivation for companies to “adjust” the rules of the game through unethical or illegal means.

The reality of resource scarcities and the impact of scarcity on motivations for corporate crime were discussed by Staw and Szwajkowski (1975), who found that companies operating in resource-scarce environments would be more motivated to engage in deviant corporate acts. While the authors found no significant differences between rates of corporate offending among industry peers, they did find that firms operating in resource-poor industries were more likely to commit corporate violations relative to firms operating in resource-rich environments. Staw and Szwajkowski stated that “organizations within scarce environments would take actions to procure additional resources” (p. 351), including the use of illegal behaviors. In particular, firms operating within environments characterized by limited resources were seen to use illegal behaviors that were intended to minimize their exposure to risk, such as price fixing.

However, work by Baucus and Near (1991) suggests that the resource scarcity hypothesis misses much of the nuanced influence of industry-level factors on corporate offending. In developing their model of illegal corporate behavior, Baucus and Near found that features of a company’s environment operating at the industry-level have significant impact on rates of corporate offending. Not only does the industry itself exert an influence on the likelihood of corporate offending, as some industries appear to be more criminogenic than others (e.g. lumber, petroleum refining, automotive), but having a glut of resources within the industry also predicts corporate illegality.

More specifically, Baucus and Near (1991) found that firms were more likely to engage in illegal corporate behavior if they were operating in resource-poor or resource-rich environments. There were no significant relationships found between illegal corporate behavior and operating within industries with a moderate amount of resources. Companies operating within industries that are highly dynamic, meaning the industry is seeing rapid fluctuations in demand for its goods, were significantly more likely to engage in illegal behavior. However, firms operating in environments that had low levels of dynamism were also likely to engage in illegal behavior, just not at the same rate as firms in the most dynamic environments.

The curvilinear relationships found between illegal corporate behavior, the availability of resources, and a dynamic environment suggest that munificent environments provide just
as much motivation for corporate crime as do resource-scarce environments. Additionally, industry-level perceptions of risk and a desire to avoid competitive environments that lead to downward pressure on a company's stock price or financial returns can motivate collusive illegal corporate behavior. As detailed by Geis (1977) and Baker and Faulkner (1993) in their investigations of scandals in the heavy electrical equipment industry (an industry that supplies large power-generation equipment primarily to government customers), the entire industry has long been rife with collusion and illegal practices. Individual firms would coordinate on the timing of bid submission and colluded to fix prices and rig their bids to ensure that everyone got an equal distribution of the pie and no one saw substantial declines in profit margin.

According to Baker and Faulkner (p. 838), antitrust violations in the heavy electrical equipment industry have been occurring since the late 1800s and have been driven by corporate profitability goals. The firms operating within this industry quickly realized that they had more to gain by cooperating in an illegal manner to fix their odds of consistently winning lucrative bids from the government. This practice allowed colluding firms to obtain enough business to stay profitable and avoid potential losses by not having to compete with their peers, and led to individual rewards (i.e. bonuses, promotions) for the executives and employees involved in the collusion.

The collusive environment that ultimately normalized industry-level deviance also led to widespread corporate abuses that were perpetrated by otherwise upstanding corporate and social citizens. While Sutherland (1949) did not specifically address the role of industry in his study of white-collar crime (which was actually a study of corporate offending), he did address the fact that white-collar offenders were able to present themselves as pillars of society and distinctly non-criminal. It stands to reason that an executive's perception of themselves as an upstanding, respected, decent member of the community allowed them to rationalize workplace behaviors that violated the law. In essence, these individuals are able to separate out their deviant and criminal corporate selves through a type of cognitive compartmentalization (Showers 1992). Yet, it is also likely the case that investigating the ways in which certain individual-level factors interact with organizational factors will lead to greater understanding of the multifaceted nature of corporate offending.

Multi-Level Theories

Organizational- and macro-level theories of corporate crime highlight how the interconnected nature of corporations, industries, and employee come together to generate myriad criminogenic influences that span levels of analysis. Individual- and group-level decision-making impact, and are affected by, organizational factors such as the prevailing climate or culture. At the same time, corporations are affected by and have an influence upon the industry environment and the marketplace. The multi-level nature of corporate crime cannot be ignored, and discussions of corporate crime theory need to acknowledge the presence and impact of multi-level influences.

As Simpson (1986) points out, “strong attention should be focused on macro[level] business trends and how they, either alone or in conjunction with industry declines, may be perceived as threatening to some firms” (p. 872). Businesses respond to perceived threats within their environment by adjusting their practices or operations in ways that mitigate their exposure to those threats. The costs of adjustment, be they the adoption of criminal behaviors or simply a realignment of the business in some legitimate way, are balanced...
against the potential gains of the action (or inaction). These cost–benefit analyses, when occurring at the individual level, are influenced by organization-level factors that either seek to constrain or prevent unwanted behavior or provide leeway for deviant acts (Paternoster and Simpson 1996).

This rational approach to corporate decision-making recognizes the influence of extra-person factors that exist at the group and organization level, with individuals making decisions based upon their perception of organizational responses to their decision-making (Simpson et al. 2002). Applying a rational decision-making framework to the study of corporate crime gives support to the potential for deterrence-based interventions that may influence the calculation of the costs of deviance. For example, Simpson (2002) states that:

strategic decisions fall more readily into the purely “rational” camp… because they are arrived at through a lengthy process of research, discussion, and cost benefit analysis … strategic decisions are most amenable to deterrence as formal legal costs can easily be incorporated within the cost-benefit decision calculus. (pp. 57–58)

The plausibility of a deterrence-based approach to individual-level decision-making that takes into consideration organizational- or macro-level influences is further supported by Vaughan (2007), who states that:

a full theoretical explanation of any particular behavior needs to take into account, to the greatest extent possible, its situated character: individual activity, choices, and action that occur within a layered social context that affects cultural understandings, and thus interpretation and meaning at the local level. (p. 7)

This chapter’s discussion of organizational- and macro-level theories has been pointing, explicitly and implicitly, toward the conclusion that theories of corporate crime must by nature include the influence of multi-level factors.

Accordingly, it is also important to consider how industry-level factors can influence individual decision-making as conditions present within an industry can create “pressure, opportunity and predisposition” toward deviance (Baucus 1994). These factors (pressure, opportunity, and predisposition) will act as a type of deviance-inducing strain, where illegal corporate behavior is seen as a legitimate coping mechanism (Agnew 2001). For example, research by Wang and Holtfreter (2012) found that the interaction of corporation- and industry-level strain was, in certain instances, associated with higher rates of illegal corporate behavior. Importantly, the authors found that corporate-level strains alone were not sufficient explanations for illegal corporate behavior; industry-level factors mattered when it came down to understanding the motivations behind corporate offending.

**Conclusion**

As was mentioned earlier, corporations tend to be viewed by society in humanistic terms, whereby corporate activities are ascribed to the corporate entity, rather than the employees, officers, and directors of the firm. The notion of corporate personhood has paved the way for legal fictions that support the sanctioning of the entire corporation for the acts of an
individual, or a group of individuals. To be sure, there are situations where, because of the widespread and pervasive nature of offending, attempts to sanction the entire corporation are warranted (for example, the case of Enron). However, in order for corporate crime theory to be effective and efficient in the study of corporate illegality and the development of appropriate interventions, it must more fully embrace the relationships that exist among individuals within the firm, groups of individuals, peer companies, and industry and environmental factors.

While many scholars recognize the influence of individuals, groups, and external factors in models of illegal corporate behavior, the corporation is still generally viewed to be the criminal actor. The dilemma this creates for those who would pursue the development and refinement of corporate crime theories is when, specifically, to separate the corporation from the entities that comprise the corporation. Are the employees theoretically distinct from the corporation? If so, at what point does an employee cease being an individual and become a representative of the firm?

In this chapter I have suggested that one such way to deal with this dilemma is to use multi-level theories. In doing so, scholars can better account for the influence of organizational (Paternoster and Simpson 1996; Simpson and Paternoster 2017) and external factors on individual decision-making (Kennedy 2015; Rorie 2015). Theories of corporate crime address criminal and deviant acts that occur at the individual and group levels but impact the entire organization both positively and negatively. The positive impacts of corporate crime relate to the achievement of organizational goals through processes or methods that preserve organizational resources, create extraordinarily beneficial environments for the firm, or help the company to avoid losses and manage risks. The negatives are obvious – corporate crime exposes the company and offending employees to criminal and civil liabilities that may ultimately negate any gains realized from their illegal behavior.

Throughout this chapter I have attempted to press home the idea that corporate crimes are, in reality, the acts of individuals and groups. A corporation, as an entity, does not act or undertake agency in ways beyond the actions of human actors. Explorations of illegal corporate behavior must therefore address the ways in which companies create opportunities for, willfully ignore, sanction or fail to sanction, and reward illegal, unethical, and deviant behavior. As a result, theories of corporate crime must take multi-level perspectives that appreciate and acknowledge the force and importance of industry-, organizational-, and group-level factors on individual and group decision-making.

Theories of corporate crime must also be flexible to today’s increasingly global business environment where technological advancements and sprawling international shipping operations are bringing consumers and corporations closer together. The global nature of trade and commerce means that organizational-, macro-, and multi-level theories of corporate crime need to incorporate the influence of third parties, such as suppliers, cargo shippers, and contract manufacturers (see Chapter 29, this volume). Furthermore, as global organized crimes like human smuggling and product counterfeiting proliferate, legitimate businesses may face increasing liability for their vicarious support of these crimes (Kennedy and Wilson 2017). Employee decision-making that exposes a company to criminal liabilities, such as an employee’s collusion with criminal gangs or human smugglers, ultimately harms the corporation as well as the employee. Finally, thought must be given to the ways that cultural differences affect employee decision-making and may ultimately expose the company to criminal liability.
References


13
Integrated Theories of White-Collar and Corporate Crime
Fiona Chan and Carole Gibbs

Introduction

White-collar and corporate crimes inflict significant social and financial harms with increasing global impacts. The recent crackdown of cryptocurrency-related fraud and several high-profile multinational corporate crime cases (e.g. PricewaterhouseCoopers, Wells Fargo, Volkswagen) demonstrate the public’s recognition of their seriousness. Yet, in comparison to conventional street crimes (i.e. violent, property, and drug offenses), there is considerably less research on white-collar crimes (WCC) (see e.g. Simpson 2013). To work toward an increased understanding of WCC that can inform preventive solutions, the following chapter provides an overview of integrated theories of WCC and ideas for future theoretical advancement.

To provide broad coverage of these theories, we rely on multiple definitions of WCC in this chapter. Some of the theories (e.g. Pontell's white-collar delinquency) are designed to explain WCCs that are less organized and often occur outside of an organizational context. These crimes are consistent with definitions of WCC that prioritize the nature of the offense, such as “nonviolent crime for financial gain committed by means of deception” (Bureau of Justice Statistics 1986, p. 2) or “property crime committed by non-physical means through the use of deception or concealment” (Edelhertz 1970, p. 3). Others (e.g. Rorie’s integrated theory) theorize about a subset of white-collar offenses that occur within a business context in pursuit of organizational goals, often referred to as organizational or corporate crime. For example, Braithwaite (1984) defines corporate crime as “conduct of a corporation, or of employees acting on behalf of a corporation, which is proscribed and punishable by law” (p. 6).

Using these definitions, we selected theories that were developed in the criminological literature and provided coverage of dominant perspectives. We based our selections on Farnworth’s (1989) definition of integrated theory as “the combination of two or more pre-existing theories, selected on the basis of their perceived commonalities, into a single reformulated theoretical model with greater comprehensiveness and explanatory value than any one of its component theories” (p. 95). Finally, to provide broad coverage of the WCC
To review this literature, we begin with a description of the rationale for theoretical integration in the broader street crime literature, followed by some potential rationales for integrated WCC theories. We then provide a brief overview of various approaches to theoretical integration and selected integrated WCC theories organized according to those integration methods (see Table 13.1).4 We conclude with a discussion of the limitations of current efforts and directions for future research.

### Background

Most theoretical development and integration in criminology was designed to explain street crime. Yet, the mounting quantity of criminological theories was criticized by some as an impediment to the growth of the field (e.g. Bernard 1991). In response, scholars proposed two ways to reduce the number of theories. Some argued for theory falsification/competition. For instance, Hirschi (1969) asserted that many theories (i.e. control, strain, cultural deviance) are inherently incompatible. Therefore, scholars should empirically test each set of theories in competition to validate or falsify each perspective.5

Others argued for theory integration. Elliot (1985), for example, favored integration because attempts to test theories against one another often involve imprecise hypotheses that fail to produce conclusive results (i.e. nothing is ever falsified). In addition, Bernard and Snipes (1996) challenged Hirschi's contention that certain theories are incompatible, noting instead that theories could be organized into groups depending on whether they focus on individual differences or structural/process explanations for crime (Bernard et al. 2010). This approach emphasizes the analysis of risk factors (as opposed to a strong adherence to specific causal pathways) and involves examining multiple variables’ simultaneous impact on the likelihood of offending. Integrating criminological theories in this way may offer a more unified account of criminality to advance the field (Bernard et al. 2010).

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Table 13.1 Integrated white-collar crime (WCC) theories organized by methods of integration.

<table>
<thead>
<tr>
<th>Integration method</th>
<th>Level of analysis</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Micro-level</td>
</tr>
<tr>
<td><strong>Sequential</strong> (end-to-end)</td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td>Coleman (1987)</td>
</tr>
<tr>
<td></td>
<td>Finney and Lesieur (1982)</td>
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<tr>
<td></td>
<td>Braithwaite (1989)</td>
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<tr>
<td></td>
<td>Rorie (2015)</td>
</tr>
<tr>
<td></td>
<td>Benson and Cullen (2018)</td>
</tr>
<tr>
<td><strong>Parallel</strong> (side-by-side)</td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td>Piquero and Benson (2004)</td>
</tr>
<tr>
<td></td>
<td>Steffensmeier et al. (2013)</td>
</tr>
<tr>
<td></td>
<td>Pontell and Rosoff (2009)</td>
</tr>
<tr>
<td><strong>Deductive</strong> (up-and-down)</td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td>Gottschalk (2017)</td>
</tr>
<tr>
<td><strong>Unclassified</strong></td>
<td>Piquero et al. (2005)</td>
</tr>
<tr>
<td></td>
<td>Shover and Hochstetler (2005)</td>
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</table>
Rationale for White-Collar and Corporate Crime Theoretical Integration

Integrated theories in the WCC literature arose for different reasons, one of which is to account for the contextual complexities of these crimes. As many WCCs occur in an organizational context, WCC theories often incorporate organizational factors to account for meso-level explanations to WC offending (Braithwaite 1989). Other factors, such as opportunity structures and offender characteristics, also differ from street crime (see Clinard and Yeager 1980; Benson and Simpson 2015). Integrating multiple theories may, therefore, better accommodate these complex factors.

Integrated theories of WCC may have developed for several other reasons, such as advancements in the general criminological literature. New theoretical developments/integration from the mainstream literature are often adapted or tested to explain WCC. The strong need for practical application may also result in WCC theoretical integration. Despite limited empirical evidence, scholars often conclude that multifaceted interventions are more likely to be effective (Simpson et al. 2014; Schell-Busey et al. 2016). Integrated theories may provide greater range of such strategies to inform practices.

Methods of Integration

Broadly speaking, there are three types of propositional integration (Hirschi 1979) – (i) end-to-end (a.k.a. sequential) integration, (ii) side-by-side (a.k.a. parallel) integration, and (iii) up-and-down (a.k.a. deductive) integration. End-to-end/sequential integrations organize multiple theoretical propositions in a causal order. Side-by-side/parallel integration emphasizes the conceptual overlap between theories. Up-and-down/deductive integration creates a broader theory with a higher level of abstraction that encompasses other theories within it. Each type of integration can be done within the micro-level or the macro-level, or across the two levels, creating nine possible integration methods (Short 1979).

A Survey of Integrated Theories of WCC

We used these integration methods as a framework to organize selected integrated theories of WCC. However, as others have noted in prior attempts to organize the criminal justice literature, most theories rarely fit neatly into one category or another due to the complexities in their evolution (Bernard and Engel 2001). Thus, our organization (see Table 13.1) simply represents one logical arrangement of the prevalent themes in the literature. Other conceptualizations may also be appropriate.

Cross-Level Sequential (End-to End) Integrated Theories

**Coleman's (1987) Integrated Theory.** The central premise of Coleman's (1987) integrated theory, one of the earliest in the field, is that WCC occurs from the confluence of offender motivation and opportunity. To explain motivation, Coleman turned to the interactionist perspective (Cressey 1953; Sutherland et al. 1983), acknowledging that offenders' symbolic constructions of expected social responses can shed light on motivation. But theories like differential association and techniques of neutralization only described how symbolic
constructions are adjusted to conform to social expectations rather than explaining root causes of motivation. Coleman suggested that the origin of WCC motivation can be traced back to the “culture of competition,” humans’ desire for wealth and success, and fear of failure (MacPherson 1962; Lukes 1973, reprinted in 2006).

According to Coleman (1987), the “culture of competition” can be attributed to the economic exchange of surpluses. Prior to the pervasiveness of market exchange, hunting/gathering societies were more cooperative and motivations more altruistic. As societies began to accumulate more goods than needed for consumption, surpluses became commodities to be exchanged. The culture of cooperation and sharing then became more egoistic as individuals no longer shared resources among themselves but accumulated excess for market exchange. The advent of money as a medium of exchange, the growth of industrial capitalism, and the desire for wealth and fear of failure further fueled a competitive culture that motivates crime.

Coleman (1987) also further theorized criminal opportunities, as motivation alone is an insufficient cause of crime. Coleman (1987) defined opportunity as any “potential course of action, made possible by a particular set of social conditions, which has been symbolically incorporated into an actor’s repertoire of behavioral possibilities” (p. 409). That is, opportunity can be more or less appealing to each individual, and there are usually courses of action of which an individual is unaware. Incorporating tenets from the rational choice paradigm and deterrence theory, Coleman presented four factors that influence an opportunity's attractiveness – (i) perception of gain from the action, (ii) perception of risk associated with the action (detection certainty and sanction severity), (iii) compatibility of such action with one's ideas, rationalizations, and beliefs, and (iv) relative attractiveness of the action in comparison to other opportunities (i.e. the entire opportunity structure).

Finally, Coleman integrated various macro- and meso-level explanations that may influence all the dimensions of criminal opportunity attractiveness. For instance, drawing from the concept of a “crime coercive/facilitative system” (Farberman 1975; Denzin 1977; Needleman and Needleman 1979), he argued that certain industries have the ability to portray illicit activities in a more attractive light. Similarly, concepts such as “organizational sets” (Gross 1980) were integrated to explicate how industries with a stratified internal system can facilitate criminal opportunity by reducing the likelihood of crime being detected. He further posited that “organizational subcultures” (i.e. criminal motivation, rationalization, knowledge of opportunities, means to achieve the criminal acts) can be diffused among organizations within an industry.

At the meso/organizational-level, Coleman integrated tenets from strain and opportunity perspectives (Merton 1957; Cloward and Ohlin 1960), stating that the absence of legitimate opportunity to attain profit goals can enhance the attractiveness of criminal opportunities. Coleman also incorporated concepts from organizational theories to understand how employees came to develop their expectations of societal responses to law-breaking. For example, corporate culture can serve as a symbol of informal social control, or the lack thereof. A complex organizational structure is predicted to be more crime facilitative due to the diffusion of responsibility (Gross 1980). On an individual level, an employee in a crime-conducive profession (e.g. accountants, lawyers, physicians) or position within an organization (e.g. salespersons, top management) can also experience increased awareness and abundance of potential illicit opportunities. Compensation structures may also influence his/her cost–benefit assessment of criminal behaviors.

Finney and Lesieur’s (1982) Contingency Theory. In a similar vein to Coleman’s integrated theory, but emphasizing the constantly changing nature of business environments, Finney
and Lesieur (1982) applied the contingency theory from organizational research to corporate crime. Within the organizational leadership literature (e.g. Fiedler 2006; Morgan 2006), contingency theory describes organizations as “open-systems” that are continuously influenced by both internal and external factors. Effective management of organizations is therefore context-dependent and requires the appropriate application of leadership styles and policies to dynamic situations. Extending this open-systems concept, Finney and Lesieur (1982) noted that corporate crime decisions are similarly developmental in nature. Certain corporate crimes “cannot be understood without adopting an organizational-level of analysis” (p. 256). The events leading up to the offense, the decision to commit the illegal act, and the aftermath that ensues all shape the outcome of the crime decision process, which is contingent on corporate agents’ reactions to the causal sequence of internal and external stimuli (not necessarily a result of the stimuli themselves). Thus, crime may be a result of management's reaction to the dynamic environment.

Several factors may impact these reactions. For example, external, macro-level sources of pressure (e.g. resource scarcity, performance pressures from rival firms, competitive social culture) may engender a performance-focused, crime-conducive internal culture within organizations. A complex industry and organizational structure, as well as limited internal social controls, may further provide opportunities for illegalities. Managements’ crime decisions are then based on the myriad of different permutations of events and their individual normative values, intentions, and prior decisions/actions (e.g. prior offense).11

Braithwaite's (1989) Integrated Theory. Braithwaite's (1989) adaptation of shaming theory to organizational crime also represents cross-level sequential integration. Braithwaite's causal model begins with the Mertonian concept of blocked opportunity (Merton 1957; Cloward and Ohlin 1960). Organizations can experience challenges in goal attainment in capitalistic and socialistic societies, and goals can differ or create conflicts within organizations. When legitimate means to achieve goals are not viable for the organization or its subunit, illegitimate means become more attractive, which can foster a criminogenic subculture within an organization or an industry. As subculture theory suggests, a strong subculture of resistance to the law can promote offending and diffuse knowledge of criminal opportunities and ways to conceal illicit activities.

A subculture of resistance can also be brought about by “differential shaming” (Braithwaite 1989). Reintegrative shaming refers to shaming that is placed on the act rather than the individual/organization/subunit, while disintegrative shaming stigmatizes the offenders with no attempt to reconcile them with society. There is a “tipping point” (Glaser 1987, as cited in Braithwaite 1989) in which shaming can be an informal social control that either discourages (i.e. control theory) or encourages crime (i.e. labeling theory) depending on its modality. When organizations and their actors are stigmatized as “irredeemably crooked,” a subculture of resistance to the law/regulatory agency is more likely to develop. When shaming is reintegrative (i.e. strict, yet communicative), the formation of such a subculture is less likely (Braithwaite 1989).

For shaming to have a deterrence effect, it must be mobilized by the general community, “peers” of the organizational offenders, and regulatory officials. The general community may contribute to reintegrative shaming via “open, vigorous democracy” such as activist groups’ participation, whistleblower protection legislatures, corporate oversight, and freedom of information legislation. Industry peers can demonstrate a “vigorou commitment to industry and professional self-regulation” (p. 346). Finally, regulatory enforcement agencies can employ a cooperative (e.g. attempting to motivate compliance through educational efforts) but firm (e.g. using punitive sanctions when warranted) enforcement
style. That is, rather than being confrontational with those they govern, regulators should seek a cooperative and communicative relationship while simultaneously enforcing the regulations in a strict manner.\textsuperscript{12}

\textit{Rorie's (2015) Integrated Theory.} Rorie (2015) presented an integrated corporate crime theory specific to environmental offending. Specifically, she combined the micro- and organizational-level subjective expected utility theory (Paternoster and Simpson 1993) with the macro-meso-focused licensing framework (Kagan et al. 2003; Gunningham et al. 2004). The license model specified three strands of “external licenses” under which corporations operate. The legal license represents demands set forth from government regulatory statutes. The social license refers to demands from the general public (e.g. community members, environmental activist groups). The final economic license is the demand for profitability and other economic goals of the organization. According to the licenses model, a company’s environmental performance will depend on the relative “tightness” of each of these three external licenses and their interactions with management attitudes.

Rorie (2015) used the license framework (Gunningham et al. 2004) to account for organizational-level concerns that can impact individual-level decision-making, but drew on Paternoster and Simpson’s (1993) subjective expected utility theory of corporate crime to further explain managers’ decisions. Paternoster and Simpson (1993) extended Clarke and Cornish’s (1985) conception of choice by identifying nine factors that influence one’s cost–benefit decision to commit a crime in the organizational setting. To address a variety of decision-making concerns, these factors encompass concepts from criminal justice research (e.g. deterrence), deontological perspectives, and perceived legitimacy of the law.\textsuperscript{13} Since individuals, more specifically top management, are ultimately responsible for making environmental-related decisions on behalf of corporations, Rorie (2015) argued that corporate-level factors (license framework) are filtered through individual-level cost–benefit analysis (rational choice), representing sequential integration. Finally, she incorporated the concept of management attitude from the license framework into each level of the theory, as individual-level managerial attitudes and organizational-level corporate culture toward environmental matters.

\textit{Benson and Cullen’s (2018) Self-Deception Theory.} Drawing from an evolutionary perspective, Benson and Cullen (2018) recently presented one of the few biosocial theories of WCC. Their theory integrated the neuro-psychological concept of self-deception with Matza’s conceptualization of subterranean values to explain how biological and social factors can interactively facilitate WCC. Self-deception originates from the evolutionary need to deceive, which represents a biological “deep feature of life” that provides survival and reproductive benefits to those who employ it (Trivers 2011, as cited in Benson & Cullen 2018). In criminology, deception is considered one of the key characteristics that distinguishes WCC from physically oriented street crimes (Edelhertz 1970). However, deception is only effective when undetected. Therefore, new and uncommon techniques that enhance deception and/or avoid detection are particularly desirable. Self-deception, a subconscious mental process where facets of one's reality are preferentially excluded from one's consciousness (Trivers 2011, as cited in Benson and Cullen 2018), may be one such technique. Since deception is a cognitively strenuous task, self-deception aids in reducing the associated cognitive load, making deceptive acts more convincing.

In addition to the neuro-psychological basis for self-deception, Benson and Cullen (2018) presented a socio-cultural component. Extending Matza’s subterranean culture to adult offenders, Benson and Cullen (2018) asserted that individuals commit WCC to fulfill the subterranean values associated with middle-class competitive culture (Coleman
integrated theories of white-collar and corporate crime (messner and rosenfeld 2012). those who are biologically predisposed may subconsciously employ self-deception when committing wcc, as it enables them to deny their guilty minds without explicit use of neutralization techniques (benson and cullen 2018). much like how it provides survival advantages during the evolutionary process, self-deception allows white-collar criminals to be more effective deceivers. organizations may also engage in self-deception. in cases of observed “normalized deviance” among large organizations (vaughan 1996), complex corporate structures are used to shield top-level management from knowledge of illicit activities within the firm.

cross-level parallel integrated theories

cross-level parallel integration involves consolidating overlapping components across theories. there have been some debates on whether this should be considered a form of theoretical integration at all (liska et al. 1989), as in certain contexts, parallel integration can be viewed as more similar to a subgroup analysis than theoretical integration. wcc scholars, however, have engaged in parallel integration. two examples include theories of female and adolescent white-collar offending.

gendered theory by steffensmeier et al. (2013). wcc scholars highlighted sutherland’s (1949) exclusion of females from his original definition of wcc (holtfreter 2015). to account for the continuously increasing female workforce, steffensmeier et al. (2013) applied an integrated theory of gender and offending (steffensmeier and allan 1996) to the corporate crime context. steffensmeier and allan’s (1996) “gendered paradigm of offending” was originally conceptualized to explain the gender gap observed in conventional street crimes by incorporating social learning, control, rational choice, and biosocial theories. it asserts that males and females differ not only in biological factors but also in the social “organization of gender” (e.g. gender norms, moral development, social control). these factors differentially shape male and female criminal motivations, access to criminal opportunities, and the characteristics of offenses (i.e. the “context of offending”).

to apply these propositions to corporate crime, steffensmeier et al. (2013) explain how gendered focal concerns can inhibit criminal behaviors in females in the corporate context. they assert that the two main focal concerns socially ascribed to women (i.e. nurturing and cooperative role, attention to physical appearance and sexual virtue) are inherently inconsistent with deviant behaviors. as a result, women are socialized to have lower risk tolerance and different risk perceptions of crime in comparison to men. these differences in risk tolerance and perception are evident in organizational research that shows females’ inclination for prosocial, ethical, and risk-averse business decisions (steffensmeier et al. 2013). studies of occupational deviance also find that females are less likely to employ criminal coping mechanisms when confronted with organizational and environmental strains, and are less likely to engage in fraudulent behaviors even when presented with similar opportunities as men (broidy and agnew 1997, as cited in steffensmeier et al. 2013). in scenarios where women do engage in corporate crime, the dollar amount involved is often of a less serious nature (franklin 1979; daly 1989; lev 1994, as cited in steffensmeier et al. 2013).

in addition to differences in risk tolerance and perception, females have also been found to have less access to criminal opportunities than their male counterparts. much like the sex-segregation practices observed in conventional street crime, women tend to experience limited access to certain job positions and to informal male networks. for this reason, they
are also seldom recruited to join in criminal conspiracies of corporate crime and seldom recruit others to join in their illegal endeavors. According to Steffensmeier et al. (2013), this further explains the “context of offending” in female-perpetrated corporate crime, as the gendered theory predicts that females’ role in corporate crime is more likely to be marginal and in lower-rank positions.\textsuperscript{15}

\textit{Piquero and Benson’s (2004) White-Collar Life-Course Theory.} Piquero and Benson’s (2004) application of life-course and development theory to white-collar offenders represents another example of parallel integrated theories. Noting that the delayed onset of white-collar offenders was not accounted for in traditional life-course theories, these scholars sought to introduce an offending pattern that deviates from conventional crime expectations. This pattern, referred to as “punctuated situational dependence offending,” describes the period of conformity among white-collar offenders in their 20s and 30s. White-collar offenders are assumed to follow similar trajectories in offending as conventional street crime offenders in their adolescent years, with a short surge in offending (that involves more conventional deviant behaviors) that diminishes in their early 20s. This is followed by a period of non-offending and conformity until they commit WCC later in life.

This relapse in offending may be triggered by situational factors (routine activity theory) that shape available criminal opportunities (Piquero and Benson 2004). One situational factor may be the offender’s occupational position, as certain positions may be required to access suitable targets (e.g. operational processes that can be exploited for financial gain, access to potential victims like medical patients), and such positions may require some period of employment tenure. Thus, structural factors that determine an individual’s occupation also influence access to criminal opportunities. Older, middle- and upper-class individuals may be more likely to occupy positions of high authority where more serious criminal opportunities exist. Younger, lower-class individuals may experience fewer opportunities.

Another situational factor may be a sudden trigger, which could stem from a personal or an occupational crisis that causes disruption in one’s conforming behaviors. As white-collar offenders generally exhibit higher levels of financial and social success, their stakes in conformity are thought to be higher than conventional street crime offenders. Theories/concepts deviating from financial needs (e.g. “fear of falling”) may explain why white-collar offenders perceive criminal opportunities as means to preserve their economic and social status quo. However, current empirical research has yet to show support for fear of falling as a motivation for WCC (Piquero 2012).

Finally, Piquero and Benson (2004) noted the importance of examining organizational influences on offender behavior, as organizational factors can shape both opportunities and motivation. An individual in a high position at a large organization may have more lucrative yet less risky criminal opportunities due to the diffusion of responsibility. Organization and subunit goals that are difficult to accomplish via legitimate avenues can also supply motives for employees’ illicit behaviors. Therefore, meso-level explanations serve an integral role in explaining the life-course pattern observed in white-collar offenders.

\textit{White-Collar Delinquency by Pontell and Rosoff (2009).} Pontell and Rosoff (2009) introduced an understudied group of juvenile delinquents whose offenses and characteristics are more consistent with adult white-collar offenders than with juvenile delinquents. Many of these delinquents focus primarily on computer-based deviance, including various forms of cybercrime, identity theft, and financial and securities fraud. Pontell and Rosoff (2009) identify concepts from theories of juvenile delinquency that are relevant and applicable to the white-collar context.\textsuperscript{16}
To explain motivations to commit white-collar delinquency, Pontell and Rosoff (2009) argue that Katz's (1988) perspective on thrill-based motivation for conventional deviance and delinquency may apply to white-collar delinquents. Similar to Tittle's (1995) notion of an imbalanced “control ratio” in offenders, the authors suggest that the sense of control white-collar delinquents experience over victims (despite the physical distance) may also compel strong motivations. However, in the case of WCC, it is difficult to establish whether delinquency is the result of offenders feeling they have too much control (and therefore sanctions are improbable) or too little control (such that crime represents an avenue to regain control). Regardless, Pontell and Rosoff (2009) synthesized existing theory to describe motivations for white-collar delinquency beyond economic gains.

Subculture and social learning perspectives are also discussed. Pontell and Rosoff (2009) adapted Cohen's theory of status frustration, as juveniles may be frustrated in their attempt to fit into middle-class values and particular subcultures (e.g. computer delinquency subculture). They also describe cases where delinquents commit serious forms of WCC while living seemingly normal middle-class lives, suggesting the potential applicability of Matza's (1964) theory of delinquency and drift, and the concept of subterranean values. Conformity to subterranean values may result from reciprocal relationship (Thornberry et al. 1994), such that virtual association with delinquent peers over the internet may increase delinquency propensity in a juvenile and vice versa. These associations may facilitate new forms of delinquency, such as white-collar delinquency. Furthermore, neutralization techniques may be used to justify nonconformity to mainstream cultures.

Finally, Pontell and Rosoff (2009) attributed opportunities for white-collar delinquency to macro-level factors. Most prominently, the advent of technologies has created tools to facilitate cyber-delinquency. Emerging technical and legal issues further undermine informal social controls when parents and institutions are unaware of deviant opportunities, lack the technical knowledge to monitor juveniles, or disagree on acceptable behaviors regarding technology usage. Finally, structural inequalities may create differential access to technologies, explaining the difference in opportunities for white-collar versus conventional juvenile deviance.

Cross-Level Up and Down (Deductive) Integration

Deductive integrations are rare in criminology, and particularly within WCC scholarship. This may be due to the reductionist nature of the practice, which can limit opportunities for practical interventions. Nonetheless, one example of deductive integration is Gottschalk's (2017) convenience theory.

**Gottschalk's (2017) Convenience Theory.** To propose a more parsimonious theory, Gottschalk (2017) unified concepts from macro-economic, meso-organizational, and micro-behavioral theories under the construct of “convenience.” Convenience refers to “perceived savings in time and effort required to find and to facilitate the use of a solution to a problem or to exploit favorable circumstances” (p. 605). Individuals are said to have different “convenience-orientations.” That is, people differ in their preferences toward solutions to problems based on the convenience of each solution.

Gottschalk (2017) organized existing WCC theories into three dimensions (i.e. economic, organizational, behavioral) and posited that each links to the concept of convenience. Economic convenience reflects the notion that criminal acts are the most convenient choice of action for one to achieve their goal(s). In the organizational dimension, offenders already
have convenient access to targets and the ability to disguise the illegal acts. Convenience in
the behavioral dimension refers to easy justifications to rationalize illegal acts (e.g.
differential association, rational choice, self-control, deterrence, obedience, fear of falling,
negative life events, slippery slope, techniques of neutralization, and social conflict theory).
According to Gottschalk’s model (2017), the concept of convenience represents the
“conceptual glue that welds the model together” across many theories of crime (p. 612).

Themes in Current Integrated Theories

To account for meso-level organizational and/or contextual factors, our review of the liter-
ature suggests that cross-level integration represents the most popular form of integrated
theory for corporate crime. For theories designed primarily to explain individual WC
offending decisions, cross-level integration also appeared favorable, but primarily to explain
socio-cultural influences on offenders’ crime decisions. In both domains (i.e. explanations
of individual- as well as corporate-level decision-making), cross-level integration is often
employed with the end-to-end method, establishing an intuitive and logical causal sequence
from macro-level societal contributions to meso-level organizational contexts to micro-
level individual decisions and actions.

Parallel integrated theories, often developed from adapting existing integrated street
crime theories to white-collar and corporate crime contexts, represent a second approach.
Many of these theories addressed a subgroup of white-collar offenders. They highlight
motivations unique to each group as compared to the larger white-collar offender
population, an approach that is consistent with Sutherland’s original definition of WCC
(specifying unique types based on the offender) as opposed to an offense-based definition.
For instance, rational choice is a common theme in corporate crime theorizing, but theories
of female white-collar offenders and white-collar delinquents discuss motivations that dif-
fer from the tangible reward of financial gain/preservation, shedding light on the role of
psychological/emotional factors that influence decisions of white-collar offenders. These
theories are also often multi-level, reflecting the growth in cross-level integration within the
larger street crime literature. Rather than focusing on organizational context, these studies
highlighted macro-level factors such as the socialization process and structurally created
opportunities that reflect changing dynamics in occupation distribution and technological
advancements.

Regardless of the method of integration, overall white-collar integrated theories favor
two theoretical paradigms – rational choice and routine activities (opportunity). Rational
choice may be an accepted position due to the nature of many WCCs. As an instrumental
crime, economic gain is often viewed as the primary motivation (even when it is committed
on behalf of an organization). Furthermore, many regulatory violations represent mala pro-
hibita offenses. The lack of expressiveness in these crimes, coupled with the general high
stakes in conformity that is characteristic of white-collar offenders, lead to the assumption
of amenability to cost–benefit reasoning (Van Slyke et al. 2016).

Criminal opportunity is also regarded as an important element in the WCC literature,
but in ways that differ from street crime. Macro-level street crime theories emphasize struc-
tural disadvantages associated with criminal propensity, while meso/macro-level WCC the-
ories place greater emphasis on the effects of capitalism and middle-class competitive
culture, as well as criminogenic organizational cultures that influence motivation and
opportunity. The street crime literature also assumes that opportunity is ubiquitous, which
does not apply to various types of WCC. For example, opportunities for financial statements fraud require technical knowledge of financial accounting and reporting, as well as an occupational position with appropriate access. White-collar delinquency requires physical access to technologies and knowledge about computer and internet securities. These examples illustrate that opportunities for specific WCCs are present for select individuals. Therefore, scholars often emphasize the need to account for how opportunity arises in white-collar and corporate crime settings (Simpson and Piquero 2002; Piquero and Benson 2004; Benson et al. 2009).

Finally, incompatible assumptions are a commonly cited hindrance to theoretical integration of traditional street crime theories. In contrast, the sparse literature devoted to WCC theory may present some advantage, as deviations from rational choice and opportunity-based assumptions appear to be few and far between. The compatibility of the underlying assumptions in these perspectives – such as the considerations of risks and rewards – may provide a unified basis for WCC theorizing. Nonetheless, integrated WCC theories still include some limitations.

**Limitations of Current Integration Efforts and Recommended Future Directions**

As previously noted, our classification and organization of WCC theories merely represents one perspective that some may disagree with. In fact, we experienced challenges in categorizing the theories, and omitted several due to our inability to classify them (see Table 13.1). This is likely due to the discursive nature of the theorizing, but it has important implications for empirical assessments. Though we considered reviewing empirical findings in our discussion of integrated theories, the overall lack of testing and replication makes it difficult to determine the empirical status of most theories beyond a single study. We acknowledge the challenges of data access and collection in the WCC arena (Simpson 2013; Braithwaite 2016; Paternoster 2016; Yeager 2016), but it is also important to recognize how ambiguous causal ordering and specifications of the relationships between explanatory factors will make theory difficult to test even when data is available. As scholars continue to find innovative ways to test WCC theory, the discursive nature of theorizing may result in an inability to compare findings across studies.

In addition to the discursive nature of theorizing, we refer back to Table 13.1 to visually demonstrate the predominance of cross-level integrated WCC theories, which may also contribute to the difficulties in empirical testing. Cross-level integration is intended to be more comprehensive in explanatory power, but the scope of research required to empirically test these theories may further exacerbate the current data and methodological challenges.

To facilitate the testability of integrated WCC theories, future research should focus on improving specification of theoretical models by clearly delineating the causal order and any mediating/moderating relationships between explanatory factors. Not only is a well-specified model beneficial to empirical testing, it is also compatible with Thornberry’s (1989) idea of “theoretical elaboration.” As an alternative to theory competition or integration, theoretical elaboration (Thornberry 1989) strives to extend a particular theory as comprehensively as possible based on logical connections. Hence, it allows for a dynamic process where theories can be built upon through elaboration and new propositions can be empirically tested on their own when faced with data challenges.
In addition to theoretical approaches, there are opportunities to advance WCC scholarship via new theoretical concepts and bodies of literature. Despite the deliberate effort to account for organizational factors, the theories and research we reviewed have largely focused on similar criminogenic cultural and structural dimensions such as complex corporate hierarchy or goal-oriented, rule-bending corporate culture. Fewer studies have examined other facets of the organization, such as the role of management strategies in corporate decision-making, or the role of organizational justice in employee offending. Future theoretical integration should consider incorporating literature from the fields of strategic management and organizational psychology to further account for variances in white-collar offending.

Finally, few integrated theories have incorporated theoretical concepts from the regulatory literature (for an exception, see Rorie 2015) or considered the role of enforcement or other regulatory interventions (for an exception, see Shover and Hochstetler 2005). WCC scholars have tested deterrence theory to assess the impact of punishment (e.g. Braithwaite and Makkai 1991; Paternoster 2016) and drawn on the regulatory literature to assess how broader interventions might also reduce or prevent WCC (Simpson 2002; Simpson et al. 2007; Muehlbacher et al. 2011; Simpson et al. 2013). However, the interplay between managerial decision-making, the organizational context, and regulatory efforts is only explored to a limited degree in integrated theories of WCC (for an exception, see the elaboration of rational choice theory in Paternoster 2016).

**Conclusion**

Integrating theories provides more than just theory reduction for WCC scholars. It represents a fundamental necessity to account for organizational and/or contextual factors in this multifaceted form of crime. It also represents the nature of criminological scholarship, where theoretical advancement that first occurs in the broader conventional crime literature is then applied to the niche area of WCC. In this chapter, we have presented a variety of integrated WCC theories and have organized them based on integration method. While the theories we have reviewed were by no means exhaustive, all followed a cross-level pattern. Consistent with Van Slyke et al. (2016), we also found the majority of them to be grounded in the rational choice and/or opportunity perspectives. We have further pinpointed potential room for development within integrated WCC theory. Future research should focus on improving model specification by more clearly delineating causal order and relationships. It should also consider incorporating concepts from various fields of research such as organizational psychology, strategic management, social networks, and regulatory literature in order to advance neglected areas of WCC theories.

**Notes**

1 Recent surges in cryptocurrency fraud have prompted widespread independent enforcement domestically in the United States by the Commodity Futures Trading Commission (CFTC), Securities and Exchange Commission (SEC), and Internal Revenue Service (IRS) and in other nations such as Vietnam, China, and India. The Indian government’s two-year ban on Pricewaterhouse Cooper’s public auditing practice, the Federal Reserve’s intervention of Wells Fargo’s growth, and the US Justice Department’s recent indictment of a former Volkswagen Chief Executive Officer (CEO) (despite the lack of extradition in Germany) all exemplify exceptionally strict and tenacious enforcement of high-profile corporate crime (Abrams 2018; Ewing 2018; Flitter et al. 2018).
The reference to “street crimes” in this chapter refers to Mann’s definition of crimes “involving threat and use of physical violence against persons, drug violations, theft involving use of physical force, and other related crimes” (Mann 1985). Mann noted that it is a broad definition encompassing various crime types, but with similarities that are distinct from white-collar crime.

Despite this goal, we deviated from it in several instances due to the nature of the WCC literature. WCC scholars often describe how a variety of theories might explain WCC or develop a set of theoretically driven hypotheses without providing a full-fledged theory (i.e. without specifying all of the causal connections). We included scholarship of this nature when it offered a glimpse into new dimensions of WCC (e.g. Pontell and Rosoff 2009) and/or theoretical factors not previously examined (e.g. Benson and Cullen 2018).

As discussed later, we experienced some challenges with classification. Although omitted from the text due to space limitations, we include two “unclassified” theories in Table 13.1 for readers to review.

Even prior to Hirschi’s advocating for theory falsification, quantitative analyses of theoretical propositions were a common endeavor in criminological research. Testing competing hypotheses thus seemed a logical extension to achieve the goal of theory reduction.

In fact, theoretical competition has been used to determine the significance of the organizational context. For example, Simpson and Piquero (2002) examined the explanatory power of Gottfredson and Hirschi’s general theory (1990) compared to their integrated theory that incorporated the organizational context; they argued that the general theory only considers micro-level criminal propensity. Using vignette surveys administered to Masters of Business Administration students, Simpson and Piquero (2002) found that low self-control failed to predict offending intentions. Instead, organizational-level and individual-level decision-making processes that are more consistent with organizational theory were supported.

For a more in-depth overview of the discourse on theory falsification, theory integration, and a third alternative – theory elaboration – Liska et al. (1989) and Benefiel (2014) provide helpful summaries of the advantages and disadvantages of each of the proposed approaches to advancing criminological theories.

Coleman’s (1987) use of the term “opportunity” differs from the conceptualization of the term in the routine activities perspective (i.e. opportunity to commit crime; Cohen and Felson 1979) and the anomie/strain perspective (i.e. blocked opportunity refers to the lack of legitimate means to achieve success; Merton 1938; Agnew 1992). We use Coleman’s language to be consistent with his work, but we view it more like “choices of action between different types of behaviors” in rational choice decisions.

Organizational sets refer to groups of organizations that are similar to one another, typically consisting of a hierarchy of dominant, mid-level, or marginal organizations (Gross 1980).

Finney and Lesieur (1982, p. 264) emphasized that organizations can commit crime, even though “biologically, of course, only individuals can enact the plans and dictates of organizations; but they do so as its agents, for its sake, to achieve its objectives and according to its constraints.”

12 Braithwaite’s (1989) shaming theory is unique in sequentially integrating criminological with criminal justice theories. Furthermore, the concept of shaming (more specifically, differential shaming) was presented as the “missing link that enables the integration of the seemingly incompatible theoretical traditions” (p. 335).

13 In addition to the cost–benefit calculations of sanctions versus rewards, Paternoster and Simpson’s (1993) subjective utility theory examined managerial decision-making in crime choices by factoring in organizational context such as situational opportunities, benefits of noncompliance, and prior offending behaviors, as well as individual normative values and potential risks to self- and social perceptions.

14 Whether this is due to women being more cooperative and attuned to appearance, however, remains an empirical question. Intersectional feminist scholars would challenge this notion that all women are socialized in the same manner (Crenshaw et al. 1993; Chesney-Lind and Morash 2013).

15 Daly (1989) also found that women white-collar offenders tend to occupy lower-level positions.

16 The authors did not discuss the exact nature of the causal connections to integrate these concepts and theories, only that they are relevant in explaining white-collar delinquency. However, we included this theory because it introduces an important subgroup of white-collar offenders. Several other theorists also presented integrated theories in which the mechanisms were unclear, which we omitted due to space. We encourage readers to review the work of Piquero et al. (2005) on desire for control and Shover and Hochstetler’s (2005) Choosing White-Collar Crime.

17 In contrast to the theories discussed above, Pontell and Rosoff (2009) indicated an apparent incompatibility of the general theory of self-control and white-collar delinquency. They argued that the patience required in planning and the skill required to accomplish complex computer-based WCCs directly contradict assumptions of self-control theory.

18 The role of networks has also been a neglected topic among WCC research (Simpson 2010). Yet, network analysis may be a useful technique to elaborate on existing theories. For example, several of the integrated theories presented above have incorporated tenets from subculture theory. Future studies may examine offender networks to further investigate how such criminogenic subculture permeates an industry or an organization.

References


Section IV

Preventing and Punishing White-Collar Crimes
Public Opinion About White-Collar Crime

Francis T. Cullen, Cecilia Chouhy, and Cheryl Lero Jonson

The United States is often portrayed as a society that is “addicted to incarceration” (Pratt 2009) and governed by a “punitive imperative” (Clear and Frost 2014). Although correctional attitudes are complex, a deep reservoir of punitive sentiments, including support for the use of imprisonment, exists among the public (Jacoby and Cullen 1998; Cullen et al. 2000). But what about white-collar offenders? Does the public want to get tough with them as well?

Early students of white-collar crime believed that a cultural lag existed in which the public was not yet fully aware of the harms wrought by industry in a rapidly changing modern economy. Writing at the time of the exposés of “muckrakers” such as Ida Tarbell, sociologist E.A. Ross (1907, p. viii) articulated this view in his small, but powerful, Sin and Society, commenting that “in today’s warfare on sin, the reactions of the public are about as serviceable as gongs and stink-pots in a modern battle.” Edwin Sutherland (1940) offered a similar analysis, noting that the general public “does not think of the businessman as a criminal” because the individual “does not fit the stereotype of the criminal” (1949/1983, p. 232).

Into the 1960s and 1970s, criminologists continued to believe that public animus toward upperworld lawlessness remained at a low level. In Thinking About Crime, for example, James Q. Wilson (1975, p. xx) justified ignoring white-collar crime based on his “conviction, which I believe is the conviction of most citizens, that predatory street crime is a far more serious matter than consumer fraud [and] antitrust violations.” This characterization of the public as agnostic about punishing white-collar offenders was likely overdrawn (see Conklin 1977). Surveys at this time revealed that respondents were willing to recommend criminal sanctions, including imprisonment, for crimes such as antitrust violations and false advertising (see, e.g., Newman 1957; Gibbons 1969). Commentators were likely sensing not moral indifference to clear incidents of white-collar crime but a lack of awareness about the problem. A 1972 study of college students by Reed and Reed revealed that only a minority of the respondents “had read or heard about white collar crime” (42%) or could adequately define the concept (32%) (Reed and Reed 1975, p. 282). They concluded that the...
students’ “knowledge of white collar crime was not very widespread … The majority were either ignorant of its existence or incapable of defining it” (Reed and Reed 1975, p. 290).

At this juncture, a major social transformation took place that resulted in what Katz (1980) called a “social movement against white‐collar crime” (see also Cullen et al. 2006). A number of factors coalesced to call into question the legitimacy of those wielding power – from elected officials to corporate officials. The failure of the Vietnam War, the assassinations of John and Robert Kennedy and of Martin Luther King, Jr., the crackdowns on Civil Rights marchers, the Watergate scandal, a consumer movement that revealed the marketing of worthless and dangerous products, a countercultural revolution that questioned conventional morality and structures of power, and investigative exposés of political and corporate corruption that appeared regularly in newspapers and programs such as 60 Minutes – these and many more developments revealed that respectable status did not ensure respectable conduct. In this context, the public lost faith in the nation’s leaders, and what Lipset and Schneider (1983) termed a “confidence gap” emerged and widened. Between 1966 and 1971, confidence in those heading up “major companies” fell from 55 to 37% (Lipset and Schneider 1983, p. 43). By the end of the 1970s, Yoder (1978, p. 40) could comment that “increasing numbers of Americans have become aware that crime exists in the suites of many corporations just as surely as it exists in the streets of their cities and suburbs.”

In the ensuing four decades, researchers have continued to assess public opinion about white‐collar crime (for reviews, see Evans et al. 1993; Cullen et al. 2009; Van Slyke and Rebovich 2016). The relevant literature, which is discussed below, falls into two categories: studies of the seriousness of crime and studies of punitiveness. This research, which falls into earlier and later periods, consistently shows that members of the public consider white‐collar offenses to be serious and are willing to punish these perpetrators. Public opinion thus is no barrier to the use of the criminal law against white‐collar offenders.

As this volume reveals, the concept of white‐collar crime includes diverse types of offenses. Public opinion studies have generally not been organized systematically to address this issue. However, whenever possible, the review to follow specifies how seriousness and punitiveness ratings vary considerably by type of offense. Later, we address this issue more conceptually, proposing a framework that might guide future research.

Public Ratings of the Seriousness of White‐Collar Crime

Early Studies of Crime Seriousness

In 1974, Rossi et al. published a classic study on public evaluations of the seriousness of crime. A sample of 200 residents of Baltimore were asked to rate the seriousness of 140 different offenses (each respondent rated 80 offenses), ranging from 1 (least serious) to 9 (most serious). These offenses fell into 11 different categories, one of them being “White Collar Crimes.” The main purpose of the analysis was to assess whether there were sex, race, and educational differences or consensus in how offenses were rated. The existence of consensus – which Rossi et al. did find – would suggest that a shared “normative structure” governed how most Americans judged criminal acts. This normative consensus would contradict a conflict perspective that sees the criminal law as reflecting the views and interests of the powerful. It would also mean that a basis existed for deciding which crimes should be punished more severely and receive more attention from law enforcement
agencies – those the public agreed were the most serious (see, however, Cullen et al. 1985). For our purposes, the key finding reported by Rossi et al. (1974, p. 233) was that white-collar crimes were not seen “as particularly serious.” They were judged to be of similar seriousness to public order, victimless, and minor property offenses and far less serious than violent offenses and drug selling.

Rossi and colleagues’ findings appeared to support the view that the public was not concerned about white-collar crime, seeing violations in this category on par with offenses such as prostitution, loitering, and petty theft. Within a decade, however, research emerged that revised this conclusion. Perhaps most influential, Cullen et al. (1982) explored whether the context of the 1970s might have changed attitudes toward white-collar crime. Because Rossi et al.’s sample was surveyed in 1972, it was possible to compare these results with those drawn from a sample of residents from a rural Illinois town (Macomb) surveyed in 1979. Cullen et al. reported that the mean seriousness ranking for 24 white-collar offenses had risen about 12 places – from 91.75 (out of 140) in 1972 to 79.71 in 1979 (where the number 1 rated offense was the “planned killing of a person for a fee”). Notably, white-collar crime was the only offense category to become substantially more serious during this period, suggesting that the predicted attitudinal change was real.

Cullen et al. (1982, p. 96) also argued that white-collar crime was not a “unitary phenomenon” but a conceptual umbrella that covers a variety of offenses. This insight was drawn from the work of Schrager and Short (1980), who proposed that public evaluations would differ by the type of white-collar crime being rated. They were particularly interested in “organizational crimes,” which they defined as “illegal actions taken in accordance with operative organizational goals which do serious harm either physical or economic, to the employees, consumers, or the general public” (Schrager and Short 1978, p. 407). Schrager and Short (1980) reanalyzed Rossi et al.’s data and found that the public judged organizational offenses that caused physical harm as more serious than those that caused economic harm. Further, organizational and ordinary crimes that had similar impacts – violent or economic – were rated similarly.

Building on this approach, Cullen et al. (1982) divided the white-collar crimes among the 140 items on their version of the Rossi et al. survey instrument into six distinct offense categories. As anticipated, they found that these categories differed in their mean seriousness rating: (1) Violent (mean = 43.0); (2) Crime Against a Business Organization (mean = 71.0); (3) Governmental Corruption (mean = 82.5); (4) Corporate Price-Fixing (mean = 96.5); (5) Defrauding Consumers (mean = 100.3); and (6) Income Tax Fraud (mean = 108.3). The violent category contained offenses that involved business practices that caused or risked causing harm to employees or consumers. It included the most seriously rated white-collar crime – “knowingly selling contaminated food that results in death” – which ranked number 13 on the list of 140 offenses. This analysis revealed the importance of treating white-collar crime as a heterogeneous category that contained diverse offenses that exacted diverse costs. The public seemed able to differentiate these types of offenses and to assign seriousness scores based on the harmfulness of the acts (see Frank et al. 1989; Rosenmerkel 2001; Stylianou 2003).

Several studies conducted around this time and published in the 1980s replicated the finding that the public views violent white-collar crimes as serious. For example, Goff and Nason-Clark (1989) reported the results of a survey in which a sample of residents of Fredericton, New Brunswick, were asked to assess the seriousness of the items used in the Rossi et al. study. The respondents rated the white-collar offenses as more serious than the Baltimore sample but as less serious than the Macomb, Illinois, sample. Notably, the
Fredericton respondents assigned different seriousness scores contingent on the type of offense involved, with the category of violent white-collar crimes ranking much higher than the other categories (a mean of 53.8 versus the next highest mean of 79.9 for Governmental Corruption).

Using a sample of students attending a public liberal arts college, Sinden (1980) instructed the respondents to rate, on a scale of 0–9, the seriousness of 32 different crimes, including eight white-collar offenses. The mean for the offense in the white-collar category was lower than that for “crimes against the person” but higher than that for “crimes against property.” More instructive were the high mean scores achieved by the three white-collar crimes that exacted physical harm: “employer failure to repair machinery resulting in death”; “selling contaminated food resulting in illness”; and “air pollution resulting in illness” (Sinden 1980, p. 79). These violent offenses were seen as more serious than other white-collar offenses. Although their seriousness rating fell below that of murder and other major violent street crimes, the violent white-collar offenses were judged as being more serious than such crimes as armed robbery, bank robbery, assault with fists, auto theft, and burglary of a house.

A 1986 national survey of 2551 Australians age 14 and over yielded similar results. Grabosky et al. (1987) asked the respondents to rate 13 offenses, including two violent white-collar offenses: (1) “A factory knowingly gets rid of poisonous waste in a way that pollutes the city water supply. As a result one person dies.” (2) “A worker had his left leg caught in an unguarded piece of machinery because the employer knowingly failed to provide safety measures. As a result the worker lost his leg” (Grabosky et al. 1987, p. 39). The crimes of “stabbing someone to death” and “heroin trafficking” were judged to be the two most serious transgressions. Thereafter, however, the two white-collar violent crimes on the list – “industrial pollution kills” and “industrial negligence injury” – were rated as the third and fourth most serious offenses (1987, p. 39).

Meier and Short (1985) conducted two surveys – one by telephone (June to July 1980) and one by mail (1981) – of residents in Eastern Washington, an area that recently had been affected by the volcanic eruption of Mount St. Helens on May 18, 1980. Conceptualizing crime as a “hazard,” they measured the respondents’ perceived risk of experiencing various crime victimizations versus natural hazards. Notably, the mean perceived risk of experiencing “white-collar hazards” (a category of seven offenses) was greater than that for “ordinary crimes” and “natural hazards” (Meier and Short 1985, pp. 393–394). Using a scale ranging from 0 (“not serious at all”) to 10 (“very serious”), the respondents were also asked to complete a second task: to rate the seriousness of a list of hazards. Unfortunately, this list did not contain all the items used in the first task that had asked survey participants to assess risk.

In any case, hazards demonstrating an immediate bodily harm (someone killed in a drunk-driving incident, a home destroyed by fire) were judged to be the most serious. The white-collar crimes on the list were rated as less serious, in part because the harm was left unspecified (i.e. the hazard was described as an “exposure” as opposed to an actual death, injury, or illness). Still, the absolute scores achieved by these potentially violent white-collar “hazards” were high and not far below the highest rated hazard (mean = 8.99 for drunk-driving death). Thus, the offenses and their mean scores were as follows: “pollution of a river with industrial chemicals” (8.18); “exposure to illegally unsafe working conditions” (7.35); and “exposure to environmental pollution due to illegal manufacturing activity” (7.11). As Meier and Short (1985, p. 398) concluded, “our respondents rate white-collar offenses as serious acts and anticipate being victimized by these crimes more frequently than by other hazards.”
Finally, Wolfgang et al. (1985) undertook the most extensive study of crime seriousness. They were allowed to incorporate a supplement into the 1977 National Crime Survey (now called the National Crime Victimization Survey), which was given to 60,000 respondents. By having sample members rate different subgroups of 25 crime descriptions, ratings were secured for 204 different offenses, including a variety of white-collar illegalities. The six offenses judged to be the most serious involved planting bombs that killed people, felony homicide, and killing of a spouse or child. However, the seventh most serious severity score was assigned to a violent white-collar crime: “A factory knowingly gets rid of its waste in a way that pollutes the water supply of a city. As a result, 20 people die” (Wolfgang et al. 1985, p. vii). The same item was asked twice more but with a less serious consequence listed – the harm for these items being “one person dies” and “20 people become ill but none require medical attention” (p. vii). These two items ranked number 30 and 31 on the list of 204 offenses. The thirty-ninth item also involved white-collar violence: “Knowing that a shipment of cooking oil is bad, a store owner decides to sell it anyway. Only one bottle is sold and the purchaser dies” (p. vii). Notably, these legal violations were rated as more serious than such crimes as intentionally shooting and wounding a victim, armed robbery where a victim is physically injured, and arson causing $10,000 in property damage.

Later Studies of Crime Seriousness

Interest in crime seriousness reached a peak in the 1980s and has since declined (Stylianou 2003). Still, since that time, several studies have been conducted that contain data relevant to the public’s assessment of the seriousness of white-collar crime. The results of this research are largely consistent with earlier seriousness investigations. This continuity in findings suggests that a normative structure informs public opinion. In general, citizens judge the severity of white-collar crimes to fall somewhere in between the category of violent crime (more serious) and property crime (less serious). They also see white-collar crime with substantial consequences – especially physical harm – as quite serious, falling just under the severity ratings given to traditional homicides and ahead of many other conventional crimes.

In a 1992 survey of business employees in Brisbane, Australia, that included 492 respondents, Holland (1995) replicated the Rossi et al. (1974) Baltimore study. The Brisbane residents ranked the white-collar crimes on the 140-item survey as even more serious than did the Macomb, Illinois, sample studied by Cullen et al. (1982). Further, similar to the Macomb study, Holland found that violent offenses were rated as the most serious type of white-collar crime. In fact, the mean rank for violent white-collar crime for the Brisbane residents (42.3) was virtually identical to that for the Macomb residents (43.0).

This issue was probed further by Rosenmerkel (2001, p. 314), who had 268 students from a “medium-size mid-Western university” rate the seriousness of 23 items, including eight white-collar offenses. When placed in broad offense categories, the mean seriousness score for the white-collar crimes (6.7715) fell between that of violent crimes (8.9323) and property crimes (5.6095). Once again, there was heterogeneity in the rankings given to individual white-collar offenses, with those involving physical harm being judged as most serious. Thus, on the list of 23 crimes, “knowingly selling bad food that results in death” ranked as the fifth most serious offense, behind only a store robbery in which two employees were killed, a father sexually abusing his child, the planned killing of a police officer, and killing a pedestrian while speeding (2001, p. 319). The eighth most seriously rated item also was a white-collar crime: “company contaminating river used for drinking water.”
Dodge et al. (2013) conducted a 2011 survey of 900 residents of El Paso County, Colorado, who had been called for jury duty. Each respondent was asked to read one crime scenario that was approximately 85 words in length. Six different non-violent crime types, having either a male or a female offender, were rated. Three were white-collar offenses – “a corporate scheme by an energy company to inflate profits, embezzlement from a legal firm, and a Ponzi scheme” (2013, p. 404). The other offenses were auto theft, burglary, and prostitution. Regardless of whether the perpetrator was portrayed as a man or a woman, the Ponzi scheme and embezzlement were ranked as the two most serious offenses. The corporate scheme also achieved the third highest rating when the offender was a female. For the scenario with a male offender, the corporate offense ranked fifth, but its mean score was almost identical to auto theft and burglary. Overall, then, the white-collar financial offenses were judged to be as serious as, if not more serious than, the street crimes.

Piquero et al. (2008) have presented relevant results from The National Public Survey on White Collar Crime, which was conducted in 1999 and involved telephone interviews with a national sample of 1169 respondents (see also Rebovich et al. 2000; Rebovich and Kane 2002). As part of this survey, the sample members were given six pairs of two crimes – one a white-collar offense and one a street crime – and then asked to select whether one of the pair was more serious; the other option was to state that the two offenses were equally serious. As reported by Piquero et al. (2008, p. 301), “in four of the six comparisons, the white-collar crime was perceived to be more serious than the street crime.” For example, the respondents believed that a bank teller embezzling $100 was more serious than stealing a handbag containing $100, that a store selling meat that is bad was more serious than robbing someone at gunpoint and causing an injury, and that doctors who engage in insurance fraud and companies that knowingly deny valid insurance claims are more serious than a patient who files false insurance claims. For the other two pairs, the street crimes achieved higher seriousness scores but the differences were minimal. Thus, the sample rated these two pairs very similarly in their severity: a contractor cheating a customer versus a handbag being stolen, and an armed robbery causing a serious injury versus an automaker failing to recall a vehicle with a known defect that causes a serious injury. Note that The 2010 National Public Survey on White Collar Crime reached similar conclusions. Undertaken in the midst of the Great Recession, this study also reported that 70% of the sample “believe that white collar crime has contributed to the economic crisis” (Huff et al. 2010, p. 20).

Finally, in a 2013 online poll of 408 respondents using Amazon’s Mechanical Turk (MTurk) platform, Michel (2016, p. 127) explored seriousness ratings of “violent street crime versus harmful white-collar crime.” First, two street crimes were chosen: (1) a felony-homicide in which a husband is shot in front of his wife while trying to disarm a robber; and (2) a forcible rape of a female student by a perpetrator who breaks into her dorm at night. Second, three white-collar crimes were chosen depicting a “company” as the offender: (1) a consumer safety violation (marketing a toy that endangers the health of children); (2) illegal toxic pollution in which “several people become seriously ill”; and (3) failure to enforce safety regulations by a mining company (e.g. lack of ventilation, no masks for workers) which also “covers up evidence regarding the link between asbestos exposure and lung-cancer deaths” (Michel 2016, p. 132). These scenarios were rated on a four-point seriousness scale (1 = not very serious to 4 = very serious). Given that the street crimes manifested clear individual culpability and extreme harm, it is unsurprising that their mean seriousness ratings were quite high (3.91 for murder and 3.94 for rape) and were higher than the three white-collar crime vignettes.
Still, it is instructive that the public also judged the company illegalities to be quite serious. Compared with felony-murder and stranger rape against a vulnerable victim, the mean seriousness scores for the white-collar scenarios were at most only 0.51 lower (3.43 for the consumer safety violation, 3.51 for toxic dumping, and 3.71 for asbestos exposure). In all likelihood, these ratings would exceed those accorded to violent street crimes such as robbery and assault and most property crimes (e.g. auto theft). Further, the ratings of the white-collar scenarios might have been even higher if the perpetrator was identified as an individual corporate executive who profited from these offenses (e.g. received a promotion and big pay raise) and if the harm was more specific (e.g. an infant choked to death from a defective toy or a worker with a spouse and three children died from the safety violation). Again, the takeaway message from these results and from the extant research is that the public is not indifferent to white-collar offenses but often sees them as rivaling, if not surpassing, street crimes in their seriousness.

**Public Willingness to Punish White-Collar Crime**

**Seriousness and Punitiveness**

Research on crime seriousness is important because it holds clear implications for whether the public would endorse the use of criminal sanctions against white-collar illegality. Underlying the traditional view of the public as indifferent to such transgressions was the claim that citizens do not see white-collar offenses as serious. By showing that this belief was empirically invalid, the seriousness studies contributed to the conclusion that the public wishes white-collar crimes to be punished and, for offenses with serious harms, punished as much as or more than most conventional street crimes. Still, scholars realized that using seriousness ratings as a proxy for punitive sentiments was not the same as asking people directly about their support for applying criminal sanctions to white-collar offenders. Accordingly, scholars have also undertaken a series of investigations of public punitiveness.

In general, public ratings of seriousness and punitiveness tend to be closely correlated. In part, this is because of consensus about legal norms that the “punishment should fit the crime,” which is another way of saying that sanction severity should be tied to seriousness. Ideas about just deserts mandate that more serious offenses should be punished more harshly than less serious offenses; to do otherwise would be “unjust.” Explored more deeply, both seriousness and punitiveness are influenced by judgments about the same two underlying components: harmlessness and culpability or wrongfulness (see Warr 1989; Rosenmerkel 2001). That is, offenses that exact high costs, especially in terms of life and well-being, and that are done knowingly (i.e. with mens rea) are seen as serious and as meriting harsh punishment. White-collar crimes that manifest these qualities evoke strong punitive sentiments. This argument will be expanded later in this chapter.

**Early Studies of Public Punitiveness**

Two classic studies pointed early on to the public’s willingness to use the criminal law against white-collar illegality. In the first study, Newman (1957) examined the evaluations of 178 respondents who were asked to give sentencing recommendations for violations of
Francis T. Cullen, Cecilia Chouhy, and Cheryl Lero Jonson

The 1938 Federal Food, Drug, and Cosmetic Act. He “randomly selected” six cases that violated food laws from the “files of a Federal District Attorney” (1957, p. 229). Three types of offenses were represented in these files: “misbranding, distasteful but not physically harmful adulteration (termed ‘aesthetic’ adulteration), and physically harmful adulterations.” His sample of “consumers” read brief descriptions of the cases (about a paragraph in length) and were told the “actual court or administrative decision in the case” (p. 230). They were then asked if this penalty was “adequate,” and, if not, what they preferred the sanction to be (either less or more severe). Notably, across the six offenses, Newman (1957, p. 230, emphasis in original) found that “the majority of the consumers (78%) felt that the punishment should have been more severe than the actual court decisions.”

Although some respondents were willing to impose a 10-year prison sentence for these white-collar illegalities, the majority favored “fines, warning, seizure of the product, and jail terms, in various combinations” (p. 231). Newman interpreted these results as showing that the public did not select “penalties comparable to those traditionally imposed in conventional criminal cases involving offenses like burglary, larceny, and so on” (p. 231). This assertion was speculative because the respondents rated only the six food violations and not any conventional offenses. Regardless, the key point of Newman’s research – found in virtually all subsequent academic surveys and public opinion polls conducted over the next six decades – is that the public saw these acts as criminal offenses deserving of criminal sanctions.

Gibbons’s (1969) research is the second classic study that, though employing a different surveying approach, reported similar data on the public’s willingness to punish upperworld lawlessness. He sent sociology students attending San Francisco State University out into the city and suburbs to survey residents on their “social attitudes.” In all, 320 questionnaires were completed. The respondents were asked to assign a sanction – ranging from “no penalty” to “execution” – to 20 offenses, each described in a paragraph. As would be the case in future studies, Gibbons found that street crimes, especially those involving violence, were given stiff prison sentences. But, again, there was no evidence of moral indifference to white-collar crimes.

On the 20-offense list, two white-collar crimes were rated, in terms of level of punishment, number 6 (embezzlement – “a bookkeeper who had ‘borrowed’ over $15,000 from his employer”) and number 7 (antitrust – “some meat packing companies engaged in price-rigging”). Nearly three-fourths (74.6%) and half (49.8%) of the respondents favored a sentence of a year or more for the two offenses, respectively. When a jail sentence was included, the percent favoring incarceration was 87.7% for embezzlement and 69.8% for the antitrust violation (figures calculated from Table 1, p. 395). Almost nobody selected “no penalty” (1 respondent for embezzlement and 6 for the antitrust illegality). A third white-collar offense, “misrepresentation of advertisement” (falsey claiming that the company’s aspirin product was faster-acting than a competitor’s product), ranked number 13. Despite no harm being done to consumers, 42.9% favored a penalty involving incarceration. Importantly, Gibbons (1969, p. 397, emphasis in original) concluded that “the lenient handling of white-collar offenders is not a reflection of high tolerance of this activity on the part of the general public.”

Over the next decade or so, several studies appeared that reinforced the portrayal of the public as willing to criminalize white-collar misconduct (for a summary, see Evans et al. 1993). These included works that explored how the public assessed not only the seriousness of crime but also the punishment of these same offenses (see, e.g. Sinden 1980; Grabosky et al. 1987). In this research, there was some evidence that the association between
seriousness and punishment ratings was lower for white-collar than conventional crimes. Thus, in Grabosky and colleagues’ (1987) Australian sample, the most seriously rated offense – “a person stabs a victim to death” – also received the harshest criminal penalties (64.8% chose prison and 26.6% chose capital punishment). By contrast, only a minority of the public selected imprisonment for two violent white-collar crimes that they had rated as quite serious. Industrial pollution of the city water supply resulting in one death was assigned a prison sentence by 31.5% of the sample; the figure was 22.3% for employer negligence causing a worker to lose a leg. As Grabosky and colleagues (1987, p. 41) warned, this could have been due to the difficulty of knowing who to blame and punish for these offenses: “Some respondents may have viewed the culpable actor as a corporation which cannot be incarcerated. Others may have regarded massive monetary fines a realistic sentencing alternative for convicted corporate offenders.” Regardless, the key point is that no attempt was being made by the public to decriminalize these offenses; it was simply a matter of deciding which sanctions were more appropriate to use.

At that time period, the most direct effort to test public support for punishing white-collar crime was undertaken by Cullen and colleagues. First, Cullen et al. (1983) asked a 1981 sample of Galesburg, Illinois, residents to state the extent to which they agreed with four items that related to the punishment of white-collar offenders. Samples from Galesburg (1982) and Springfield, Illinois, (1979) were asked three of the items and gave very similar responses. Thus, 88.6% of the 1981 Galesburg respondents agreed that “white-collar criminals … deserve to be sent to jail for their crimes like everyone else,” whereas only 18.2% agreed that “since white-collar criminals usually don’t harm anyone, they shouldn’t be punished as much as regular criminals.” Further, 84.1% agreed that upperworld offenders should be punished “just as severely” as those “who steal money on the street,” and 73.6% agreed that “stiff jail sentences will stop most white-collar criminals from breaking the law” (Cullen et al. 1983, p. 485). These responses suggested that the public supports punishing white-collar offenders on grounds of both equality before the law and deterrence.

This study also probed how the public evaluated the costs of white-collar versus street crimes. Three-fourths (75.6%) agreed that white-collar crimes exacted more financial costs, and more than half (55.2%) concurred that such crimes did more than street offenses to “undermine the morality of our society” (Cullen et al. 1983, p. 488). By contrast, responses to three other items showed that the Galesburg respondents believed that street crimes did more to make people afraid (84.1%), were “much more likely to injure or kill people” (89.5%), and were “more dangerous” (64%) (p. 488). Although research indicates that the violent or physical costs of white-collar crimes are high – especially corporate illegalities (Cullen et al. 2006; Benson and Simpson 2015) – the public, at least at this time, seemed unaware of this fact. Still, concern about the violent costs of street crime did not translate into indifference to white-collar crime. As noted, high percentages believed that criminals – regardless of the collar they are wearing – merited their just deserts.

Second, on another part of the 1981 Galesburg questionnaire, Cullen et al. (1985, p. 18) instructed their respondents to use an 11-point scale – ranging from “1 = put the person on probation” to “10 = life in prison” and “11 = death penalty” – to assign punishments to 41 offenses. To capture public views more systematically, this list was designed to include not only conventional crimes but also several categories of white-collar lawlessness. Notably, when a corporate offense revealed clear culpability and serious harm, it was rated highly. Thus, “knowingly manufacturing and selling contaminated food that results in a death” received the third highest mean punishment score, with 97.8% of the sample favoring a prison term (1985, p. 20). Punitiveness declined a degree when the illegal act exposed
consumers only to a potential harm, but it was still high. The item with the ninth highest mean and with 89.9% favoring prison was “manufacturing and selling pharmaceutical drugs known to be harmful to users”; the seventeenth highest mean, with an imprisonment percentage of 83.3, was “manufacturing and selling autos known to be dangerously defective” (p. 20). Summarizing other results is difficult because the sample's punitiveness varied across individual white-collar offenses and across categories of such offenses. Still, overall, property offenses by corporations and professionals (e.g. doctors, lawyers) were given lower punitiveness scores, typically with about 30% of the respondents favoring a prison term. One exception was when items included the label of “embezzlement,” which seemed to elicit more punitiveness. Thus, a prison sentence was favored by 90.1% of the sample for a “lawyer who embezzles money from a client's account he is in charge of,” and by 84.4% for an “employee embezzling company funds” (p. 20).

The public's reluctance to incarcerate white-collar crimes with economic impacts might reflect less punitiveness. A more likely reason, however, is the limits inherent in the methodology of asking respondents to rate lengthy lists of offenses described in 15 words or fewer. Key aspects of white-collar offenses – the fact they can be planned and carried out over lengthy periods of time and can have enormous costs – are not captured. The Cullen et al. (1985, p. 21) survey contained this item: “Fixing prices of a consumer product like gasoline.” Only 35.6% favored a prison term. But what if the price-fixing item had been described in this way? “For a three-year-period, executives from three major oil companies met secretly once a month to make sure that gasoline prices were 50 cents higher per gallon. This price-fixing scheme earned each of their companies $500 million in illegal profits. What sentence do you believe that the executives who engaged in this conspiracy should receive?” Because the degree of culpability would be clear and the economic impact revealed as enormous, it is likely that a high percentage of the public would endorse a prison term. Future research might benefit by having the public evaluate vignettes of this sort, perhaps developed from actual cases.

Later Studies of Public Punitiveness

Since the publication of these early studies, research on punitiveness toward upperworld criminality has been relatively limited. Still, enough studies have been undertaken to confirm that the public's willingness to punish white-collar offenders has not diminished and, if anything, may have solidified. Writing even before Bernard Madoff’s celebrated Ponzi scheme and the shady business practices that contributed to the financial crisis that spun the United States into the Great Recession, Cullen et al. (2009) argued that repeated scandals have transformed corporate officials from upstanding members of the community into “bad guys.” They cite a number of polls showing low confidence in CEOs' morality and ethical standards. In this context, it is possible that corporate malfeasance will be attributed to dishonesty and company leaders portrayed much as “bad guys” who victimize due to greed, arrogance, and heartlessness. If so, then any insulation from punishment provided by so-called respectability will be forfeited. This thesis warrants further investigation.

Several surveys can be cited that illustrate the public's continuing willingness to punish white-collar crime. Thus, The National Public Survey on White Collar Crime conducted in 1999 contained data not only on crime seriousness but also on punitiveness preferences (Rebovich et al. 2000; see also Schoepfer et al. 2007). The respondents were asked to consider someone who commits a robbery or a fraud, each stealing $1000. They were
then queried as to who they thought “will likely receive the most severe punishment” and then who “should be punished more severely” (Rebovich et al. 2000, p. 31). Although 82% of the respondents thought that the robber would be punished more severely, 79% stated that the punishment should be either equal (38%) or higher for the fraudster (31%). They were then presented with the following item: “Do you believe the government should devote more resources to combating street crimes like robbery or white collar crimes like fraud?” (Rebovich et al. 2000, p. 38). Notably, 70% chose either fraud (35%) or an equal amount (35%).

A 2005 national poll replicated these same questions and produced similar results (Holtfreter et al. 2008). Thus, about two-thirds of the sample stated both that a street criminal like a robber was more likely to be punished more severely and that a white-collar criminal like a fraudster should receive harsher penalties. About the same proportion (60.9%) also believed that the government should devote equal or more resources to combating white-collar as opposed to street crimes. A 2010 survey found a comparable result (Huff et al. 2010). Taken together, these surveys show the public’s willingness to punish white-collar crimes.

A similar orientation was revealed in a 2002 national poll conducted by ABC News and The Washington Post (Unnever et al. 2008). The 1512 respondents were asked: “Do you support or oppose stricter penalties, including longer prison terms and higher fines, for corporate executives who conceal their company’s true financial condition” (2008, p. 174). More than 9 in 10 members of the public supported tougher punishments for such executives – 77.3% strongly and 16.3% somewhat.

Recall the 2011 survey of residents called for jury duty in El Paso County, Colorado, by Dodge et al. (2013). In addition to providing seriousness ratings, the respondents were asked whether incarceration was an “appropriate punishment” for those who engaged in a Ponzi scheme, embezzlement from a legal firm, and a scheme by an energy company to inflate profits. In each case, clear majorities of male and female respondents supported incarceration. The percentage of males and females endorsing a prison term was 86 and 77% for the Ponzi scheme, 66 and 59% for embezzlement, and 67 and 63% for the corporate illegality.

Recall as well Michel’s (2016) survey conducted in 2013 in which 408 respondents rated five scenarios of violent offenses – two street crimes (felony-murder and rape) and three white-collar crimes (consumer safety, illegal toxic waste disposal, and worker exposure to asbestos). Again, given the nature of the transgressions, the street crimes evoked higher punitiveness scores, including lengthy prison terms. Nonetheless, public support for using the criminal law to control white-collar crime was clear.

First, one analysis examined support for the prosecution of the crimes on a three-point scale that included 1 = a non-legal means, 2 = a non-criminal court, and 3 = a criminal court. Although virtually unanimous that murder (mean = 3.0) and rape (mean = 2.99) should be prosecuted criminally, most of the respondents also favored use of the criminal court for the white-collar offenses (mean scores of 2.70 for toxic pollution, 2.71 for asbestos exposure, and 2.74 for consumer safety violation). Second, the public was far more likely to support the imposition of criminal fines against the lawless companies (choosing fines between $100 000 and $499 000) than on the street criminals who murdered and raped (choosing fines under $100 000). Third, a disparity emerged whereby the sample members chose prison terms of 11–30 years for the violent street offenders but a sentence that did not surpass an average of five years for the white-collar illegalities (Michel 2016, p. 136). Interpreting this finding is difficult, however, because the offender in the white-collar crime scenarios is not an
individual executive but a “company” that obviously cannot be imprisoned. This methodo-
logical reality might explain why the respondents endorsed the use of fines in the white-
collar incidents but were more ambivalent about the appropriateness of prison sentences.

Regardless, across the three punitiveness measures – use of the criminal court, imposi-
tion of fines, and prison terms – there is little to suggest that today’s American public is
opposed to criminally sanctioning upperworld lawlessness. It may be that murder and rape
elicit the most condemnation and willingness to punish harshly, but this fact does not mean
that white-collar crime, including by companies, is viewed as morally neutral business
behavior. Indeed, Michel’s (2016) study shows that the public considers these offenses to be
serious and an appropriate object of criminal prosecution and punishment.

Finally, additional insight on the reservoir of punitive sentiments toward white-collar
malfeasance is apparent in Pickett and Roche's (2018) study of the public’s willingness to
criminalize the occupational deviance of scientific fraud. Using MTurk to secure 821 usable
responses, about half the sample (n = 415) was randomly assigned to evaluate vignettes
describing data falsification and fabrication. The subjects read two scenarios – one in which
a medical researcher changed blood pressure scores to show a drug’s effectiveness and
another in which a psychologist created a phony dataset to show a preferred result. It is
instructive that more than 9 in 10 respondents defined the acts as morally unacceptable
(96%) and thought that the perpetrators should be fired from their jobs (96%) and banned
from receiving government funds in the future (93%). Most revealing, about two-thirds of
the sample (66%) believed that “it should be a crime to falsify or fabricate data in scientific
research” (Pickett and Roche 2018, p. 166). Among this group, 35% favored incarceration
(22% up to one year and 13% more than one year) as opposed to a fine and/or probation
(65%). Notably, the other half of the sample (n = 406) was instructed to read scenarios
describing the selective reporting of data (e.g. a scientist analyzes data different ways and
reports only desired results). Here, 71% of the subjects defined the behavior as morally
unchangeable and 35% even defined it as a crime.

To check their findings, Pickett and Roche (2018) conducted a second study in which a
subset of their questions was asked – a 2016 online probability survey of 964 respondents
undertaken by GfK Custom Research. Punitiveness ratings were even higher than for the
MTurk study, with 91% of the sample stating that the data falsification and fabrication sce-
narios “should be a crime” and a majority (55%) of the subjects endorsing criminalization
favoring incarceration (Pickett and Roche 2018, p. 159). These results were then analyzed
across a range of socio-demographic characteristics, including age, gender, race, education,
income, political party, and geographic region. “Our results reveal,” conclude Pickett and
Roche (2018, p. 158, emphasis in original), “that there is an incredible consensus across all
groups that data fraud should be a crime.”

**Focusing on Types of White-Collar Crime**

As this volume illuminates, white-collar crime is a conceptual umbrella that covers diverse
forms of illegality. With few exceptions, however, the public opinion literature has not sys-
tematically explored how attitudes are shaped by crime type (cf. Cullen et al. 1985). To gain
insights, it is often necessary to read through responses to lists of offenses on a survey and
impose a conceptual framework on them. As Van Slyke and Rebovich (2016, p. 678) note,
to be policy relevant, “future research” on public views about white-collar crime needs to
“focus on specific offenses, which vary in terms of factors identified as influencing punitive
Public Opinion About White-Collar Crime

Attitudes. This research could be profitably guided by the framework informing the current volume: occupational, governmental, and corporate/state-corporate crimes.

As noted, across all offenses, punitiveness is governed by two normative standards: whether there is evidence of culpability and the amount of harm incurred (especially physical harm). Not surprisingly, offenses involving intentional or known harm – whether due to a shooting or a lethally defective product – evoke high punitive sentiments. With white-collar crime, however, two other normative standards are salient: trust and equity. We argue that these standards play a role in fueling punitive sentiments toward upperworld criminals.

As Benson and Simpson (2015) show, white-collar criminal opportunity is rooted in relationships in which victims must give offenders legitimate access to sensitive information and assume honesty. Such crimes thus involve a violation of trust, often compounded by purposeful deception and concealment of injury. Harming someone who “placed their faith in you” – who made themselves vulnerable based on promises of good will – is likely to spike the willingness to punish. Similarly, a revelation of a white-collar illegality raises the issue of equality before the law. The norm of equity demands that white-collar offenders, especially those who enjoy a privileged life, should be treated as harshly as poor, minority criminals are treated. We argue that in comparison to Americans in the 1940s and 1950s, the norm of equity is strong among today’s citizenry and will fuel punitiveness when called into play.

Table 14.1 presents a framework for understanding factors that might increase or decrease punitiveness. A high score in each category is likely to generate harsh reactions. Bernard Madoff’s Ponzi scheme would be an example, where his culpability was clear, the harm enormous (billions of dollars), the violation of trust profound (thousands affected), and the need to show equity demanded (Benson and Simpson 2015). In each cell in the table, we have suggested what the modal valence would be (high, moderate, low). It is possible to differ with our assessment. In particular, there are exceptions within every category. For example, the prototypical occupational crime is likely to involve finances (e.g. embezzlement, fraud), but violence is possible, such as when a physician knowingly performs an unnecessary surgery (see Liederbach et al. 2001). Or the need to show equity is going to be stronger for a large international corporation than for a small local company. We should note that scenario research (e.g. using a factorial design) could be undertaken that varies the degree to which the four norms are violated within each category of white-collar crime.

Table 14.1 suggests two conclusions. First, punitiveness toward occupational crimes is likely driven by the clarity of the culpability. Similar to street crimes, these offenses usually involve an individual (or small number of conspiring individuals) who commits a crime that is easily understood (e.g. embezzle funds). Public support for criminal sanctions thus will be found consistently. The level of harshness, however, would depend on scores in the

<table>
<thead>
<tr>
<th>Type of white-collar crime</th>
<th>Clarity of culpability</th>
<th>Typical harm</th>
<th>Violation of trust</th>
<th>Need to show equity</th>
</tr>
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<tr>
<td>Occupational</td>
<td>High</td>
<td>Low to moderate</td>
<td>Moderate</td>
<td>Low to moderate</td>
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<td>Governmental</td>
<td>Moderate</td>
<td>Moderate</td>
<td>High</td>
<td>Moderate to high</td>
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<td>Corporate</td>
<td>Moderate</td>
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<td>State-corporate</td>
<td>Low</td>
<td>High</td>
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other categories. Because these offenses often have a limited pool of victims and can be committed by employees of different statuses, we see these cells as ranging from low to moderate.

Second, those who perpetrate governmental and corporate/state-corporate crimes tend to be higher in all but the culpability dimension. Governmental offenses may have moderate harm and, depending on the status of the perpetrator (e.g. elected official, staff member), be moderate in equity demands. But violation of the public trust would generate animus. Establishing culpability can be clear (e.g. a kickback is videotaped in a Federal Bureau of Investigation sting) or unclear (e.g. a “benefit” is not seen as quid pro quo). For corporate offenses, the potential for strong punitiveness exists because the harm can affect many victims, the violation of trust can occur over time, and the need to show equity is palpable. However, establishing culpability is challenging (Benson and Cullen 1998; Cullen et al. 2006; Benson and Simpson 2015). Surveys can make this liability clear and induce high punitiveness. But in reality, the complex nature of decision-making in organizations can mask individual culpability and offer corporations the defense that a “mistake” was made. For state-corporate crimes, which exist at the interstices of company-government collusion, it may be even harder to prove responsibility. It is instructive that the financial crisis of 2008, which was facilitated by state policies, resulted in only one conviction (Eisinger 2014).

**Conclusion: Time for a New Generation of Research**

A key finding in the existing literature is that the American public, as well as citizens in other Western nations, are quite prepared to criminally sanction offenders wearing any color collar. With this fundamental policy issue settled, a new generation of research needs to be undertaken. The previous section has detailed the importance of focusing on types of white-collar crime and on core normative principles that might inflate or diminish public punitiveness. We would suggest three further lines of inquiry.

First, the time has arrived to undertake a truly systematic, national study that seeks to illuminate the many facets of how Americans view white-collar crime. Such a survey might explore how well the public understands the impact of various types of upperworld crime, including newer forms of financial and governmental cybercrimes that have emerged in the internet age. Beginning research exists suggesting that most of the public is not fully aware of the nature, scope, and harmfulness of white-collar crime and that this lack of “lay knowledge” may diminish the willingness to punish such offenses harshly (Michel et al. 2016a,b). What is not known – but what could be assessed – is whether this limited knowledge is unique to the domain of white-collar lawlessness or is part of a broader public ignorance about crime (e.g. belief in the myth that “crime is rising”) and about political issues in general (Kinder 1998; Kinder and Kalmoe 2017). A national study also could use more detailed scenarios describing offenses that probe more deeply which features of white-collar crime spike punitive sentiments. Insights on sanctioning merit explorations as well. Thus, this research could explore how citizens wish to apply criminal sanctions when the perpetrator is a corporation – to the business entity or executive, or both. And a national study might investigate whether members of the public would wish to consider criminal sanctions that are not only punitive but also restorative, rehabilitative, and preventative (see Braithwaite 2002; Benson and Simpson 2015). Further, it might be fruitful to supplement broad surveys with focus groups that can explore these issues in depth.
Second, with regard to corporate crime, criminologists rarely study public views toward other systems of control, especially regulatory agencies. On a global level, Americans resist calls to expand governmental regulation. In a 2014 Gallup Poll, nearly half the sample (49%) responded that there was “too much” government regulation. The other choices were “about right” (27%) and “too little,” with only 22% support among the public (Newport 2014). Several caveats should be mentioned, however. To start with, the Gallup Poll revealed a substantial political divide, with “too much” regulation being selected by 77% of Republicans but only by 22% of Democrats (Newport 2014). Data from a 2012 poll by the Pew Research Center for The People & The Press (2012) found that advocacy of regulation varied by the type of business. Small businesses, which are viewed favorably, are seen as suffering “too much” regulation (49%), but large corporations, which are viewed negatively, are seen as having “too little” (43 vs. 31% for “too much” and 19% for “right amount”) (2012, p. 16). The Pew poll also revealed that most Americans oppose reducing specific regulations. Fewer than 20% of the respondents favored reducing federal regulations of “food production and packaging” (8%), “environmental protection” (19%), “car safety and efficiency” (9%), “workplace health and safety” (12%), and “prescription drugs” (20%) (2012, p. 15). Finally, a 2002 survey by ABC News and The Washington Post reported that 58.7% of the public preferred less regulation of the stock market (albeit a poll taken prior to the nation’s financial collapse later in the decade). Still, as reviewed previously, over 90% of the sample also endorsed “tougher penalties for executives” (Unnever et al. 2008, p. 176).

These findings suggest that Americans possess global attitudes that resist governmental regulation and likely have small businesses in mind when asked this question in a poll. However, they also possess specific attitudes that favor regulation when asked about lessening protections on identifiable consumer products, workplace conditions, and environmental protections that could affect their safety and quality of life. Further, when an executive breaks a law, they do not hesitate to punish that person. Still, these are only beginning, somewhat speculative insights. Unpacking how the public wants to use different systems of controls – criminal, regulatory, and civil – to punish and prevent diverse white-collar crimes will require further investigations (see, e.g., Frank et al. 1989).

Third, it is important to learn what role, if any, public opinion plays in policy formation. Prior research on crime policy suggests that legislators and other policymakers often misperceive public opinion, often seeing it as more punitive toward conventional offenses than is actually the case (see, e.g., Riley and Rose 1980). Little is known, however, about how policy elites assess white-collar crime and whether their misperceptions might be in the opposite direction of assuming more leniency than is the case. Research on this issue thus might prove revealing. Further, when serious white-collar scandals occur – whether a huge financial fraud or illegal pollution of a community’s water supply – it would be important to prepare in advance to go into the field immediately to capture how this victimization affects public views (see, e.g., Meier and Short 1985). Such a fast-acting survey might be part of a broader case study that explores the “life course” of such opinion, including the duration of its intensity and how it shapes, or does not shape, legal responses.

References


A core question in the study of white collar crime is how to prevent corporations from breaking the law. Much attention has focused on punishing corporate crime. Indeed, conversations in the public fora often call for punishing corporate executives more severely. We only need to think about how in the aftermath of the 2008 financial crisis, progressive politicians called for stricter punishment of banks. Now, with more recent scandals such as at Wells Fargo, we are hearing their calls resound even more loudly. For instance, US Senator Elizabeth Warren is one of the most vocal supporters of stricter corporate punishment. In March 2018, she introduced a bill in Congress introducing stricter sanctions for corporate executives. As she explained: “When they break the law, Wall Street executives should be trading in their pinstriped suits for orange jumpsuits. After wrecking the economy in 2008, too many executives got off scot-free while millions of hardworking people lost their homes and savings. That’s why I introduced the Ending Too Big to Jail Act.”

The belief is that punishing corporations and their executives more severely will prevent future wrongdoing. Certainly, this idea is partly a reaction against the impunity of corporate actors, as for many years, major cases of corporate misconduct did not result in strong sanctions either against the corporation or against the executives involved (Garrett 2014; Pontell et al. 2014; Steinzor 2014). Undoubtedly, impunity does sustain misconduct and crime. As the economist Thomas Piketty explained in 2016 in response to the tax haven scandals that came to light after the publication of the so-called Panama Papers: “Let there be no mistake: only repeated application of sanctions of this type, at the slightest non-compliance, will enable the credibility of the system to be established and an end seen to this climate of lack of transparency and widespread practice of impunity for many decades” (Piketty 2016).

However, the question is whether punishment will, in and of itself, deter corporate crime and violations. Unfortunately, the existing science does not provide strong evidence that punishment consistently and effectively deters corporate wrongdoing. A recent systematic review of all available studies about corporate deterrence found that: “The evidence fails to
show a consistent deterrent effect of punitive sanctions on individual offending, company‐level offending, geographic‐level offending, or offending among studies using an ‘other’ unit of analysis” (Simpson et al. 2014). Critically, this is not just another study in the literature. This study, which constitutes the most comprehensive, rigorous, and up‐to‐date review of all available scientific evidence about deterrence for corporate crime and misconduct across a range of corporate crimes, failed to find a deterrent effect.

There are several explanations for why corporate deterrence is difficult. A first reason is that just like for individual crime (Nagin 2013), certainty of punishment matters more than severity of punishment. Further, stronger sanctions will only start to have an effect if a tipping point of certainty is achieved (Brown 1978; Chamlin 1991). However, because of the complexity of corporate organizations and processes, detecting corporate violations in the first place is quite challenging (Gray and Scholz 1991; Pontell et al. 1994; Gray and Mendeloff 2005; Henriques 2011; Gray and Silbey 2014; Plambeck and Taylor 2016). In fact, stronger punishment threats can actually lead to more investment to prevent getting caught and ultimately result in a cat‐and‐mouse game (cf. Plambeck and Taylor 2016). For instance, when Volkswagen (VW) discovered that California and US regulators knew about their cheating, their initial response was to improve the software and hide their cheating through a recall (Ewing 2017). Further, when wrongdoing is actually detected, it remains difficult to prosecute (Pontell et al. 1994). Finally, even when it is successfully prosecuted, penalty fines often remain uncollected (Ross and Pritikin 2010).

A second reason is that deterrence is subjective (cf. Apel 2013). Oftentimes, corporate executives who are supposed to be deterred simply are not aware of the certainty and severity of punishment (Thornton et al. 2005). For some companies, the expected penalties are seen as the price of business and made part of the budget. At VW, high‐level engineers and executives had since 2006 received penalties in other cases, but in the words of New York Attorney General Eric Schneiderman: “They had concluded we can survive this type of penalty.”2 Indeed, even with the massive damages and penalties VW had to pay after it finally admitted to its cheating (setting aside 25 billion USD), in 2017 it had its highest sales ever and retained its number 1 ranking in car sales, and in 2018 it further extended its lead over Toyota.3

These findings do not mean that corporate crime and wrongdoing should not be punished. Certainly, punishment must be administered when wrongdoing is uncovered. However, these findings do mean that punishment in and of itself is not enough to prevent future violations and damages. A comprehensive approach to white collar crime looks beyond punishment, and also identify what can be done within the organization.

This chapter examines three options, each of which has drawn academic and practical attention. First, we discuss internal compliance management systems. These are systems that are supposed to help organizations manage their compliance and become better equipped at preventing illegal behavior by organizational members. Legal systems, including that of the United States, have introduced legal incentives to stimulate corporations to adopt these systems. The second way to prevent white collar crime from within the organization is through whistleblowers. Staff and workers in corporations have much better knowledge of wrongdoing than external regulators. The chapter will discuss how successful whistleblowers have been in aiding the control of corporate crime and misconduct. Finally, the chapter will discuss the role of internal monitoring as a check on rule‐breaking behavior. Three forms of internal monitoring will be discussed: private third‐party monitors, technological forms of monitoring, and mandated monitors that corporations have to adopt following prosecution settlements. The chapter will conclude by reflecting critically on what these studies mean for the prevention of white collar crime and corporate wrongdoing.
Corporate Compliance Management Systems

Over the past two decades, there has been rapid growth in corporations adopting compliance management schemes. One of the driving forces is that the law actually incentivizes these practices. For instance, US law offers lenient treatment for companies that have an “effective compliance and ethics program.” Consequently, it is unsurprising that we see many companies adopt compliance management systems in the aftermath of major scandals and prosecutorial investigations. Siemens is a prime example. This German electronics giant had been bribing governments worldwide to get favorable contracts overseas, funneling an estimated total of 1.4 billion USD to officials in Asia, Africa, and Latin America. Once its massive bribery scheme was uncovered, Siemens became part of a major US criminal investigation. As the investigation proceeded and Siemens began negotiations with the US Department of Justice (DOJ), it developed new anti-corruption compliance policies, including a handbook, web-based complaints channels, improved financial controls, and an anti-corruption tool kit operated by 150 dedicated staff members. These efforts cost Siemens over $150 million, and expanded its compliance operation to 500 staff members. This helped Siemens get more lenient treatment, as the DOJ asked the court to give a lower sentence. As the DOJ sentencing memo stated: “The reorganization and remediation efforts of Siemens have been extraordinary and have set a high standard for multinational companies to follow. These measures, in conjunction with Siemens’ agreement to retain a Monitor … for a term of four years, highlight the serious commitment of Siemens that it operates in a transparent, honest, and responsible manner going forward.”

There are two ways to view what happened at Siemens. We may see this as a typical case where a major multinational company got caught red-handed in criminal activities that were structural and endemic to the organization, and then got off lightly. After all, no major executives were actually sent to prison and the company simply had to pay a fine. Siemens’ compliance reforms effectively reduced the company’s liability and enabled it to receive favorable treatment from the DOJ.

Alternatively, we can see Siemens as a complex organization that needed to initiate a broader compliance management reform to prevent bribery throughout its worldwide operations. Here, even if all the top managers had been sentenced to spend years in prison, this would not have automatically prevented similar misconduct from continuing. Bribery had become a major part of the Siemens operations and was well ingrained throughout its business practices across many countries. Punishing the top executives in and of itself does not automatically change the culture of a large organization with several hundred thousand employees. Altering the behavior of such an organization is very different from doing so on an individual level. It requires knowing what happens in the organization, what the organizational processes are, and the incentives and values that sustained the bribery for so long.

The official rationale for adopting compliance management systems is that they help organizations install mechanisms that prevent misconduct and crimes. If misconduct does occur, they also help deal with those infractions at the earliest possible moments. The question is whether corporate compliance management systems, such as the one adopted by Siemens, actually do prevent corporate crime and wrongdoing. Unfortunately, the body of scientific literature does not provide a simple answer.

Some studies directly question whether compliance management can be effective. Marie McKendall and her colleagues, for instance, studied whether ethical compliance programs (consisting of ethical codes, ethics communication, ethics training, and the incorporation of ethics into human resource management practices) could reduce occupational health
and safety violations. Studying 108 large American firms, McKendall and colleagues found no positive effect associated with the programs and further found that these programs failed “to support a commonly held assumption that the types of corporate ethical compliance programs advocated by the 1991 Uniform Sentencing Guidelines will result in less organizational illegality” (McKendall et al. 2002, p. 367). On this basis they concluded that ethical compliance management may be more about “window-dressing” (or at least a marketing ploy to differentiate firms from competitors) than actually improving corporate behavior and reducing violations. The authors also concluded that “if meaningful ethics programs are to be developed, they must be supported by top management; this factor is more important than external controls such as the sentencing guidelines. Institutionalizing ethics involves more than codes and training; it must be supported by a culture change and examples of ethical leadership from top management” (McKendall et al. 2002, p. 379). In sum, they found that on its own, compliance management is not enough.

Other scholars agree that compliance management is mere window-dressing (cf. Parker and Gilad 2011). Kimberly Krawiec, for instance, finds that “a growing body of evidence indicates that internal compliance structures do not deter prohibited conduct within firms and may largely serve a window-dressing function that provides both market legitimacy and reduced legal liability” (Krawiec 2003, p. 487). She concludes that this not only fails to improve corporate behavior, but also comes at a high cost for corporations adopting these programs. Similarly, Gary Weaver and colleagues looked at whether the top 1000 American industrial and service firms in the mid-1990s actually implemented the ethical compliance management practices that they so widely adopted. They found that “the vast majority of firms have committed to the low cost, possibly symbolic side of ethics management (e.g., adoption of ethics codes and policies, etc.). But firms differ substantially in their efforts to see that those policies or codes actually are put into practice” (Weaver et al. 1999c, p. 283). It seems that for these top firms in the 1990s, compliance management was more about checking-the-boxes” show of compliance management efforts than actually changing operations and improving corporate behavior.

Compliance management systems may have actually made matters worse. McKendall and her colleagues found that the more firms incorporated ethical compliance into their operations, the more likely they were to have “willful and repeat” violations (McKendall et al. 2002, p. 380). Moreover, employees get mixed messages. On the one hand, they see that their firm has publicly adopted a lofty ethics and compliance system. On the other hand, they see in everyday working practices that the firm does not “follow through.” What results is a form of corporate dissonance (Ewing 2017) that harms future compliance inside the company as employees will learn not to believe lofty messages from their leaders (Van Rooij and Fine 2018). Linda Treviño and Gary Weaver argue that such a mismatch may damage employee expectations of procedural justice (Treviño and Weaver 2001); procedural justice are thought to be strong motivators of compliance (Tyler 1997, 2006; Nagin and Telep 2017).

Part of the problem is, as Krawiec has argued, that it is remarkably difficult to determine what is a good, effective compliance management program (Krawiec 2003). Yet, according to law, corporations with a compliance management program get treated with much more leniency than those without. As Krawiec argues, “the indicia of an effective compliance system are easily mimicked and true effectiveness is difficult for courts and regulators to determine” (Krawiec 2003, pp. 491–492). For this reason, she explains, there will be more window-dressing. “Firms engaged in legally prohibited, but potentially profitable, conduct can reduce or eliminate firm-level liability by mimicking an effective compliance system, without reducing the incidence of prohibited conduct within the firm” (Krawiec 2003, p. 492).
There is ambiguity not just about which compliance programs may work, but also in what the law actually requires corporations to do. Lauren Edelman, in her study about employment discrimination compliance programs, shows that organizations often create so-called symbolic structures, such as special affirmative action officers and antidiscrimination codes. She argues that organizations are caught in a dilemma, as they must appear to care about the law, while also keeping costs at a minimum. Because the law is often unclear about what it exactly requires, organizations can overcome the dilemma simply by having compliance management processes. These then “serve as visible efforts to comply with law,” without actually achieving the substantive goals of the law, such as reducing actual employment discrimination (Edelman 1992). Thus, compliance management can become about the optics of serving the (often vague) letter of the law rather than its original spirit.

Other scholars are less negative. They find, instead, that there might be some evidence that corporations with compliance management programs do perform better than those without. Coglianese and Lazer, for instance, have studied how government-mandated compliance management programs, which they call management-based regulation, have fared in improving food safety, worker safety, and pollution prevention in the United States. They find that while there still is significant noncompliance with the management program standards, the programs did help to reduce risk, especially when independent monitoring and oversight is in place (Coglianese and Lazer 2003, pp. 724–725).

Parker and Nielsen agree that compliance management systems can make a difference, albeit only under certain conditions. Their study is one of the most comprehensive to date. The study surveyed 999 large Australian firms about 21 elements of their compliance management systems and compliance with competition and consumer protection law (Parker and Nielsen 2009). They found that of the 21 components of a compliance management system, only six played a positive role in enhancing compliance behavior, at least as reported on the survey. These six were “(a) having a written compliance policy, (b) a dedicated compliance function, (c) a clearly defined system for handling complaints from customers/clients, (d) a clearly defined system for handling compliance failures, (e) induction for new employees that includes compliance training, and (f) having had an external consultant review the compliance system” (Parker and Nielsen 2009, p. 28). Their findings thus show that a few, elements of compliance management systems can make a difference in curbing corporate misconduct.

However, Parker and Nielsen’s data also show that the majority of compliance management system elements play no role. These included having a hotline for complaints about compliance, using a compliance manual, using a computer-based training program for compliance, written policies to protect internal whistleblowers, requiring managers to frequently report on compliance, compliance performance indicators for employees, and internal employee discipline for noncompliance (Parker and Nielsen 2009, p. 24).

Consequently, Parker and Nielsen’s study presents mixed findings. It shows that we must look carefully at the actual elements of compliance management systems. Even elements most of us intuitively might think will work (e.g. whistleblower protection programs, having internal indicators and discipline to promote employee compliance) might not actually work. As we saw, these include many of the elements the DOJ had so proudly applauded Siemens for introducing as remedial action following its massive bribery scandal.

More importantly, Parker and Nielsen argue, much in line with several other studies they cite, that compliance management systems on their own are not enough to improve organizational behavior. Such systems only work if they can operate in the right
organizational system that has sufficient leadership support and values. Others in the field have come to similar conclusions (Weaver et al. 1999a, b). Parker and Nielsen even wonder whether compliance management systems can institute a “culture of compliance.” “Indeed, we cannot be sure that it is not the other way around— that better compliance ‘culture’ leads to greater implementation of compliance systems” (Parker and Nielsen 2009, p. 29).

Studies of corporate ethics codes also have mixed conclusions about their ability to help reduce unethical behavior. Kaptein and Schwartz (2008) reviewed the existing body of research on whether instituting an ethics code, which is a core part of most compliance programs, reduces unethical behavior. They found very mixed results: 35% of the studies found that such codes are effective, while 16% found only a weak relationship, 33% found no effect, 14% found mixed results, and one study in the sample found negative effects. Overall, we see that the simple adoption of a code in and of itself does not directly reduce unethical behavior (see also Kaptein 2011, p. 234). As Cooper notes, “A code of ethics cannot make people or companies ethical. But nor can hammers and saws produce furniture. In both cases they are necessary tools, which need intelligent design and use” (Cooper 1990, p. 8). In a follow-up study, Kaptein (2011) sought to understand what conditions then made these ethics codes more effective in reducing unethical behavior. He found that what counts most is whether workers perceive that their management sufficiently support and internalize these ethics codes. In addition, ethics codes will work better if their content addresses a broad set of ethics issues and if the organization properly communicates them to the employees (Kaptein 2011).

The body of scientific work on the effectiveness of compliance management programs is not conclusive. At worst, compliance management programs serve as window-dressing that allow corporations to maintain legitimacy and to receive lenient treatment from regulators, while undermining the internal legitimacy of the law and internal rules. At best, these programs are able to help prevent unethical and illegal conduct. But even in the most positive studies, we find hesitation. Corporate compliance management systems may sometimes, but not always, improve corporate behavior. What we find, then, is that installing a corporate compliance management system is not enough. Studies show that corporate leadership must be committed to compliance as well as ethics for compliance and ethics management programs to be effective. Many studies also stress the importance of a favorable corporate culture in which the programs can successfully operate. Furthermore, some argue that compliance management can only function well if there is some form of independent oversight.

These are vexing findings. The chief reason to have compliance management programs is that some or all of these conditions are missing. We have moved toward internal compliance management because independent oversight, often in the form of governmental enforcement, simply lacks the capacity to unearth illegal behavior hidden inside the corporation. We have developed compliance management systems because they may be able to change an unethical and criminal corporate culture. And we have compliance management systems to keep unethical leaders in check.

What we see here is that the law, most notably in the United States’ 1991 Federal Sentencing Guidelines, has incentivized companies to adopt systems for which there is very little evidence that they actually work. In the Siemens case, we see how much belief the DOJ places in these practices, without actually acknowledging the existing studies that question their effect.
Whistleblowers

Apart from installing compliance management programs, corporate crime and wrongdoing can also be addressed by protecting workers who want to speak out against illegal behavior in the company. For example, some VW employees must have known about the fraudulent emissions software the German carmaker had been using to evade California pollution standards for its “clean diesel” engines. Or consider the “tell-alls” that many Siemens employees could have written about whom the company bribed and where, long before the scandals became public. While corporations may be able to hide illegal behavior from external inspectors, and even from internal compliance managers, employees often directly observe misconduct and crimes. If employees speak out about misconduct and crime in their organizations, they can help initiate action within and outside the company toward compliance.

Similar to what it did for compliance management programs, major legislation has provided an impetus to stimulate whistleblowers to come forward. The United States is again a good example. Since the 1986 False Claims Act (FCA), several major federal laws, including the 2002 Sarbanes–Oxley Act (SOX) (Rapp 2012 p. 74) and the 2012 Dodd–Frank Wall Street Reform and Consumer Protection Act (Dodd–Frank), provide protections for whistleblowers, for instance against retaliation by their employers. Some of these laws (FCA and Dodd–Frank) also incentivize employees to come forward by offering bounty rewards for bringing information to the Securities and Exchange Commission (SEC) that results in successful enforcement action (Rapp 2012).

The question remains, do these whistleblowing policies actually work? Studies inform us about two questions: first, whether whistleblowers actually come forward to speak out, and second, when they do, whether this helps correct and prevent corporate wrongdoing. Unfortunately, there is much more research on why employees do or do not speak out against their employers than there is on what speaking out may actually accomplish.

A common finding in the whistleblower studies is that potential whistleblowers face tremendous obstacles and risks. Regardless of all the legal protections, many whistleblowers get fired (Alford 2007, p. 223; Dyck et al. 2010; Sawyer et al. 2010) or “quit under duress” (Dyck et al. 2010, p. 2216). If they continue at their job, many are demoted and come to work with much less satisfaction, often in a hostile environment (Sawyer et al. 2010, pp. 88–89). Employees who stay on face the risk of retaliation. Alford, in his study based on conversations with whistleblowers, explains, for instance, how in one case a nuclear physicist whistleblower was first moved to a broom closet, then lost his computer, and finally was put to work in the mailroom (Alford 2007, p. 230)! Alford concludes that when whistleblowers remain with their employer they can suffer an “endless chain of abasement” (Alford 2007, p. 230). Some employers have also retaliated by forcing whistleblowers to undergo “psychiatric fitness-for-duty examinations” (Liyanarachchi and Newdick 2009, p. 41). Those employees who are forced to leave their job, or quit voluntarily, often find that their whistleblowing history hurts their chances in the job market. In fact, studies show that potential employers may see whistleblowers as disloyal (Schmidt 2005; Fincher 2009; Gonzalez 2010) and less attractive to hire (Liyanarachchi and Newdick 2009, p. 40; Dyck et al. 2010). Studies also find that whistleblowers can incur large financial, social, and personal costs. While their claims are investigated, whistleblowers may have very expensive legal fees; they need lawyers to protect them (Earle and Madek 2007; Carson et al. 2008) especially if their employer sues them (as happens in about a quarter of cases; Sawyer et al. 2010).
The whole procedure can bring tremendous stress and anxiety, which can affect their personal relations at home and actually often results in divorce and/or substance abuse (Alford 2007; Rapp 2012). Clearly, the legal protections for whistleblowers are not sufficient to protect those speaking out and do not offer enough guarantees for those considering whether to come forth.

The next question is, if whistleblowing does occur, what effect does it have on corporate wrongdoing? Here we have far less literature to consult, as few studies have sought to link whistleblowing to corporate misconduct. The few studies available cast doubt on the actual effect of whistleblowing on compliance.

One way to study the effects of whistleblowing is to look at changes in corporate misconduct and wrongdoing that have occurred after the whistleblower protection laws came into place. Richard Moberly examined whether the whistleblower protections of SOX that were installed in 2002 had much effect in motivating the early disclosure of major fraud in subsequent years (Moberly 2012). His conclusion is that whistleblowers did not significantly help to uncover the massive corporate fraud that resulted in the 2008 financial crisis and Great Recession. He relates how major financial institutions simply failed to respond when their employees disclosed instances of major and systemic fraud. Rather than addressing the fraud, firms often would retaliate against whistleblowers. Moberly finds that one problem had been that – due to internal codes of ethics procedures – employees would first have to report to their supervisors, who had great power to “block and filter the reports” (Moberly 2012, p. 37). Moreover, he concludes that whistleblowers were powerless against the pervasive fraudulent corporate culture. “All of these statistics and evidence suggest that Sarbanes–Oxley, above all else, failed to change corporate culture sufficiently to address misconduct when employees report it” (Moberly 2012, p. 38).

Another way to understand whistleblowing would be to measure whether individual firms with strong whistleblower protections have a better compliance record than those without. Parker and Nielsen, as we saw above, have carried out such an analysis in their study of compliance management programs at 999 large Australian firms. They conclude that, unfortunately, organizations with such whistleblower protection policies do not have better compliance behavior than those without. However, they do find that a clearly defined system to handle external complaints by clients/customers positively affects compliance behavior; it seems that companies may respond more to their clients than to their employees (Parker and Nielsen 2009).

Thus, the few studies about the effects of whistleblowing do not clearly show that it enhances compliance behavior; in fact, whistleblower programs may have negative effects. Garry Gray, in his 2009 study about how Canadian workers were granted the right to speak out about work safety violations, discusses what he calls “responsibilization.” By this, he means that by having the right to speak out, workers can become responsible for reporting misconduct. However, often the right to speak out is not matched with the actual ability to speak out and might go against an engrained corporate culture of misconduct and vested hierarchies in the workplace. When there is a major accident, employees will be blamed for not using their right to speak out, even though they never truly had the ability to do so (Gray 2009).

Finally, and most importantly, research has shown that whistleblowers only alter corporate conduct under specific conditions (Near and Miceli 1996; Miceli et al. 2013). Studies find that whistleblowing will be more effective the greater the credibility and power of both the whistleblower and the recipient of the complaint, and the lesser the credibility and power of the actual wrongdoer the complaint addresses. In other words,
whistleblowing fails when a weak whistleblower makes a complaint with a weak complaint manager about a powerful wrongdoer. They also find that the level of criminal behavior involved and the extent to which the behavior is of vital importance to the organization matters. In other words, if the complaint is about a major felony, and about behavior that is not part of the core business model of the company, the whistleblower is more likely to succeed in getting the company to address it. Finally, they find that whistleblowing works best in firms that are open to outside influence and pressure, and in organizations that have a culture supporting compliance (Near and Miceli 1996; Dasgupta and Kesharwani 2010, p. 63; Miceli et al. 2013).

When viewed together, these preconditions for successful whistleblowing present fundamental problems. Whistleblowing, by its very nature, often entails lower-level employees, with lesser power and credibility, reporting on higher-level staff and management. Consequently, whistleblowing often has a low chance of successfully achieving internal changes and ending wrongdoing, while the risks to whistleblowers are great. Moreover, whistleblowing is particularly necessary in organizations where wrongdoing is structural, and where it is part of their culture or business model. But when wrongdoing is this deeply engrained, the studies show that whistleblowing will be less likely to succeed in ending it. Furthermore, while non-anonymous whistleblowing may be more effective, anonymity is a vital precondition for employees who may fear retaliation and social repercussions to come forth in the first place (Lee and Fargher 2013, p. 283).

Independent Internal Monitoring

There is one other option to enhance internal compliance management. Rather than rely on a paper compliance system or on internal employees, corporate compliance can also improve through independent monitoring to oversee internal operations. Sometimes firms do so voluntarily, and other times they do so only when forced by prosecutors as part of settlements.

One type of independent monitoring is when companies hire a third-party firm to carry out inspections of their operations. This can be beneficial for firms who work with many subcontractors, or who have operations in multiple jurisdictions and who do not trust compliance reports from within their own organization. Such independent inspections can also aid external governmental regulators who themselves do not have the resources to do sufficient inspections and who can now use monitoring data that is arranged by the regulated company themselves.

Short and Toffel have done a series of studies about these third-party monitors. They find that there is variation in how well monitors do their job. Some monitors may inspect more leniently. They show, for instance, that monitors unearth fewer violations if they have less experience and training, and if they have been at the factory to audit previously (Short et al. 2016). More worrying, Short and Toffel (2015) also find that there may be integrity issues with these third-party monitors. Third-party monitors may not be as independent as one would hope. Their study shows that monitors will be more lenient if they are directly paid by the firm they inspect, if there is more competition for their monitoring services, if they have a longstanding relationship with said firm, and if they hope that this firm becomes their customer for other non-monitoring goods and services they may supply.

Thus, the practice of hiring external monitors may not result in a truly independent audit. Instead, third-party monitoring can become a commercial transaction in which the
monitor tries to please the audited firm (Short and Toffel 2015). The lesson here is that the expected win-win for compliance, where the corporation pays for external monitors that can help with independent oversight at less cost to governmental regulators, may often not exist. The more the corporation pays for the oversight, the less independent and stringent the monitoring will be.

Corporations can also monitor compliance through electronic surveillance technology. In such cases, corporations can bypass individual employees and directly observe whether there is any illegal behavior within their operations. Such electronic monitoring is an attractive way to get better information about compliance behavior in larger organizations. Electronic monitoring can operate around the clock and in any place the company needs – and all of this at relatively low costs, especially when compared to any human form of monitoring (Staats et al. 2016). Electronic surveillance may also directly promote compliance. Employees will know that they are monitored and this in and of itself may reduce wrongdoing. Moreover, the monitoring data may give employees feedback so that they can also learn about their behavior and improve it, especially for behavior that they may be less aware of (Gerber et al. 2008; Yoeli et al. 2013; Pierce et al. 2015; Staats et al. 2016, p. 1565).

There have been a few studies about the effects of electronic monitoring on compliance behavior. Some find positive results. Lamar Pierce and his colleagues studied, for instance, what happens when restaurants install a theft monitoring system in order to reduce employee theft. Using data from 392 restaurants, they found that the electronic surveillance works well. In those cases, it not only helped to reduce employee theft, but also improved worker productivity (Pierce et al. 2015).

Other studies warn that monitoring may not always work and may, at some point, even backfire. Bradley Staats and his colleagues have studied how the introduction of electronic monitoring in 71 hospital units affected compliance with hand hygiene rules. While compliance initially increased when the monitoring was introduced, over the course of three and a half years, it gradually declined (Staats et al. 2016). The paper estimates that should they have been able to continue the study, this decline would have completely eroded any positive effects of monitoring on compliance after about 43 months. Staats and colleagues explain the reduction that eventually set in as a process of desensitization, meaning that employees simply got used to the monitoring and no longer responded strongly to it (Staats et al. 2016, p. 1579).

More troubling, Staats and colleagues found that when some of the hospital units removed the monitoring, compliance rates even fell below the pre-monitoring period. What may have happened here, they argue, is that the introduction of the monitoring system “crowded out” the social norms and personal morals that sustained individual compliance of the hospital workers studied (cf. Gneezy and Rustichini 2000). Similarly, they note that monitoring is highly dependent on the actual organizational setting in which it is deployed. They hold that “organizations looking to build process compliance must think about how electronic monitoring fits within a broader system encompassing not only technology, but also norms, culture, and leadership, among other things” (Staats et al. 2016, p. 1580).

Electronic surveillance is thus a promising way for organizations to create better compliance, particularly in the short term. We must realize, however, that such surveillance may not have long-term effects, and also that it may undermine intrinsic motivations that are so vital to building a lasting compliant culture.

The third form of independent monitoring is hiring an external manager to oversee a compliance transformation (Root 2016). This most often happens in the aftermath of a
major scandal and prosecutorial settlement. The hope, of course, is that an external monitor with sufficient authority can ensure that the compliance management process is actually effective in creating a lasting behavioral change, and that such a monitor is sufficiently independent from the company to evaluate it critically and act on behalf of protecting the public interest and the law (Root 2016).

Prosecutors increasingly impose such monitors on firms caught breaking the law. Siemens, for instance, had to hire a monitor as part of its remedial action following its massive bribery operation. And Citibank was forced to hire a monitor to guarantee that the bank properly returned $2.5 billion dollars in mortgage relief to homeowners it had hurt with its predatory lending and mortgage practices.13 Another example is how HSBC, the British bank, had to hire a monitor after it had been caught moving billions around the financial system for Mexican drug lords, terrorists, and governments on official sanctions lists.14 VW was similarly forced to hire an independent monitor following its emissions fraud scandal.15

So, do these imposed independent monitors work well to create more sustainable compliance? At present, we still lack an empirical answer to this question, as no one has conducted a rigorous study about the effect of monitorships on compliance. What we have are several studies, mostly by law professors who analyze the history, process, and variation in the operation of monitorships, and extrapolate conclusions about their effectiveness. Rather than provide concrete answers, unfortunately, these studies mostly raise concerns.

A first issue is whether monitors actually have a broad enough mandate not just to oversee the surface-level institutionalization of a compliance management process, but to actually seek to go deeper into the organization to try to force a cultural change (Ford and Hess 2008, pp. 704–707). A second problem is that monitors often lack sufficient qualifications to manage a compliance transformation process. Many have only very limited and mostly legal experience (Ford and Hess 2008). Most monitors are former prosecutors that now work for private law firms serving corporate clients. Prosecutorial experience helps prepare them to prosecute wrongdoing, and private practice helps them aid corporations to manage liability; neither experience helps them in making the organization become more compliant and fundamentally alter its behavior. Also, there is a danger of nepotism, as current prosecutors select former colleagues who have moved to private practice to be monitors (which can be a very lucrative assignment; Ford and Hess 2008).

Meanwhile, monitors operate in organizations that are not necessarily supportive. At the time of the settlement, firms will agree to almost anything if it keeps them from being formally indicted and prosecuted. The monitor is thus forced upon them at a moment of weakness. As soon as the settlement is set, the firm will try to mitigate the burden such monitor imposes on them (Ford and Hess 2008, p. 706). Veronica Root finds that corporations can be very successful at this, stating that “private organizations are co-opting the use of monitorships, which may transform the nature of monitorships from a quasi-governmental enforcement mechanism to a privatized reputation remediation tool” (Root 2016, p. 109).

Here the core problem is that monitors may lack full independence. The best way to ensure independence is to select monitors who have not had any prior business relationships with the organization, and then enforce a long-term ban on such relationships following the end of the monitorship. In practice, such a rule is not strictly enforced, in part because some deem it overly burdensome on monitors and their firm, and in part because in some specialty areas, there may not be a monitor who both meets such requirements and is willing to serve (Ford and Hess 2008).
Conclusion

Corporate crime and wrongdoing are tricky problems. They occur in organizations that are powerful, internally complex, and able to both hide misconduct and resist change. A deterrence strategy, on its own, is not sufficient to create a sustained form of compliance. Punishment, of course, is necessary, especially to end impunity and reassure those who are in compliance (Gunningham et al. 2005; Thornton et al. 2005). But for corporate compliance problems, a broader organizational change is needed. Legislators and regulators, including those in the United States, have introduced a number of approaches such as: incentivizing firms to develop compliance management and ethics programs, offering protection and incentives for whistleblowers, and imposing independent monitorships on companies caught breaking the law.

Ironically enough, the available evidence indicates that these initiatives work best where they are needed the least. As we saw, compliance management and whistleblower protection work in situations where the wrongdoing is neither supported by powerful leaders nor systemic within the organization’s ranks or business operations. While such programs may curb minor wrongdoing at lower levels of the corporation, they do not work for the systemic culture of deviant behavior that has been at the root of many major cases, such as the years of fraudulent sales practices at Wells Fargo, the decades of emissions cheating at VW, and the repeated safety and environmental catastrophes at BP (Van Rooij and Fine 2018).

Yet, despite the science, the law continues to favor compliance management, whistleblower protection, and monitoring arrangements as “best practices” to reduce corporate misconduct. The law is not alone here in supporting these unproven internal approaches to deal with corporate wrongdoing. For businesses, internal compliance management, whistleblower protection, and monitoring, while costly, are strategies to alleviate legal sanctions or reduce liability. In many cases, these strategies even provide an opportunity to restore their reputation—sometimes (and ideally), like Siemens, going from fraud villain to compliance hero.

Meanwhile, the people whose job it is to regulate or prosecute corporate misconduct often fail to publicly express strong concerns about the effectiveness of these internal systems. Prosecutors and regulators appear continually pressed to show that they take corporate wrongdoing seriously, while being structurally challenged to create actual deterrence. The best they can hope for after a major scandal is the proud press release of another multibillion-dollar settlement, with the installation of compliance management and monitoring to signal their commitment to future risk prevention, and maybe—if they get lucky—a successful verdict against individual executives. For most regulators, and especially prosecutors, achieving sustained behavioral change is simply not their most pressing concern.

So what about compliance professionals? These are the individuals who work in the emerging compliance industry, staffing compliance and ethics programs and developing whistleblower, complaint, and independent monitoring systems. Certainly, these professionals have difficult jobs. They are officially responsible for generating compliance, often where few would believe it possible. They do so from a position of limited power, with the immense risk that if they fail, they may be held individually liable. Moreover, many of them (especially lawyers) simply do not have adequate training in how to achieve behavioral and organizational change. All the while, they operate either as employee or hired consultant of a business that ultimately has its own interests that may not always align with compliance management.16

So how would one, working as a compliance manager, manage these expectations and risks? Would one truly focus on behavioral change and tie one’s own fate to successfully
changing a change-resistant organization? The pessimist in us says that the “easy” way out is to focus on managing corporate liability, ensuring that there are systems in place that (at least on paper) meet the requirements of regulators. The company will get what it wants, namely managed liability and the ability to shift blame downwards toward lower-level employees should things go awry. Regulators can show success as the company has installed the systems they demanded, while compliance managers can build ever-expanding systems that they alone know how to manage and operate at a lower personal risk.

Unfortunately, the available science is not that helpful here. At present, empirical knowledge about how to make these systems more effective is limited. This means that practitioners have very little to go on and often must design systems using anecdotal evidence or “common sense.” It also means that we do not really know how to define quality here. How do we know whether a compliance and ethics system is robust and worthy of the leniency of the Federal Sentencing Guidelines? How do we know what type of whistleblower scheme will actually enhance compliance? And what makes someone a good monitor?

In the almost three decades that have passed since these systems started in the 1990s, there has been much experimentation. Now that we have had decades of leniency for corporate compliance systems, over a decade of whistleblower protection in federal law, and also a decade of increased imposed monitorships, we should have sufficient data points for a rigorous empirical analysis. Yet we simply have too little good research that systematically shows what works and what does not.

There is an overarching lesson here. We need to redefine how we approach corporate crime and misconduct. Rather than always discussing the need for stricter punishment or merely complaining about the costs of compliance management, we need to become pragmatic. What matters when corporations break the law is that we effectively prevent future violations. This means, first of all, using every available insight about how punishment, social and personal norms, capacity, opportunity, and unconscious influences can be employed in these particular situations. We need to change the training of compliance professionals, with less focus on studying legislation, court cases, and legal procedures, and more on the criminology, psychology, sociology, and organizational science of how humans actually respond to rules. These insights must be translated to fit corporate organizational settings.

Notes

2 As stated in the Netflix Documentary Dirty Money, season 1, episode 1, minute 27:28.
5 https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2013/05/02/12-12-08siemensvenez-sent.pdf.
6 https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2013/05/02/12-12-08siemensvenez-sent.pdf.
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Preventing and Intervening in White-Collar Crimes: The Role of Law Enforcement

Nicholas Lord and Karin van Wingerde

Introduction

Imagine that you are employed at the Securities and Exchange Commission (SEC) (or equivalent) in your country and are assigned with the task to design a prevention strategy to prevent frauds like Madoff’s Ponzi scheme in the future. Where would you start? What information do you require? Which other authorities would you contact (and possibly collaborate with)? Who or what will be the focus of your prevention strategy? Which strategy would you suggest as effective and why? And how will you measure effectiveness in the future? These questions have puzzled law enforcement authorities tasked with preventing and intervening in white-collar and corporate crimes for many years. While this chapter will not provide definitive answers to these questions, it has two primary objectives: to consider the role of law enforcement authorities in the intervention and prevention of white-collar crimes, and to consider more effective ways of intervening with and preventing white-collar crimes.

In general, the formal state response to white-collar crimes has been dominated by attempts to regulate, persuade, or otherwise negotiate compliance with the law – particularly in the case of “elite” white-collar offenders – rather than pursue full-blown criminal law enforcement and prosecution. This is (particularly in cases involving corporate offenders) often on pragmatic and practical grounds (e.g. evidential difficulties, complexity of cases, legal arbitrage), but is also justified on more ideologically or normatively driven grounds (e.g. protection of national economic interests, preferences to negotiate with offenders like “us”). Deciding whether to use persuasive versus punitive strategies, of course, also raises tensions between ensuring equal treatment and punishment for all and pursuing what is (or might be) effective in the response to white-collar crimes (e.g. administrative justice may be sufficient, but perhaps less symbolic than criminal justice). In any case, little attention is given to the role of public law enforcement agency interventions as a means and goal of preventing white-collar crimes; more often the focus is on the preventive actions of private sector institutions or civil society organizations.
While we recognize that white-collar crime prevention and intervention requires commitment from actors beyond law enforcement, in this chapter we specifically explore the possibilities for law enforcement authorities to be central to white-collar crime prevention and intervention strategies. Prevention implies stopping potential crimes and harms before they occur. Intervention implies stopping crimes and thus reducing harms once they have occurred or as they are occurring. The approaches and strategies discussed in this chapter, and the related data issues that we present, are relevant for both prevention and intervention. Thus, we use the terms interchangeably given the relevance of our arguments to both, but specify where this is not the case.

The concept of white-collar crime is an accepted label (but – as discussed in Chapter 2 of this volume – also a problematic analytical construct given variations in definition) that refers to myriad law violations where we mostly see supposedly legitimate actors at the center, engaging in these violations in the context of otherwise legitimate organizational, institutional, and market environments (see Levi and Lord 2017 for a recent overview of the concept). In these terms, it is especially difficult to determine the conceptual parameters of white-collar crime while we continue to know little (in terms of systematic, empirical insights) about how such crimes are carried out. This in turn makes it difficult to measure “what works” (and under which circumstances) in white-collar crime prevention. This is made more challenging as theory and application of crime prevention strategies and models have largely been preoccupied with more “ordinary” volume crimes; in recent years we have seen practitioners, policymakers, and applied academic research pursuing situational approaches to achieve fairly myopic operational “successes.” There is an absence of clear and systematic evidence and data about effective prevention strategies to apply to white-collar crimes, making it difficult to identify which approaches are of most use.

The above issues hinder the development and assessment of white-collar crime prevention, and the role of law enforcement within this. In this chapter we attempt to address some key questions about white-collar crime prevention. First, we revisit some key cases from across the globe that fall within the framework of “white-collar crime” before posing some key questions relating to what we know, and what we need to know, about such cases to inform effective prevention and intervention strategies. Second, we consider the role of law enforcement authorities in tackling these questions and being key players in prevention. Third, we discuss the evaluation of white-collar crime prevention mechanisms, what “success” looks like, and obstacles to identifying “good practice.” We conclude by discussing the difficulties in analyzing the success of prevention strategies and considering what data is needed to inform evidence-based policymaking in this field.

**White-Collar Crimes in the Twenty-First Century: What We Know, What We Need to Know**

We begin writing this chapter in the midst of several notable white-collar crime scandals involving otherwise legitimate global individual and corporate elites implicated in an array of criminal and unethical activities. We could, for instance, consider the US case involving Paul Manafort and Rick Gates, President Trump’s former campaign chairman and his deputy, who were accused of money laundering, fraud, and tax evasion that came to light during special counsel Robert Mueller’s investigation into Russian interference in US politics. According to the indictment, illicit monies of over $75 m flowed via numerous offshore shell companies and bank accounts. Or we might discuss corruption in Brazil (and
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beyond), where investigations implicated numerous business and political elites, including state oil company Petrobras (accepted bribes to award contracts at inflated prices to construction firms), global construction conglomerate Odebrecht (admitted bribing public officials to win business contracts—see Chapter 23, this volume, for a case study of Petrobras and Odebrecht), former president Luiz Inácio Lula da Silva (sentenced to 12 years in prison for accepting favors from engineering firm OAS), current president Michel Temer (charged with accepting bribes from meatpacking firm JBS), and Temer's predecessor, Dilma Rousseff (impeached for the illegal movement of public funds between government budgets). This case implies systemic, pervasive, and well-organized corruption between state and private sector organizations and individuals. These are just two cases that fall under the umbrella concept of white-collar crime—these are offenses taking place in the course of occupational positions giving the actors legitimate access to the offending environment, spatial separation from victims, and non-violent financial gains, features common across many white-collar crimes (Benson and Simpson 2018). Criminological research informs us that criminals become aware of opportunities as they engage in their normal legitimate activities, finding “targets” in familiar places, with opportunities most likely to be taken advantage of when they are closer to areas of familiarity (Brantingham and Brantingham 1991). This is important because white-collar crimes are “parasitical” on legitimate business and organizational practices, enabling criminality to be conveniently concealed behind the daily, routine behaviors of the offenders' legitimate occupations (Benson and Simpson 2018). This makes both detection and proof to a criminal standard of certainty difficult for regulators and compliance actors, prosecutorial authorities, and criminal courts. Hence, public law enforcement authorities need to search for ways to intervene in the organization and commission of these crimes early on and prevent them from taking place.

We cannot address prevention and intervention in relation to the diverse array of behaviors falling under the white-collar crime concept in a single chapter, as this also brings with it a diversity of responsible enforcement authorities. Similarly, broadening our analysis here to include harmful but not criminal behaviors (e.g. tax avoidance) is not possible, nor is it desirable given enforcement actors themselves require definitive offenses and frameworks within which to pursue such white-collar offenders. However, while we know of such cases due to scandals emerging in the mainstream media, through investigative journalism, or through brief analysis in academic outputs, a more systematic and comprehensive account of such cases is required to realistically inform prevention and intervention. Of course, prevention requires systemic social change to alter the political-economic-societal conditions that shape white-collar and corporate crime opportunities; this implies social concern with the nature of criminality, underlying motivations, and its facilitative conditions. But such social change can only be driven by governmental institutions, particularly in the case of governance in liberal democratic regimes. The often exigent nature and role of law enforcement means more immediate, myopic preventive strategies are needed and for such authorities to have a role in prevention, more practical modes of thinking and analysis are necessary—a focus on the specific crime event offers a more direct, and more plausible, route to prevention for those involved as law enforcers. Thus, while we recognize the need for greater societal change for social prevention, we also recognize the more immediate priorities of enforcement. This latter endeavor implies deconstructing the white-collar crime commission process, understanding these crimes’ opportunity structures and the nature of networked collaboration within them in order to better understand critical points of vulnerability and intervention.
Some Key Analytical and Practical Questions

In brief, the prevention of (and intervention in) crime refers to any action or technique by public agencies or private organizations/individuals that aims to reduce the damage caused by potential (and accomplished) acts defined as criminal by the state (Hughes 2003, p. 85). This in turn incorporates a broad set of policies that may seek not only to reduce rates of crime, but also to improve the quality of community life and cohesion among the population (International Centre for the Prevention of Crime 2010, pp. vii–x). However, there is comparatively little material on the prevention of white-collar crimes when compared to volume crimes or other forms of serious crime such as “organized” crime. In their evidence-based critique of organized crime prevention, Levi and Maguire (2004) raise some fundamental questions that anyone venturing into crime prevention ought to consider. More specifically, these questions concern: (i) definitions of crime and aims of prevention strategies, (ii) who has “ownership” of the problem, and (iii) how to determine and accurately measure the impact of interventions. In this chapter, we draw on this framing to consider the prevention of white-collar crimes and, as with Levi and Maguire, address the following three questions:

1. What or who should be targeted for white-collar crime prevention and intervention, and with what aims in mind?
2. Who has ownership of white-collar crime prevention and reduction?
3. How can the effects of interventions be evaluated?

We take each of these questions in order before thinking about the types and sources of data that need to be collected and analyzed for law enforcement to take a central role in prevention.

Who or What Should Be Targeted?

The debate about preventing what or who resonates in white-collar crime scholarship, given the extended dialogue around offender- and offense-based conceptions of white-collar crime. That is, should we focus on the prevention of law violations by (networks of) actors of elite social status and respectability in the course of their occupation as envisaged by Sutherland (1983), or should we de-collar the white-collar criminal for a more inclusive focus on the nature of the offense and associated characteristics such as inherent deception (Edelhertz 1970; Shapiro 1990)? The latter conception inevitably broadens the scope to incorporate “blue-collar” occupational violations, watering down the elite component of the actors involved and broadening the remit for authorities tasked with white-collar crime prevention (Simpson 2013, p. 312; Geis 2016, p. 35; Pontell 2016, p. 39). The construct of white-collar crime can also incorporate a range of crimes by those in the “middle classes” (Weisburd et al. 1991), such as tax frauds committed by those who consider themselves, and are perceived by others, to be respectable, law-abiding citizens (Karstedt 2016).

Scholars of criminology, and academics more broadly, have good reasons to define white-collar crimes on the basis of who commits them (e.g. in order to draw attention to and curb crimes of the powerful). However, while these are important scholarly debates, law enforcement authorities can only pursue white-collar crimes that are defined as such under the law; such legal definitions focus on the characteristics of the offense, not the offender. Offender- and offense-based conceptions can, of course, be integrated if we
analyze how individuals’ elite status: provides access to particular crime opportunities; enables actors to possess the knowledge, techniques, networks, locations, and skills for realizing these opportunities; and enables those actors to circumvent or deter suspicions of regulators (Levi and Lord 2017). In this chapter, we focus on white-collar crimes whose opportunity structures are accessible by those of elite, rather than blue-collar, social status.

Understanding Opportunity Structures

As with other forms of serious (and organized) crimes, the prevention of white-collar crimes by law enforcement needs to focus on both harmful acts and harmful actors (cf. Levi and Maguire 2004). For the purpose of targeted prevention, a focus on those acts considered more serious ought to be at the forefront of white-collar crime prevention. In other words, those frequent acts with severe outcomes and harms ought to be more of a priority than those that are frequent but less harmful and those that are less frequent and less harmful (for an analysis of the harms of crimes, see Greenfield and Paoli 2013). For instance, it is those higher-level white-collar crimes that are most harmful and also most difficult to prevent and intervene with. This is particularly the case when there is conspiracy, collusion, and/or collaboration, due to such offenses’ complexity and their embeddedness within legitimate systems that allow them to “hide in plain sight.” Corporate frauds, for instance, are regularly more harmful, more organized, and more systemic than individual occupational frauds, often involving cross-border dimensions.

In terms of the actors, white-collar crimes can involve individuals acting alone, networks of actors working together, or the unwitting involvement by offenders of third-party facilitators. These crimes may be for individual or organizational gain but a common feature is that they require some level of organization to realize an opportunity once it has been recognized. Thus, the starting point for informing prevention and intervention by law enforcement must be an understanding of opportunity, the nature of the “problem,” and how actors organize around this. This implies a shift toward focusing on the opportunity structures of white-collar crimes (Benson and Simpson 2018), the tools of which are mainly situational crime prevention, routine activities theory, and crime pattern theory (Benson et al. 2009).

For white-collar crimes to occur, an opportunity must be present. This is self-evident, though an opportunity is a necessary but not sufficient condition. However, it is not the mere presence of an opportunity that is important but the particular characteristics of the opportunity; as Benson and Simpson (2018) demonstrate, all white-collar crimes have a specific opportunity structure (defined below) that differs between different types of crime.

Analytical focus on the structures of opportunities ought to be a fundamental part of explanatory accounts of white-collar crimes, and therefore of prevention, intervention, and reduction. The opportunity structure refers to the set of conditions or elements that must be in place in order for the white-collar crime to take place. Different settings naturally create different opportunities that vary in accessibility and attractiveness to would-be-offenders. When intervening with the structures of white-collar crime opportunities, certain dimensions must be recognized. Specifically, the nature of these offenses is such that: (i) the offenders usually have “specialized access” to victims and targets; (ii) the offender, however, remains spatially distant from victims at the time of the offense; (iii) deception or concealment enables offenders to hide the offense; and (iv) criminal intent is often ambiguous as the acts may closely resemble routine, legitimate activities (see Benson and Madensen 2007, pp. 613–614). Law enforcement authorities must incorporate these features of white-collar
offending into the design of prevention strategies as – in contrast to “ordinary” crimes – the nature of the target of offending is more esoteric, there is a lack of identifiable victims, and the concept of a physical offending location is less relevant (Huisman and van Erp 2013).

Consistent with the opportunity perspective, and to further inform prevention, we can seek to understand how the opportunities are realized in practice and how this is organized. Focusing on the “organization” of white-collar crimes enables law enforcement to identify those relations, practices, and networks that are central, or more contingent in influence, to accomplishing the enterprise (Edwards and Levi 2008; Lord and Levi 2017). In researching serious crimes, including white-collar crimes, we need to appreciate the interplay between the remote distal causes and conducive conditions, situational opportunities and routine activities, and the networks of relationships (whether pre-existing or more ephemeral) that exist and enable offenders to cooperate and conspire (Edwards and Levi 2008, p. 363). For instance, a systematic, evidence-based account of the following factors ought to inform prevention and intervention (Levi 2009):

- how and why motivated offenders recognize and exploit such white-collar crime opportunities;
- how they generate and manage the finances for and from their activities;
- the types of skill sets, knowledge, and expertise that they need (or need to recruit) to organize the white-collar crime; and
- the generative conditions that facilitate why the crimes are organized as they are.

Script Analysis

One mode of thinking for operationalizing and developing systematic insight in this way is by deconstructing the nature of the crime commission process and the actors involved to gain a more comprehensive understanding of the processes involved in white-collar crimes. This has been termed “script” analysis (Cornish 1994) and has been recognized as a successful approach to developing analytical and prevention-focused thinking to disrupt the behaviors of organized criminals (Levi and Maguire 2004, p. 429). The framework enables “a careful and comprehensive analysis of the nature of the problem to be addressed, including developing a clear understanding of the various crime scenes, actors and their resources” (Levi and Maguire 2004, p. 457).

In brief, script analysis provides

a way of generating, organizing and systematizing knowledge about the procedural aspects and procedural requirements of crime commission. It has the potential to provide more appropriately crime-specific accounts of crime commission, and to extend this analysis to all the stages of the crime-commission sequence. (Cornish 1994, p. 160, emphasis in original)

For Cornish (1994, p. 157), criminal behavior can be routinized, making it appear simplistic, but this routine can conceal key aspects of the organization, sequencing, and acquisition of crimes. Scripts therefore provide a way of understanding the logistical steps (not necessarily linear or sequential, allowing for flexibility and actor innovation) that take place across different scenes. Within each “scene,” different permutations of the “facets” that make up the different ways the behaviors can be accomplished can be found. Underpinning the script approach is an assumption of rational choice for understanding offending
behaviors and decisions that can be prevented by intervening with the larger situations or environments within which they take place (Clarke and Cornish 1985). Thus, the logic behind the approach is that criminality is understood as rational, goal-oriented, and purposive behavior and that by understanding the procedural aspects of these behaviors, suitable intervention mechanisms can be mapped onto their scripts. The script analysis approach has been persuasively applied to a range of criminal enterprises such as: drug manufacturing in clandestine laboratories (Chiu et al. 2011), the online stolen data market (Hutchings and Holt 2015), human trafficking for sexual exploitation (Savona et al. 2013), infiltration by the Mafia of the public construction industry (Savona 2010), the switching of Vehicle Identification Numbers from wrecked to stolen vehicles (Tremblay et al. 2001), illegal waste activity (Thompson and Chainey 2011; Sahramäki et al. 2017), and, in conjunction with social network analysis, in relation to stolen-vehicle exportation operations (Morselli and Roy 2008) and the distribution of counterfeit alcohols (Lord et al. 2017). The increasing use of this approach in relation to serious and complex crimes reflects the simple yet effective way through which the complete sequence of actions and decisions across all stages of crime commission can be identified, thereby giving a fuller range of possible intervention points that has clear crime reduction and disruption potential for law enforcement and regulatory authorities.

Applying Theory in Practice

How could this integrated script and opportunity structure analysis of high-level white-collar crimes be carried out in practice to inform enforcement responses? We provide two examples here drawing on empirical research into market manipulation and counterfeiting, both of which could be analyzed within the framework of white-collar crime.

Our first example is the Libor scandal (i.e. market manipulation) that permeated across Europe and the United States, and provides insight into how finance capitalism (i.e. the dominance of financial institutions like banks, as opposed to private trade or manufacturing companies, in capitalist markets) generated opportunities for market manipulation that only particular “elite” actors had access to due to their occupational expertise, leading to the generation of profit for banks (and individual benefits also). For law enforcement authorities to effectively intervene with or prevent such white-collar crimes, they first need to develop a comprehensive and systematic account of the nature of how the activities are organized over time and place. Jordanoska and Lord (2019) undertook such an analysis when implementing a script analysis to understand the procedural dynamics and mechanics of the market manipulation process. They analyzed the range of interactions between the relevant actors, these actors’ behaviors, and the resources essential to allowing the manipulative behaviors to occur. By analyzing the how of the Libor rigging, they were able to gain insight into the procedural aspects and organizational dynamics of the manipulations in different “scenes” of the script, to identify which actors (individual and corporate) were central and how they cooperated across the script, and the ways in which regulatory and corporate conditions created opportunities and potential for the manipulations. Their analysis delineated the rigging into four essential scenes – (i) calculated positioning and identification of co-collaborators; (ii) recruitment of collaborators; (iii) (ephemeral) manipulation; and (iv) recompense and solicitation – and made more evident the paradox in regulatory and organizational actors’ becoming both “capable guardians” and “facilitators of misconduct.” Thus, a detailed analysis of the essential components
of the Libor rigging was able to identify key points of routinized activities where oversight was lacking or problematic, highlighting these as key areas for prevention and intervention strategies. For instance, in some cases, the close physical proximity of traders and submitters enabled traders to regularly “shout out” their preferred rates of submission, demonstrating the routine nature of the manipulation and frustrating social control efforts by regulators as such exchanges would thus be undocumented. Such open manipulations demonstrated the vulnerabilities evident within the organizational environment and the potential for altering these dynamics to remove the opportunity. Absent large-scale social and economic intervention, law enforcement authorities can then devise evidence-based measures for immediate reductions. For instance, drawing on the principles of situational crime prevention (see Clarke and Cornish 1983; Cornish and Clarke 2003), attempts can be made to increase the effort, increase the risks, reduce the rewards, reduce provocations, and remove excuses in relation to highly specific white-collar crime types (Benson et al. 2009). For instance, with market manipulation, as in the Libor example above, had conflicts of interest within single organizations been removed by ensuring so-called “Chinese Walls” were in place between those departments setting and trading on benchmarks, then the efforts required to commit the fraud would have been increased. Similarly, ensuring clear internal policies were in place that clarified how the benchmark rates ought to be set would have removed excuses.

In our second example, Lord et al. (2017) and Bellotti et al. (2018) integrated a script analysis with a social network analysis to understand the distribution of counterfeit alcohols between two European jurisdictions where legitimate business actors were implicated, and where the movement of the illicit products was concealed within legitimate logistics networks (i.e. networks involved in the transportation of goods) and the products sold via legitimate wholesalers and supermarkets. The distribution was deconstructed into five scenes (collection, logistics, delivery, disposal, proceeds/finance) and the analysis identified underlying and routine activities connecting each scene at the intersections of licit and illicit markets and networks as they saw the “integration,” “incorporation,” “de-integration,” and “allocation” of the illicit product at various stages and under particular conditions. The role of particular network actors in different scenes was identified, including where opportunities arose and the resources and skills they required to realize these opportunities. This knowledge informed the identification of key deception points and actors that had not been foregrounded by the enforcement authorities. The regulator was then able to reorganize live investigations based on the vulnerabilities identified in the research. For instance, the investigation had initially focused on the end-point in Country B where the counterfeit alcohols had been found and the distribution strategies prior to sale, but the analysis here made obvious the key role of a small number of logistics businesses in Country A that were regularly involved across multiple consignments or shipments. These logistics businesses were key players in the enterprise. Also, the analysis drew attention to the centrality of two businesspersons in particular who covered the costs for the legitimate, transnational haulage companies that were used to transport the products unknowingly – essentially “following the money” to the benefactors.

Approaching the most harmful acts and harmful actors through an integrated theoretical analysis as above can assist law enforcement authorities in understanding how social/criminal networks are established and maintained for criminal enterprise within legitimate business structures, networks, and situations. By organizing our thinking to consider white-collar crimes in terms of the “skill sets, contacts, start-up capital, and running costs that they require” (Levi 2009, p. 231), we can recognize how necessary it is to have convergence
in space and time of a specific situation (e.g. a vulnerability in how interbank lending rates are established), a target (e.g. the ease with which offenders can manipulate this), and the absence of capable guardians (e.g. where they may paradoxically act as facilitators or be incapable). Thus, if law enforcement authorities consider how potential offenders organize their behaviors – including confronting problems of gaining finance, gaining access to crime opportunities, and retaining their freedom and crime proceeds (Levi 2009, p. 225) – they can intervene with or prevent the crimes, or reduce the potential for the crimes to take place.

Who Has Ownership?

The focus in this chapter is on the role of law enforcement, and to some extent the answer to who has ownership is these very law enforcement authorities. However, white-collar and corporate crimes are diverse, not only in the types of offenses, offenders, victims, and harms that can be incorporated within the analytical construct, but also in terms of those law enforcement authorities that have responsibility for prevention and intervention and the regulatory strategies that they implement – which is much more varied than for “ordinary” crimes. For instance, a look at the history of business regulation indicates that numerous specialist bodies outside of the police have been established to deal with varied behaviors such as tax noncompliance, financial services, health and safety, and so on (Braithwaite and Drahos 2000). Moreover, even within one type of behavior, there are often several different authorities responsible at the same time. For example, authorities on the local, regional, and national level might all claim jurisdiction, creating challenges for collaboration and coordination between these bodies. What is more, for these bodies “criminal prosecution is overwhelmingly the road not taken” (Levi and Lord 2017), making prevention and intervention even more significant in response to white-collar crimes.

In practice, an array of non-state actors, not just law enforcement or other public authorities, also have a fundamental role in white-collar crime prevention and reduction, and these are discussed in Chapters 15 and 17. In addition, at the national level, governmental departments have a direct involvement in strategy whilst the often cross-border nature of white-collar crimes implies cross-state, bi- and multilateral ownership of particular white-collar crime phenomena, including the role of policing authorities such as Europol and Interpol. Also at this cross-national level, regional and global intergovernmental authorities such as the European Union, the Organisation for Economic Co-operation and Development (OECD), the Financial Action Task Force (FATF), and the United Nations – as well as other official bodies such as the International Monetary Fund (IMF) and World Bank – have some level of ownership, particularly in cases of serious corruption or those white-collar crimes with connections to organized crime.

We focus here on the role of national-level law enforcement authorities, as this is where responsibility for prevention predominantly lies. However, much variation exists given enforcement is culturally shaped, dependent on particular geo-historical configurations in each jurisdiction. To give an example of this diversity of law enforcement, if we consider economic and financial crimes that could be carried out by the “white-collar offender” in a common law system as in the United Kingdom, we can see that there is an incredibly fragmented enforcement arrangement (see for example Doig and Levi 2013; Levi and Lord 2017). Nationally, the Serious Fraud Office (SFO) and the National Crime Agency (NCA) are responsible for serious and organized economic crimes, while the 45 individual police
The Role of Law Enforcement

constabularies have economic crime divisions. Other special forces such as the Ministry of Defence Police also have authority to investigate relevant cases, such as corruption in defense contracts. Furthermore, there are regulators with criminal law powers such as the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA).

In civil law systems, we see a similar fragmented approach to the enforcement of white-collar and corporate crimes, although civil law systems tend to have more unified systems in which white-collar crimes are dealt with in the same ways as ordinary crimes (Levi and Lord 2017). In the Netherlands, for instance, the Fiscal Intelligence and Investigation Service is responsible for all fiscal fraud cases, including those considered to be white-collar frauds and “ordinary” fraud cases. In addition, the Authority for the Financial Markets is responsible for supervising the operation of the financial markets, which includes individual behavior affecting financial markets as well as corporate or organizational behavior. In general, regulation and enforcement are organized around particular issues, like (fiscal) fraud, occupational health and safety, and environment and pollution (van de Bunt and Huisman 2007). At the same time, the National Public Prosecutor’s office for serious fraud, environmental crime and asset confiscation (part of the Prosecution Service) is responsible for investigating and prosecuting criminal offenses and supervises criminal investigations by other authorities.

In federal systems, such as Germany and the United States, there are State-level as well as Federal-level law enforcement authorities. For instance, in Germany individual Bundesländer (i.e. States) have law enforcement authorities (i.e. a Landeskriminalamt with support from local police forces) and public prosecutorial offices (i.e. Staatsanwaltschaft) that have responsibility for crime, including those we could categorize as white-collar and corporate crimes. At the national level, there are nationwide policing authorities (i.e. Bundeskriminalamt) and regulators (Federal Financial Supervisory Authority – BaFin) with interests in preventing and responding to white-collar crimes. We also see such enforcement diversity in the United States, where the Federal Bureau of Investigation (including its Internet Crime Compliant Center), the New York Department of Financial Services, the Manhattan District Attorney’s Office, and the Department of Justice (DOJ) are the principal criminal investigation and prosecution bodies dealing with white-collar crimes there. We can also include the SEC, the US Secret Service (for counterfeiting and payment card fraud), and the Federal Trade Commission within this law enforcement arena.

The sheer diversity of enforcement responsibility makes it difficult to evaluate all potential approaches to preventing and intervening with white-collar crimes and to assess their relative benefits. For instance, how we go about reducing white-collar crimes is often ideologically driven, reflecting mixes of compliance/regulatory strategies (whereby authorities seek to ensure standards are secured and maintained by persuading, and cooperating with, those communities of actors to encourage law compliance) and deterrence strategies (whereby crime control is the objective through criminal law prosecution and punishment; Croall 2003). There is much overlap between the persuasion and deterrence models in practice, and strategies of compliance can both have preventive impacts before the crime occurs and represent different modes of intervening with occurring white-collar crimes. This, of course, assumes that potential or actual offenders are willing to comply or that they operate on an amoral basis. Where there is no will to comply or an absence of rational thinking, alternative measures need to be considered. Due to the diversity of white-collar crimes, it is difficult to conceptualize the prevention and intervention responses to specific white-collar offenses. In general terms, the issues of prosecution and sentencing are dealt with elsewhere in this handbook, but clearly can have preventive impacts at a specific and general level.
How Do We Evaluate White-Collar Crime Prevention and Intervention by Law Enforcement?

The preventive effects of measures taken by law enforcement authorities to reduce white-collar crimes are largely unanalyzed. The evaluation of crime reduction impacts has largely been associated with more conventional, volume crimes, reflecting policing concerns with the “usual suspects” and impacts that can be more readily evidenced. For instance, in their systematic review of the corporate crime deterrence literature, Schell-Busey et al. (2016) found few studies rigorous enough to inform evidence-based policymaking. Moreover, a search on the European Union’s Crime Prevention Network (EUCPN) website for examples of good practice in crime prevention indicates there are no examples specifically attending to white-collar crime cases. The closest is five strategies related to economic and financial crimes (mainly corruption and frauds), but these programs relate to criminal enterprises rather than occupational actors, and there is no evaluation data on their impacts. Similarly, a search on the International Centre for the Prevention of Crime (ICPC) returns no hits for white-collar crime. In the United States, two funding calls were placed in 2013 and 2015 by the US Department of Justice (DOJ), the Office of Justice Programs (OJP) and the National Institute of Justice (NIJ) for social and behavioral science research and program evaluations that inform efforts to detect, investigate, prosecute, and otherwise combat and prevent white-collar crime and public corruption. However, there is no information provided about funded projects.

Part of the reason for the lack of prevention evaluation research on white-collar crimes may be the restrictive expectations placed on such analysis. For instance, the abovementioned funding calls in the United States require that if the research is evaluative (i.e. aiming to determine effectiveness or impact of a particular intervention), then “the application is expected to propose the use of random selection and assignment of participants (or other appropriate units of analysis) to experimental and control conditions, if feasible” (National Institute of Justice 2015, p. 5). This is significant, particularly where research pursues offender-based definitions of white-collar crime, as gaining access to populations of elites for random and controlled research in this way is highly unlikely. Whilst the calls do stipulate that randomization is not essential, in such cases quasi-experimental designs to reduce selection bias are required. As we know from the discipline, the most rich white-collar crime studies have frequently been qualitative (but still robust, rigorous, and systematic) in nature. The evaluation criteria used by the NIJ further exacerbate the bias for experiment and randomization, as proposals are scored higher when such statistical tests and dimensions are clearly incorporated. More usefully, the guidance also encourages the inclusion of cost–benefit analysis; such analysis should be central to the evaluation of prevention mechanisms, particularly when intended for use in policy and law enforcement operation.

It is clear that preventive measures need to have concrete specified desired outcomes beyond the direct, immediate operational outcomes of particular interventions. For instance, if the persistent bribery of public officials by a company to win contracts in the construction sector is taking place, then disruption by law enforcement through the introduction of more stringent measures, or by the prosecution of a key individual, may “work” in the short term, but measures need to be taken to evaluate long-term prevention on the wider industry. Such longer-term impacts require precise measurement (perhaps via proxy indicators), but currently there are very few examples of the impacts of prevention measures on white-collar crimes. Specific planned outcomes may include more tangible impacts.
such as: reducing the number of product recalls, reducing the number of consumer complaints, increasing the number of firms that have implemented certain preventive measures, increasing public awareness of white-collar and corporate crimes, and/or improving public perception of a certain industry.

Although certain white-collar crimes are now major concerns for governments and on the agenda of law enforcement authorities, as seen through increased legislation globally (e.g. anti-bribery laws) and corresponding enforcement strategies (e.g. UK Anti-Corruption Plan 2014 and UK Anti-Corruption Strategy 2017–2022), there has been no formal evaluative research on the prevention impacts of such interventions. “Successes” are generally defined as such based on prosecutions, confiscations of proceeds, and size of financial penalties. This is in part due to the absence of before-and-after evaluative data or comparison-based studies, and this makes it difficult to measure impact (Schell-Busey et al. 2016).

### Types and Sources of Data

With the above in mind, in this section we suggest some types and sources of data that are needed to evaluate prevention measures by law enforcement authorities. These data can inform law enforcement strategies by informing the abovementioned script and opportunity analyses with the intention of locating critical points of vulnerability for intervention and prevention measures. Law enforcement agencies are under pressure to produce results (usually in the form of prosecutions) in order to ensure they maintain their existence and function. Shifts toward prevention and disruption reduce the number of measureable results and may also contradict statutory remits.

Much of our knowledge about white-collar and corporate crime and its enforcement derives from qualitative case studies, analysis of policy documents, and interviews with offenders and enforcement authorities or regulatory agency employees. Quantitative information about the number and frequency of violations and prevention measures is scarce and often problematic. For instance, official statistics mirror enforcement capacities and priorities, not necessarily its success (see van de Bunt and Huisman 2007; Gibbs and Simpson 2009; Walburg 2015; Benson et al. 2016; and Cliff and Wall-Parker 2017 for an overview of measurement problems). In addition, victimization surveys often have low response rates and have often been administered by consultancy and/or audit firms that have their own agenda and may not always distinguish between white-collar, corporate, organized, and occupational crime (Walburg 2015). To provide better insight into the rather secluded world of business firms and elite offenders and into the effectiveness of prevention measures, criminologists could make use of various sources of information, such as self-report studies, offender interviews, systematic case file analysis, and perception studies (see Lord and Levi 2015). But in addition to these data sources, data collected on prevention and compliance measures taken by individual offenders and business firms could further provide insight into the impact of prevention strategies of law enforcement authorities. For example, one could think of data of corporate compliance departments, compliance assessments by third-party experts, such as certification bodies, data from non-governmental organizations (NGOs) or international bodies such as the OECD, and data from business and sector-specific trade associations.

Of course, all these sources of information have strengths and weaknesses. Self-reports may be biased, as might be reports by NGOs or other bodies. Hence triangulation of these sources is required to better inform enforcement authorities (Walburg 2015, p. 35).
Information from one source can then be compared, confronted, and completed by other sources. Moreover, to assess the value of the materials collected, longitudinal data is necessary about the prevention and compliance measures taken by white-collar and corporate offenders.

In any case, evaluating prevention strategies begins with determining indicators to measure success. Is successful prevention about reducing the number or frequency of violations, the number of complaints or reports by dissatisfied consumers? Or do we also wish to include indicators such as changing perceptions about right and wrong within organizations and about the seriousness and blameworthiness of white-collar and corporate crime in the general public? Debate about successful prevention and intervention should start with answering these questions.

Concluding Thoughts

This chapter has sought to explore the role of law enforcement authorities in the preventing and intervening with white-collar crimes. Given the immediacy requirements of law enforcement, much can be gained by pursuing prevention mechanisms informed by an analysis of the scripts of white-collar crime, the associated social/criminal networks, and the nature of opportunities. Script analyses enable the identification of points of vulnerability for white-collar crimes of commission (less for omissions) that can be adapted to reduce crimes in the shorter term. Clearly we recognize the need for longer-term social justice interventions, the need to change problematic systems (for non-offenders), and the need to incentivize prosocial behaviors. The sheer complexity of many white-collar crimes makes such strategies a necessity, but evaluating the impacts of intervention and prevention measures is difficult due to an absence of before-and-after data, the restrictive funding requirements of state agencies for independent research, and the hard-to-access samples of the white-collar crime offending population.

For instance, we have seen how the global financial system has provided an infrastructure for creating financial arrangements conducive to managing finances generated through illicit behaviors (such as corruption or tax avoidance) with anonymity, as illuminated in the Panama Papers and the Paradise Papers. Our own research into the use of legal structures in cases of corporate financial crimes in this way indicated that these structures act as vehicles for managing illicit finances (Lord et al. 2018). For instance, by setting up and using legal structures such as Limited Companies, Trusts, Limited Partnerships, and Foundations, corporations are able to create an illusion of legitimacy for what are actually illicit transactions (e.g. bribes) and effectively gain anonymity for those instigating the crimes. Key to these cases is the involvement of third-party occupational actors (such as lawyers, notaries, accountants) working as company formation agents (CFAs) or trust and company service providers (TCSPs) who can set up and service these “vehicles” on the behalf of those corporate and individual actors involved in the crimes. Cases such as these raise important questions as to the extent to which law enforcement authorities can actually intervene with or prevent such financial arrangements, particularly as they are so well embedded in the legitimate financial system. Thus, intervening with particular conducive situations or with vulnerabilities inherent in the crime commission process is more plausible.

Looking ahead, the role of new and emerging technologies in white-collar crime prevention and intervention needs further consideration. For instance, financial technologies such as the so-called Blockchain and other types of distributed ledger technology (DLT) offer
opportunities for improving tracking of financial transactions whilst regulatory technologies can assist in the automation of regulatory compliance for business. For instance, such technologies require data to be verified across multiple locations and then added to an unchangeable “chain” of data, making it more resilient to fraud, as multiple actors would be required to validate the transaction, and increasing the transparency of transactions. Law enforcement authorities will need to engage with such technological innovation to counter innovations in white-collar criminality.

Finally, this chapter has demonstrated the need for collecting more and better data on prevention and compliance measures and for making this data available for enforcement authorities and academic researchers. Only then will we be able to gain more insight into prevention strategies and compliance over time and provide more definitive answers to the question of how successful intervention strategies really are. Future research in this area may focus on identifying the necessary aspects of specific white-collar crimes in order to inform an understanding of where critical points of vulnerability exist in the “scripts” of these crimes to ensure intervention can be evidence-based and targeted. Furthermore, understanding the conditions generative of opportunities for white-collar crimes at local and global levels and theorizing potential future scenarios within which certain white-collar crimes may increase is needed for aiding progressive enforcement policies.

Notes

1 The UK College of Policing defines volume crime as any crime “… through its sheer volume, [having] a significant impact on the community and the ability of the local police to tackle it.” See https://www.app.college.police.uk/app-content/investigations/introduction/#volume-crime
2 https://eucpn.org
3 http://www.crime-prevention-intl.org
4 https://www.ncjrs.gov/pdffiles1/nij/sl001049.pdf
5 https://www.ncjrs.gov/pdffiles1/nij/sl001155.pdf
6 https://www.crimesolutions.gov/about_instrument.aspx

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Nicholas Lord and Karin van Wingerde


Preventing and Intervening in White Collar Crimes: The Role of Regulatory Agencies

Angela Francis and Nicholas Ryder

Introduction

The origins of the 2007/2008 financial crisis can be found in the US subprime mortgage market, which resulted in the largest economic crisis since the Wall Street Crash (Financial Crisis Inquiry Commission 2011). The subprime crisis is associated with mortgages provided by subprime lenders, who targeted high-risk debtors with poor credit histories. Subprime lending grew at an unprecedented level between 1994 and 2006, with the amount of money lent increasing to $600 billion, or a quarter of all US mortgages (White 2008, p. 618). By the end of 2006, 3 million extra subprime loans were offered, extending the total value of unsettled debt to $3 trillion. Following the collapse of the subprime mortgage market in 2007, a number of financial corporations became insolvent or needed financial support to continue operating. Examples included New Century Financial, Lehman Brothers, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, American Insurance Group, and Bear Stearns. The Federal Reserve responded by reducing interest rates, increasing access to short-term liquidity, and negotiating the enforced takeover of Bear Stearns (The Federal Reserve n.d.). Additionally, several legislative instruments were introduced, including the Economic Stimulus Act of 2008, the Emergency Economic Stabilization Act of 2008, the Recovery and Reinvestment Act of 2009, the Fraud Enforcement and Recovery Act of 2009, and the Dodd–Frank Wall Street Reform Act of 2012. The response to the financial crisis in the United Kingdom was similar. For example, several financial institutions required emergency funding (Lloyds TSB, HBOS, and the Royal Bank of Scotland) while others were taken over by other financial institutions (Northern Rock, Alliance & Leicester, and Bradford & Bingley). The UK government introduced a series of legislative provisions including the Banking (Special Provisions) Act 2008, the Banking Act 2009, the Financial Services Act 2010, the Financial Services Act 2012, and the Financial Services (Banking Reform) Act 2013.

The geneses of the financial crisis are well documented and include a combination of factors – macro-economic policy, financial market developments, irrational credit pricing, weak banking and credit regulation, risk management weaknesses in several large financial
institutions, high levels of consumer debt, securitization, deregulation of consumer credit and banking legislation, self-regulation of credit rating agencies, and the culture of banking practices. However, for the purpose of this chapter the authors concentrate on white collar crime, its association with the financial crisis, and the response by financial regulatory agencies. Professor Edwin Sutherland famously defined the term “white collar crime” as “a crime committed by a person of respectability and high social status in the course of his occupation” (1949, p. 9). In his seminal research, Sutherland stated that “present-day white-collar criminals, who are more suave and deceptive than the ‘robber barons’, are represented … and many other merchant princes and captains of finance and industry, and by a host of lesser followers” (Sutherland 1949, p. 9).

This is a deeply contested description of white collar offenders, and it has attracted a great deal of criticism (Gilligan 2012, p. 495). However, it is not the purpose of this chapter to provide a detailed commentary and review of this definition. Examples of white collar crime associated with the financial crisis include mortgage fraud, Ponzi fraud schemes, money laundering, insider trading, market misconduct, dealing, and fraud. This chapter offers an alternative commentary on the association between white collar crime and the role and enforcement action pursued by financial regulatory agencies.

Financial Regulation and White Collar Crime

The primary purpose of financial regulation is to promote an effective form of protection for investors and/or consumers and to create a regime that encourages related financial corporations to operate within the respective legislative framework. However, as the financial markets and products have evolved, the role of financial regulatory bodies has also changed to include prevention of white collar crime. This is clearly illustrated by providing a brief historical review of banking regulation in the United Kingdom, where the first attempt to regulate financial activity occurred in 1697 when legislation was enacted that required those who worked within the “City of London” to be licensed annually by the Court of Aldermen (Fisher and Bewsey 1997, p. 13). The regulatory regime required licensees to take an oath that they would undertake transactions honestly and without fraud. The next piece of legislation was the Bubble Act 1720, which was followed by an Act to Prevent the Infamous Practice of Stock-Jobbing in 1734. However, this legislation only lasted until the early part of the eighteenth century and was replaced by the Joint Stock Companies Act 1844 and the Limited Liability Act 1855. It was not until 1939, with the passage of the Prevention of Fraud (Investments) Act 1939, that any legislation applied to white collar crime associated with the financial services industry. The Act was amended by the Prevention of Fraud (Investments) Act 1958, which gave regulatory agencies the ability to investigate the administration of unit trusts. However, the impact of this legislation was negligible and it resulted in the City of London becoming self-regulating. The next major reform was the Financial Services Act 1986, which continued the traditional self-regulation system of financial regulation. Three weeks after the 1997 general election, the then new Labour Government announced that work would begin on the reform of the regulatory structure created under the Financial Services Act 1986 – the Financial Services Authority (FSA). One of the major factors that contributed toward this reform was the association between ineffective financial regulation and white collar crime, as illustrated by the collapse of Johnson Matthey Bankers, Barlow Clowes, BCCI, and Barings Bank. The reforms were published in the Financial Services and Markets Bill (1999) and were enacted by the
Financial Services and Markets Act 2000. Innovatively, the 2000 Act contained a number of important legislative provisions that provided the FSA with a statutory objective to reduce financial crime (Financial Services and Markets Act 2000, s. 6), an extensive array of civil enforcement powers (Financial Services and Markets Act 2000, s. 206(1)), and the ability to instigate criminal proceedings to specifically tackle white collar crime (Financial Services and Markets Act 2000, s. 402). The introduction of these provisions placed the FSA in the unique position of being the first UK financial regulatory agency with the ability to impose financial penalties and instigate white collar crime-related prosecutions. This position can be contrasted with that of the Securities and Exchange Commission (SEC) in the United States, which – despite investigating a wide range of white collar crimes – is unable to commence criminal proceedings, only impose civil sanctions. The SEC has imposed a record number of financial sanctions since the onset of the 2007/2008 financial crisis, yet (as outlined below) the impact of these penalties has been questioned. In order for criminal proceedings to be instigated, the SEC refers them to the Department of Justice (DoJ) for further examination, which only investigates one in 10 referrals (Black 2008, p. 317). Despite having an arsenal of enforcement powers, the regulatory performance of the SEC during the financial crisis has been overshadowed and perhaps permanently tarnished as a result of the actions of Bernard Madoff. It is important to note that this position must be contrasted with that of the United Kingdom’s FSA and its replacement agency, the Financial Conduct Authority (FCA).

The Financial Crisis and White Collar Crime

White collar crime is a crucial factor that has contributed toward several financial crises, not just the 2007/2008 financial crisis. Lynn Turner, a former chief accountant for the SEC noted “the amount of gimmickry and outright fraud dwarfs any period since the early 1970’s, when major accounting scams like Equity Funding surfaced, and the 1920’s, when rampant fraud helped cause the crash of 1929” (Berenson 2001). Between 1932 and 1934 a Senate Banking Committee, chaired by Ferdinand Pecora, concluded that fraud and corruption contributed toward the Wall Street Crash and subsequent Great Depression (Kuttner 2009). The Pecora Commission added that the Great Depression was caused by market manipulation that was committed by financial institutions (Romano 2005). The Pecora Commission was able to unearth evidence of “widespread fraud and abuse on Wall Street, including self-dealing and market manipulation among investment banks and their securities affiliates” (Shapiro 2013). Furthermore, evidence of the association between the Great Depression and financial crime was highlighted by the Congressional Research Service (1987). Comparisons can be made between the Wall Street Crash and the Savings and Loans Crisis, which resulted in approximately 2000 savings and loans providers becoming insolvent, thus costing the US taxpayer $150 billion (Smith 2010, p. 1060). Evidence that white collar crime was a key factor in the Savings and Loans Crisis was offered by several commentators, including Pontell and Calivita (1993), Felsenfeld (1991), McDonald (2009), Pizzo et al. (1989), and Gray (1990).

Previous studies have concluded that several different types of financial crime have interacted with the traditional variables, as outlined above, that contributed toward the financial crisis. This includes, for example, mortgage fraud, predatory lending, Ponzi fraud schemes, and market misconduct. It is not the purpose of this chapter to concentrate on these factors, but to focus on market manipulation.
Market Manipulation

Market manipulation is conduct that can misinform or deceive others into making misleading investment decisions (Action Fraud n.d.), which includes conduct and customs that are detrimental to the financial market (Carrol 2002). It has also been defined as an unwelcome intrusion on the function of the financial markets (Lomnicka 2001, p. 297). Market manipulation encompasses three elements. First, it includes financial dealings that provide fictitious indicators to obtain the price of a monetary tool at a synthetic level. Second, it involves a series of contracts or orders to utilize fabricated devices or products. Third, it incorporates the sharing and dispersal of information that provides false or misleading signals (FSA n.d.). Examples of conduct that amounts to market manipulation include providing false statements or transactions that could result in the price of shares fluctuating (Action Fraud n.d.). Other instances of market manipulation include a process called “share romping,” as illustrated during the Guinness fraud in the 1980s (Wright 2001, p. 19). Market manipulation poses a significant threat to global financial markets (Alkhamees 2012, p. 41), which adversely affects investor confidence (Swan 1995, p. 53). The most recent type of white collar crime associated with the financial crisis is the manipulation of the London Inter-bank Offered Rate (LIBOR). LIBOR is “the rate at which an individual contributor panel bank could borrow funds, were it to do so by asking for and then accepting interbank offers in reasonable market size, just prior to 11.00am London time” (British Bankers’ Association n.d.). The administration of LIBOR fell under the duty of the British Bankers’ Association (BBA) LIBOR Ltd., which is a subsidiary of the BBA (now UK Finance), and was managed by the LIBOR manager. Contributing banks were expected to ensure and maintain the quality of the submissions they made to LIBOR.

The first evidence of wrongdoing regarding the manipulation of LIBOR was witnessed in 2005 when Barclays Bank was accused of attempting to manipulate the dollar LIBOR and the Euribor (Euro Inter-bank Offered Rate) rates of interest after being asked to do so by derivative traders and other banking institutions. The misconduct took place in both London and New York. Further breaches took place between February 2006 and October 2007 when Barclays sought to further manipulate the Euribor and the US dollar LIBOR. During this period, Barclays was accused of providing a misleading depiction of its credit quality so that it could continue to raise funds. Further disquiet was voiced by the New York Federal Reserve, which asserted that it had evidence that implied LIBOR submissions were lowered by financial institutions (Mollenkamp 2012). In 2008, the Wall Street Journal also queried the reliability of LIBOR (Mollenkamp 2008), and this came to the attention of the Commodity Futures Trading Commission (CFTC) after a compliance officer at Barclays raised concerns about problematic actions by other banks (CFTC 2012, p. 22). Because of this misconduct, financial regulatory agencies in the United States, the United Kingdom, and Singapore imposed large financial penalties on offending financial institutions. The next part of the chapter critically considers the response to market manipulation in the United States.

The United States

The association between the 2007/2008 financial crisis and white collar crime is illustrated by the introduction of the Fraud Enforcement Recovery Act of 2009. Additionally, the Financial Fraud Enforcement Task Force (FFETF) was created with the objective of “holding
those accountable who helped bring about the last financial crisis, and to prevent another
crisis from happening” (Financial Crimes Enforcement Network n.d.). The laws prohibit-
ing insider dealing and market manipulation in the United States are enforced by the SEC,
which works closely with the DoJ and self-regulatory agencies such as the Financial Industry
Regulatory Authority. The SEC was created after the economic turmoil of the Wall Street
Crash and the Great Depression, and it was initially designed to act as an “economic
watchdog” (Huynh 2010, p. 108). Its mission is to protect investors and to preserve a pro-
portionate financial market that seeks to assist capital creation (SEC n.d.). From a financial
regulation perspective, the SEC is “responsible for the enforcement and regulation of the US
and securities market … it is charged with regulating all companies that hold and trade
public stock” (Huynh 2010, p. 108). The SEC has five divisions, including Corporate
Finance, Trading and Markets, Investment Management, Enforcement, and Economic and
Risk Analysis. In this chapter, we focus on the Enforcement division of the SEC, which was
established in August 1972. The Division of Enforcement undertakes investigations of
alleged breaches of securities legislation and prosecutes the SEC’s civil suits (Huynh 2010,
p. 109). Common remedies pursued include injunctions, financial penalties, and the
suspension or prohibition of people from acting in certain positions. The SEC is also per-
mitted to provide compensation for the victims of fraud and generate administrative pro-
ceedings before an SEC administrative law judge. There are several different categories of
proceedings that the SEC could pursue against wrongdoers, including a cease and desist
order, a disgorgement order, the revocation of a license or registration, or even suspension.
The Division of Enforcement seeks to support and advise the SEC by recommending when
it should begin investigations and what type of civil sanction should be imposed. The SEC
investigates a wide range of white collar crime activities, including allegations of misrepre-
sentation, market manipulation, insider trading, and selling unregistered securities. From
an enforcement perspective, it is very important to note that the SEC has an extensive array
of civil enforcement powers, but it has no authority to instigate criminal proceedings.

The Securities Exchange Act of 1934 introduced insider-trading legislation, and counter-
fraud provisions are contained in section 10b and SEC Rule 10b-5. Further legislative
amendments were made by the Insider Trading Sanctions Act of 1984, which provided the
SEC increased power to impose tougher sanctions for breaches of the law in this area. The
1984 Act was amended by the Insider Trading and Securities Fraud Enforcement Act of
1988, which imposed obligations on corporations, agents, and traders to implement pre-
ventative insider dealing mechanisms. The 1988 Act also permits the SEC to pay whistle-
blowers for inside “intelligence.” Two other notable Acts include the Sarbanes–Oxley Act of
Furthermore, the Securities Act of 1933 and the Securities Exchange Act of 1934 both pro-
hibit market manipulation. The Securities Act forbids the making of corporate misstate-
ments that will lead to the defrauding of innocent investors. One can see the strong role that
market manipulation played in the 2008 financial crisis by examining the increase in
enforcement actions in the United States. For example, between the start of the financial
crisis and the most recent data provided in 2017, the SEC has charged 204 companies and
individuals (including 93 senior corporate officials with related offenses), while 54 individ-
uals have either been barred from acting as company directors or suspended from doing so.
The SEC has also imposed penalty orders of more than $1.93 billion, enforced disgorge-
ment orders totaling more than $1.47 billion, and obtained $418 million compensation for
affected investors; the total amount of penalties amounts to more than $3.76 billion (SEC
2017). Abramowitz and Sack (2013, p. 2) took the view that these statistics illustrate that the
SEC had increased its enforcement activity, noting that up until the time their research was conducted in 2012, the SEC had filed 117 actions against companies and individuals.

Specific instances of enforcement action pursued by the SEC include Goldman Sachs agreeing to pay $550 million to reconcile SEC charges related to subprime mortgage collateralized debt obligation (SEC 2010) and CR Intrinsic agreeing to pay $600 million to settle insider trading charges. The CFTC has been heavily involved in investigating the manipulation of LIBOR by banks in the United Kingdom and the United States and has fined Barclays $200 million (CFTC 2012), UBS $700 million (CFTC 2012), RBS $325 million (CFTC 2013b), and ICAP $65 million (CFTC 2013a). Abramowitz and Sack (2013, p. 2) took the view that in 2011, the CFTC had brought approximately 100 enforcement actions, representing a 74% increase since 2010.

Additionally, the DoJ (2013b) announced that RBS Securities Japan Limited, a wholly owned subsidiary of RBS, pleaded guilty to wire fraud and its role in influencing the Japanese yen LIBOR. As part of a deferred prosecution agreement, they have agreed to pay a $50 million fine. Additionally, RBS Securities Japan Limited agreed to pay a $100 million penalty to the DoJ.

The CFTC has been heavily involved in tackling market manipulation and in particular the LIBOR scandal. The CFTC was created in 1974 following the enactment of the Commodity Futures Trading Commission Act and its purpose is to “promote market integrity” (CFTC n.d.-a, n.d.-b). The CFTC has adopted a comparable enforcement strategy to that of the SEC, imposing a series of financial penalties on offending financial institutions for market manipulation. For example, in June 2012 the CFTC fined Barclays $200 million for its attempted manipulation and false reporting of LIBOR and Euribor (CFTC 2012). Barclays also agreed to introduce a number of internal compliance mechanisms to prevent future misconduct (Scannell, 2012). This has been described as an example of the CFTC being “willing to combat manipulation in commodity staples markets” (Greenberger 2013, p. 747). Furthermore, the CFTC fined UBS $700 million for its attempted manipulation and false reporting of LIBOR and Euribor. David Meister stated that the enforcement action of the CFTC is a clear example that they will not tolerate instances of corporate misbehavior and are prepared to fully utilize their extensive enforcement powers (CFTC 2012).

In February 2013, the CFTC fined RBS $325 million for its manipulation, attempted manipulation, and false reporting of yen and Swiss franc LIBOR (CFTC 2013b). This was followed by the imposition of a financial penalty on Lloyds Banking Group plc and Lloyds Bank plc of $105 million for the attempted manipulation of the LIBOR (CFTC 2014). In September 2013, the CFTC imposed a $65 million civil monetary penalty on ICAP Europe Limited for “… manipulation, attempted manipulation, false reporting, and aiding and abetting derivatives traders’ manipulation and attempted manipulation” of LIBOR (CFTC 2013a).

In April 2015, the CFTC imposed its largest financial penalty, $800 million, on Deutsche Bank for the attempted manipulation of the LIBOR and Euribor interest rate benchmarks (CFTC 2015b). In May 2015, Barclays agreed to pay a fine of $400 million for attempted market manipulation and false reporting (CFTC 2015c). In May 2016, Citibank paid a financial penalty of $250 million for attempted market manipulation and false reporting of the US dollar ISDAFIX benchmark (CFTC 2016). Therefore, the enforcement activities of the CFTC are identical to those adopted by the SEC: the imposition of a series of administrative penalties. It is questionable whether the financial penalties imposed by the CFTC will have any deterrent on the future misconduct of financial institutions.
Additionally, the DoJ has attempted to use various civil enforcement mechanisms, including filing a $1 billion civil law suit against Bank of America Corporation (DoJ 2013a). Furthermore, the DoJ played a key role in obtaining the largest settlement ($25 billion) for robo-signing (DoJ 2012a), acquired the largest fair lending settlement ($335 million) with Countrywide Financial Corporation (DoJ 2012c), and also acquired the second largest fair lending settlement ($125 million) against Wells Fargo Bank (DoJ 2012d). For example, in relation to the manipulation of LIBOR the DoJ reached an agreement with Barclays Bank that it would pay a $160 million penalty for its actions. The DoJ (2012b) stated that:

For years, traders at Barclays encouraged the manipulation of LIBOR and EURIBOR submissions in order to benefit their financial positions; and, in the midst of the financial crisis, Barclays management directed that U.S. Dollar LIBOR submissions be artificially lowered. For this illegal conduct, Barclays is paying a significant price.

In December 2012, the DoJ announced that UBS Securities Japan, a subsidiary of UBS, pleaded guilty to wire fraud and its role in manipulating LIBOR (DoJ 2012e). The company entered into an agreement with the DoJ, which required them to pay a $100 million fine. Additionally, its parent company, UBS AG, entered into a non-prosecution agreement which resulted in the payment of a further $400 million fine (DoJ 2012e). The Attorney General stated that UBS AG

defrauded the company’s counterparties of millions of dollars. And they did so primarily to reap increased profits, and secure bigger bonuses. (DoJ 2012e)

Additionally, in February 2013 the DoJ announced that RBS Securities Japan Limited, a subsidiary of RBS, had pleaded guilty to wire fraud and manipulation of the Japanese yen LIBOR as part of a deferred prosecution agreement (DoJ 2013b). The Assistant Attorney General stated:

The bank has admitted to manipulating one of the cornerstone benchmark interest rates in our global financial system, and its Japanese subsidiary has agreed to plead guilty to felony wire fraud. (DoJ 2013b)

It is not surprising that the DoJ has adopted an identical enforcement strategy to that of the SEC and CFTC toward market manipulation by financial institutions. This is due to the US Supreme Court overturning the conviction of Arthur Andersen in 2005 due to inaccurate jury instructions by federal prosecutors (Arthur Andersen LLP v. United States, 544 U.S. 696 (2005)). As a result of this decision, the DoJ decided to rethink its use of corporation prosecution and increase its use of the safer, more generous, and more flexible option, the deferred prosecution agreement, with a view to minimizing the impact of corporate death.

The United States has adopted an aggressive stance toward financial crime. In particular, it has been at the forefront of the global fight against money laundering as part of the “War on Drugs” and it played an integral part in the evolution and implementation of the “Financial War on Terrorism” following the al Qaeda terrorist attacks in September 2001. Additionally, the United States has embraced a robust enforcement policy toward fraudulent activities, as illustrated following the Savings and Loans Crisis, the collapse of several corporations due to fraud, and financial crime associated with the 2007/2008 financial crisis – the latter of which resulted in the SEC and the Federal Bureau of Investigation
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securing record financial penalties and convictions for fraudulent behavior. Examples would include the Ponzi fraud convictions of Bernard Madoff and over 1100 convictions for mortgage fraud. However, the approach adopted in the United States toward the regulation of market manipulation by its financial regulatory agencies can be best described as tepid compared to the United Kingdom's approach (described below), which facilitated criminal prosecutions in addition to financial penalties. The agencies discussed above have focused on imposing large-scale financial penalties on the offending financial institutions. The next section of the chapter concentrates on the United Kingdom and illustrates that it has adopted a similar but more aggressive approach to that used in the United States.

United Kingdom

Following the collapse of Bank of Credit and Commerce International and the failure of Barings Bank, the (then) newly elected Labour Government announced in May 1997 that it intended to create a single super-regulator for the United Kingdom's financial services sector, the FSA. The reduction of financial crime became one of the regulator's four statutory objectives under the Financial Services and Markets Act 2000 (FSMA 2000). In order to achieve this statutory objective, the regulator was given a plethora of investigative and enforcement powers. For example, the regulator has become a prosecuting authority for money laundering, some fraud-related offenses, and insider dealing. It also has the power to impose financial sanctions where it establishes that there has been a contravention by an authorized person of any of its requirements. Furthermore, the FSA had the power to ban authorized persons and firms from undertaking any regulated activity. By virtue of the Financial Services Act 2012, the FSA was replaced by the FCA and the financial crime statutory objective was removed; it is now associated with the FCA's consumer protection and market integrity objectives. The FCA stated “one of our objectives is to ensure the integrity of the markets … a key part of that is ensuring that our markets operate honestly and that the firms we regulate understand, and manage, the financial crime risks that they face” (FCA 2013a).

The regulator will continue to concentrate its resources toward maintaining “standards of conduct in the financial services industry” (Hill 2013, p. 30). This means that the FCA will adopt an identical approach toward the reduction of financial crime to that adopted by the FSA, namely that regulated firms must have appropriate systems and controls. Another legacy left by the FSA includes “the tools that are currently available to the FSA. It will be able to impose penalties for market abuse, instigate criminal proceedings for insider dealing and market manipulation and it will act as a ‘competent authority’ in relation to money laundering” (Hill 2013, p. 30). Furthermore, the FCA will be expected to follow and further develop the FSA’s credible deterrence strategy. This would involve the FCA continuing to “take tough, targeted, effective and public action against misconduct perpetrated by firms and individuals” (Hill 2013). However, it is important to note that there is an expectation that the FCA will be more proactive than its predecessor by initiating more cases and imposing stronger penalties.

One of the powers most commonly utilized by the regulator has been its ability to impose financial sanctions where it establishes that there has been a contravention by an authorized person of any requirement under FSMA 2000. The highest-profile financial sanctions imposed since the financial crisis has been over the manipulation of the LIBOR and the Foreign Exchange Currency Market. For example, in 2012 the regulator concluded that
Barclays Bank had manipulated both the LIBOR dollar and the Euribor rates of interest after being asked to do so by derivative traders and other banking institutions (FSA 2012a). This is a particularly relevant link between the financial crisis and the illegal activities of Barclays. This was a point raised by the regulator, who reported:

Liquidity issues were a particular focus for Barclays and other banks during the financial crisis and banks’ LIBOR submissions were seen by some commentators as a measure of their ability to raise funds. Barclays was identified in the media as having higher LIBOR submissions than other contributing banks at the outset of the financial crisis. Barclays believed that other banks were making LIBOR submissions that were too low and did not reflect market conditions.

(FSA 2012c)

The regulator added that the concerns raised by members of senior management of Barclays resulted in directions being given by minor managers at the bank to decrease the LIBOR tenders to circumvent any undesirable media coverage (FSA 2012c). The regulator concluded that this conduct breached several of its Principles of Business and stated that Barclays had “fail[ed] to conduct its business with due skill, care and diligence” (FSA 2012c). Barclays Bank Plc was fined £59.5 million by the regulator and its conduct was strongly condemned. The second bank to be fined (£160 million) owing to its manipulation of LIBOR was UBS in December 2012. The regulator concluded that between January 2005 and December 2010, UBS breached regulations 3 and 5 of the Principles of Business when the bank engaged in illegal behavior regarding the calculation of LIBOR and Euribor (FSA 2012b). The Royal Bank of Scotland (RBS) became the third bank to be fined, in February 2013, following the revelations of LIBOR rigging. The regulator fined RBS £87.5 million for its conduct between January 2006 and November 2010 (FSA 2013). The overall fine would have been £125 million had it not been for a 30% discount granted by the regulator. The conduct of the bank’s employees was not limited to the United Kingdom; it also occurred in Japan, Singapore, and the United States. According to the regulator, the illegal conduct was extensive – there were over 200 inappropriate submissions, involving 21 employees and a manager (FSA 2013). The regulator added that the failures at RBS were all the more serious because of the attempts to influence not only the submissions of RBS but also those of other panel banks and the use of interdealer brokers to do this: “… the extent and nature of the misconduct relating to LIBOR has cast a shadow on the reputation of this industry and we expect firms to take steps to ensure that this can never happen again” (FSA 2013). The regulator imposed another financial penalty of £14 million on ICAP European Ltd. in September 2013 for an embarrassing amount of misconduct that involved the firm’s traders colluding with the UBS traders to manipulate the Japanese yen LIBOR rates and one trader receiving bonus or corrupt payments for assisting in the manipulation (FCA 2013a). In October 2013, Rabobank was fined by the regulator £105 million because its “poor internal controls encouraged collusion between traders and LIBOR submitters and allowed systematic attempts at benchmark manipulation” (FCA 2013b). In July 2014, Lloyds TSB was fined £104 million for breaches of the LIBOR and other benchmarks (FCA 2014d). Additionally, Martin Brokers (UK) Ltd. was fined £630,000 for significant failings in relation to LIBOR (FCA 2014e).

The key question that must be addressed here is whether the financial penalties will deter future misconduct in the financial services sector. Evidence suggests that the impact of these fines on the financial services sector is extremely limited and that the sector continues to be troubled by misconduct. This was soon illustrated by the imposition of more “record-breaking” financial penalties following the manipulation of FOREX. For example,
November 2014 the regulator fined five banks a total of £1.1 billion for inadequately attempting to control corporate practices in the trading of foreign exchange (FCA 2014c). In this instance, the regulator fined Citibank £225 million, HSBC Bank Plc £216.3 million, JP Morgan Chase Bank £222.1 million, RBS £217 million, and UBS AG £233 million. In May 2015, Barclays was fined by the regulator £284.4 million for “failing to control business practices in its foreign exchange business in London” (FCA 2015b). The regulator condemned the actions of Barclays and stated “this is another [emphasis added] example of a firm allowing unacceptable practices to flourish on the trading floor” (FCA 2015b). The regulator also imposed a financial penalty on Mark Stevenson in 2014 for manipulating gilt prices during quantitative easing (FCA 2014b).

There is one significant difference between the enforcement stance adopted by the United Kingdom and that of the United States, the ability to pursue criminal proceedings. The criminal offense of insider dealing in the United Kingdom is enforced by the FCA. The FCA’s ability to prosecute insider dealing cases is confirmed by the FSMA 2000. For example, between 2009 and 2011, the FSA obtained a total of 10 convictions (FSA 2011b). In July 2014, the FCA reported that it had obtained 23 convictions for insider dealing offenses since 2004 (FCA 2014a). In March 2015 this figure had risen to 27 convictions (FCA 2015c). Between 2016 and 2017, the FCA secured six convictions for insider dealing (FCA 2017b). There was no reference to any insider dealing convictions in the FCA’s 2017/2018 Annual Enforcement report (FCA 2018). However, these figures have attracted a great deal of criticism and it has been suggested that between 2013 and 2018, the FCA only prosecuted eight cases of insider dealing and obtained 12 convictions (Chapman 2018). Despite the low number of criminal convictions, the FCA instigated a record number of insider dealing investigations in 2017. However, it is essential to remember that investigation of insider dealing (like other types of financial crime) is very complex and lengthy, thus limiting the ability of the FCA to obtain more criminal convictions.

Examples of the criminal prosecutions include Christopher McQuoid (R. v Christopher McQuoid [2009] EWCA Crim 1301), who was given an eight-month custodial term for using inside information to make a profit of almost £50 000 (FSA 2009a). Additionally, McQuoid was subjected to a criminal confiscation order under the Proceeds of Crime Act 2002. In 2009, Timothy Power was convicted of insider dealing (which resulted in a profit of £9.8 million) and received an 18-month jail sentence which was suspended for two years (Cheston 2009). In 2014, Neel and Matthew Uberoi were sentenced to prison terms of two years and one year, respectively, for insider dealing trades worth a benefit of £288 050 (FSA 2009b). Whilst this was more punitive than previous cases, it is lenient when compared to the conviction of Asif Butt (R v Butt (Asif Nazir) [2006] 2 Cr. App. R. (S.) 44), who was initially sentenced to five years’ imprisonment for conspiracy to commit insider dealing. Butt made £388 488 profit for his investment bank (Credit Suisse), equating to £237 000 in personal benefit. However, the Court of Appeal reduced the sentence to four years. Recently, Malcolm Calvert was sentenced to 21 months in prison for insider dealing after making an illegal profit of £103 883 (FSA 2010). Neil Rollins was initially sentenced to 27 months’ imprisonment, but this was reduced by the Court of Appeal to 18 months (FSA 2011a). Christian Littlewood was sentenced to three years and four months’ imprisonment for insider dealing, while his codefendant Helmy Omar Sa’aid received two years’ imprisonment and a confiscation order of £640 000 (FSA 2011c). In May 2015, Martyn Dodgson and Andrew Hind were sentenced to imprisonment of three years and six months and four years and six months, respectively, following their conviction for insider dealing.
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(FCA 2015a). Judge Pegden described the conduct of the defendants as “persistent, prolonged, deliberate, dishonest behavior” (FCA 2015a). The FCA stated this case involved serious offending over a number of years, conducted in a sophisticated way using deliberate techniques to avoid detection. Dodgson was ... entrusted by his employer with sensitive and valuable information. He betrayed that trust by exploiting the information for his own benefit, conspiring with Hind to deceive the market. (FCA 2015a)

In 2016, Mark Lyttleton was convicted on two counts of insider dealing and sentenced to 12 months’ imprisonment and subject to a criminal confiscation order of £149,861 (FCA 2016). In sentencing Lyttleton, Judge Goymer remarked on the premeditated and deceitful nature of this crime, explicitly opining that insider trading is far from “victimless,” while the FCA emphasized the abuse of trust and Lyttleton’s role as a senior fund manager in its description of the offense (FCA 2016). In January 2017, Manjeet Mohal was convicted on two counts of insider dealing, and was sentenced to 10 months’ imprisonment, which was suspended for two years (FCA 2017a). The number of insider dealing convictions obtained by the FCA (compared to the number of investigations opened) clearly illustrates the difficulty in investigating and pursuing white collar criminals. To overcome these problems, the FCA has prioritized pursuing administrative financial penalties.

Singapore

The final case study in this chapter is Singapore, whose regulatory agency is the Monetary Authority of Singapore (MAS). Bromberg et al. stated that MAS “supervises the banking and insurance sectors. It is also Singapore’s central bank. Civil penalty proceedings are brought by MAS, while criminal proceedings are brought by the Public Prosecutor” (2017, p. 657). MAS was created by virtue of the Monetary Authority of Singapore Act 1971 and its purpose is to supervise the Singapore exchange rate, foreign reserve, and liquidity in the banking sector. Furthermore, MAS regulates all financial institutions and seeks to develop a reliable but liberal financial services sector. Its ultimate objective is to promote Singapore as both a regional and an international financial center.

MAS consists of several departments, including Monetary Policy and Investment, Development and International, Fintech and Innovation, and Financial Supervision (MAS n.d.-b). Its Enforcement Department aims to:

uphold the integrity of Singapore’s financial markets by deterring unlawful and improper conduct through effective surveillance and enforcement. It investigates and enforces breaches of the laws administered by the MAS. These include the Banking Act, the Financial Advisers Act, the Insurance Act, the Securities and Futures Act, and MAS regulatory requirements on financial institutions against terrorist financing and money laundering. (MAS n.d.-a)

The MAS has adopted a similar approach to its counterparts in the United States and the United Kingdom by working with other agencies such as the Singapore Exchange (SGX n.d.) and the Commercial Affairs Department of the Singapore Police Force (MAS 2015). Of relevance to this chapter is the criminal offense of false trading and market rigging, which is criminalized under section 197 of the Securities and Futures Act. The Securities and Futures Act allows the MAS to impose an assortment of penalties, including both criminal and civil. In particular, the MAS is able to conduct investigations, rescind the
operating license of regulated activities, and impose financial penalties. Bromberg et al. noted that “Singaporean securities provisions relating to … market manipulation … can result in criminal sanctions and civil penalties” (2017, p. 657). MAS has followed an identical enforcement policy toward market manipulation to that used in the United States and the United Kingdom, the imposition of financial penalties. For example, MAS “obtained a default judgment for $100,000 against Mr Ong Beng Hock for … false trading and market manipulation” (MAS 2013a). In July 2013, Mr. Lee Wee Soon was fined $50,000 for “false trading and market manipulation” (MAS 2013b). More recently, MAS imposed financial penalties on Wang Boon Heng ($75,000) and Foo Jee Chin ($50,000) for “fraud or deception in connection with the subscription, purchase or sale of securities” (MAS 2017).

Interestingly, following the initial fines imposed in the United States and the United Kingdom, MAS announced that it had punished 20 banks and identified over 130 traders who had attempted to manipulate three interest and exchange benchmarks. MAS identified three banks (RBS, UBS, and ING) for the strictest punishment. However, it is important to note that MAS lacks the legal authority to impose financial penalties on the banks for market manipulation. MAS was only able to impose temporary fines on the offending banks (approximately $10 billion), which was repaid to the banks following their efforts to prevent future instances of market manipulation. Therefore, it should be of no surprise that the financial regulatory authorities in Singapore have adopted a very similar enforcement strategy to that used in the United States – again, the imposition of financial penalties. The enforcement strategy can be contrasted with that used in the United Kingdom by the FCA, which is able to instigate criminal proceedings for a wide range of finance-related criminal offenses.

Conclusion

The primary aim of this chapter was to illustrate the different approaches adopted by financial regulatory agencies in the United States, the United Kingdom, and Singapore toward tackling white collar crime, in light of the market manipulation associated with the 2007/2008 financial crisis. This chapter has revealed a number of important similarities and differences between the enforcement approaches adopted in each of the case studies. For example, the most commonly used enforcement strategy in the United States, the United Kingdom, and Singapore has been the imposition of financial penalties. This contribution is situated in an era of unprecedented scrutiny of the relationship between the enforcement powers of financial regulators and market manipulation in relation to the 2007/2008 financial crisis. The United States is generally regarded as a “role model” or “world leader” in its efforts to tackle white collar crime. However, the chapter has presented evidence that the US approach by its financial regulatory agencies toward white collar crime has a number of flaws. For example, the effectiveness of the SEC is limited by the inability to commence criminal proceedings – and this is heavily reliant on its working relationship with the DoJ. However, efforts by the DoJ toward white collar crime tended to concentrate on prosecuting employees and, only in some instances, prosecuting corporations. However, since the reversal of the conviction by the Supreme Court of Arthur Andersen, the DoJ has abandoned this approach and is favoring deferred prosecution agreements, which often include hefty financial penalties. Therefore, the SEC and the DoJ have adopted identical approaches toward tackling financial crime.

Conversely, the financial regulatory agencies in the United Kingdom have the ability to commence criminal proceedings against white collar criminals. However, the financial value of the financial penalties imposed in the United Kingdom draws unfavorable comparisons with the penalties imposed in the United States and it is recommended that the United
Kingdom should impose larger financial penalties to prevent future misconduct. Currently, financial penalties have done little to alter the future conduct of the offending corporations. Indeed, it can be suggested that the frequency with which financial institutions are fined means that it has become normal practice for them to set aside large sums of finances in order to meet their financial penalty commitments.

The situation in Singapore can be contrasted with both the United Kingdom and the United States because the MAS is not permitted to impose financial penalties on financial institutions – only temporary financial penalties. This places Singapore at odds with the enforcement strategies adopted in the United States, the United Kingdom. It is therefore recommended that the legislative provisions in Singapore that deal with market manipulation are amended so as to allow the MAS to imposed financial penalties on offending financial institutions. The imposition of temporary refundable fines is questionable, and has done little to counter market manipulation.

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Prosecution, Defense, and Sentencing of White-Collar Crime

Ronald G. Burns and Michele Bisaccia Meitl

Edwin Sutherland’s 1949 infamous work on crimes of the powerful suggested that white-collar crimes were rationally calculated, deliberate, and more frequent than the volume of their prosecutions indicated. Sutherland further suggested that the legal responses to such crimes were ineffective, as roughly 97% of his sample were criminal recidivists. Well over half a century later, there has been much progress with regard to addressing white-collar crime; however, many of the crime- and justice-related issues identified by Sutherland still exist, especially the need for enhanced legal responses to white-collar offending.

Increased scholarly and public attention has been directed toward white-collar crimes since Sutherland’s study. With regard to scholarly attention, researchers have examined various aspects of white-collar crime, including the reasons why the crimes occur, how they occur, and legal responses to them. This chapter addresses a very important portion of the legal responses to white-collar crime through an examination of the prosecution, defense, and sentencing of such offenses. This discussion is preceded by a brief examination of judicial proceedings as they relate to white-collar crimes.

Here, we review the literature on criminal justice sanctions for all types of white-collar crime, specifying when the literature points to unique strategies for specific types (e.g. occupation, corporate, state, or state-corporate). In accord with the limited research literature regarding white-collar crime in general, very few studies have focused on the adjudication of the various types of white-collar crime.

Although much progress has been made with regard to the legal responses to white-collar crime in the courts, the existing research literature generally suggests that it remains difficult to prosecute and defend such offenses. Further, white-collar offenders have historically received sentences that were less punitive than those received by other offenders, although there has been a shift toward imposing increasingly punitive punishments on them.
Invoking criminal law occurs infrequently with regard to white-collar crimes, and filing criminal charges is typically used only as a last resort by government officials (Frank and Lynch 1992). Instead, white-collar misconduct cases are often adjudicated in four judicial, or quasi-judicial, settings, including:

- civil proceedings,
- administrative proceedings,
- professional proceedings, and
- workplace-disciplinary proceedings (Payne 2017).

In civil proceedings, an individual or a government representative, who is known as the plaintiff, files civil charges against an individual or a business. The focus of the charge is on the violations allegedly committed by the defendant. Victims may file civil suits against the organization, individual, or agency that harmed them, or the government may invoke the criminal law or use various administrative, regulatory controls. In cases involving the government as a plaintiff, the state may file motions that seek injunctive remedies, for instance as they may seek cease and desist orders, which request that a business or individual stop the activities under judicial review until the proceedings are concluded (Payne 2017).

Administrative proceedings somewhat differ from civil and criminal proceedings, as they are not designed to punish, but to restrict certain future actions. They are used more commonly in cases involving white-collar misconduct than they are with regard to conventional crimes (Payne 2017). Many regulatory agencies use them, and the types of decisions made in these hearings could involve the imposition of:

- a civil fine,
- a cease and desist order,
- restrictions on specific individuals or groups from engaging in particular activities, and
- restrictions on corporations from participating in particular types of government programs (Van Cleef et al. 2004).

Administrative laws enable regulatory agencies to direct specific behaviors and offer greater flexibility and specialization than civil or criminal laws. Among other contributions, these laws give regulatory agencies power to regulate areas such as worker and consumer safety, and the environment. For instance, administrative hearings may be held to resolve cases in which a business is accused of having a member on their board of directors who is not permitted by administrative law due to a conflict of interest. The types of decisions made in administrative hearings could include the issuance of civil fines, cease and desist orders, the prevention of specific individuals or groups from being involved in corporate practices, and prohibiting corporations from participating in certain government programs (Van Cleef et al. 2004). Often, administrative laws are imposed to prevent specific behaviors from recurring (Cohen 1992).

Professional-disciplinary hearings are also used to address various types of white-collar misconduct. They may involve a state bar association (if the misconduct involves attorneys), or disciplinary sanctions on behalf of a professional association. For instance, state medical boards may oversee cases involving misconduct by medical doctors. Other professions have similar boards, for instance in the areas of counseling, teachers, the clergy, and social work (Payne 2017).
Workplace-disciplinary proceedings are similar to professional-disciplinary hearings, although they occur in the workplace in which the alleged infraction occurred. These quasi-judicial hearings may include labor law violations and cases involving alleged discrimination. These cases are often heard by a company’s equal opportunity office or a human resources department, and may move to civil administrative court if they are not resolved within the workplace (Payne 2017).

To be sure, criminal proceedings are used to address white-collar crime. Briefly, in criminal proceedings, criminal charges are filed against defendants and sanctions could include incarceration, probation, fines, community service restitution, and any other sanction imposed on conventional criminals (e.g. house arrest with electronic monitoring). Again, government officials are sometimes hesitant to invoke the criminal law against white-collar offenders given the difficulties associated with doing so (as discussed below).

There is a clear need for the use of criminal courts in prosecuting white-collar crimes, despite the historical resistance to doing so. Invoking the criminal law is necessary: (i) given that white-collar crimes are more harmful than all other types of crime; (ii) to address the fact that white-collar criminals are just as culpable as conventional criminals, and; (iii) because it helps send a message to other white-collar offenders that misbehavior will not be tolerated. Further, the harms and costs associated with some white-collar crimes arguably warrant the more stringent penalties imposed under criminal law to ensure justice (Friedrichs 2010; Payne 2017).

While each of these judicial processes contributes to the resolution of white-collar crime or misconduct, the primary focus of this chapter is on the prosecution, defense, and sentencing of white-collar crimes in the United States’ criminal justice system. The focus on the United States is primarily due to the fact that most research on justice systems and white-collar crime focuses on that country, and coverage of the adjudication of white-collar crimes in all countries is beyond the scope of this review.

**Prosecution**

Prosecution of white-collar criminals is often used after methods of persuasion and encouragement of compliance fail. Although prosecution of white-collar crime is not as prevalent as it is for conventional crime, when white-collar cases do proceed to (or go beyond) investigation, prosecutors have a great deal of discretion on who to prosecute and what charges to bring. United States Attorney’s Offices – which house the bulk of federal prosecutors – often establish special prosecution units devoted to addressing specific areas of white-collar crime, such as securities fraud, environmental crimes, and healthcare fraud. These prosecutors establish expertise in handling such matters and develop relationships with the agents and officers who investigate such cases. Similar units or divisions exist in attorney generals’ offices at the state level, and in some district attorneys’ offices at the county or local level.

**Prosecutorial Discretion**

The goals of prosecuting white-collar crimes differ from those of prosecuting street crime, which have largely involved defendant-specific deterrence and incapacitation. In contrast, the primary prosecutorial goals for white-collar crime have more directly focused on
general deterrence (Cullen et al. 2006). That is, prosecutors may seek to deter other white-
collar professionals from engaging in white-collar crime through prosecution of a limited
set of offenders. How they go about reaching their goal varies, as prosecutors are influenced
by many individuals, groups, agencies, and other factors.

Prosecutors make many important decisions in our justice systems, for instance as they
are the ones who ultimately decide:

● whether to prosecute or drop a case;
● what charges will be filed;
● whether or not to engage in plea bargaining, and, if so, what deals they will offer or
accept;
● whether to charge individuals or corporations; and
● whether to offer diversion or some other alternative to formal prosecution (Payne
2017).

They consider many different factors in deciding whether to move forward with a case, and
are accountable to many groups and individuals. The more significant factors that influence
prosecutorial discretion in white-collar crime cases include:

● legal factors;
● the burden of proof required in different courts;
● the available time and resources;
● the potential effects of prosecution on the community;
● political and community pressure;
● the complexity of a case;
● their familiarity with areas of the law; and
● the quality of the defense.

Primary among the factors that influence prosecutorial discretion are legal factors,
including the legal boundaries in which they operate. Aside from dictating their day-to-
day operations, the law has greater impacts on prosecutors tasked specifically with
addressing white-collar crimes. For instance, conflict theorists have long argued that the
laws surrounding white-collar crime protect the powerful groups that are expected to
abide by them (Chambliss and Seidman 1982). They add that the powerful groups that
pass laws (i.e. legislators) may work closely with, or be influenced by, white-collar
offenders. Further, the laws are sometimes written in a vague manner to encompass a
wide range of activities. For this reason, discretion on behalf of prosecutors becomes
increasingly important.

Numerous factors influence a prosecutor’s decision to proceed with a case. Prosecutors
who wish to file criminal, as opposed to civil, charges face the burden of having to demon-
strate guilt beyond a reasonable doubt, which is a heavier burden of proof than that required
by civil prosecutions (a preponderance of evidence). In addition, the prosecution of white-
collar crime poses particular challenges not present in the prosecution of many other
offenses. In particular, prosecutors tend to spend considerably more time prosecuting
white-collar crime in comparison to other offenses primarily because of the difficulties
inherent in proving such offenses, the presence of well-prepared defense attorneys often
involved in these cases, and the lack of institutional advantages that federal prosecutors
possess in other matters because these cases are more rare.
As an example, compare a federal prosecution of a felon who unlawfully possesses a firearm (a very common federal prosecution) with a healthcare fraud prosecution. In the felon-in-possession case, the prosecutor must only prove that the defendant was a felon, that he or she possessed a gun, and that the gun had traveled in interstate commerce (easily proven based on where the gun was made). Typically, such cases are only presented when agents or officers have arrested the defendant with a gun, leaving very little for the prosecutor to have to prove. In contrast, in a healthcare fraud case, the prosecutor must prove that the defendant engaged in a scheme to defraud a healthcare plan by using false pretenses, that the defendant acted with a specific intent to defraud, that the false pretenses were material, and that the defendant’s activities affected interstate commerce. In effect, the prosecutor must prove what the healthcare defendant thought when they engaged in the alleged criminal behavior. Absent a confession, this is usually done through circumstantial proof, and usually through a variety of sources. The white-collar prosecutor must piece together a puzzle for the jury, a far more challenging task than the typical street crime case.

In using their discretion, prosecutors consider their ability to prove intent, which is particularly difficult in many white-collar cases. This use of discretion occurs with many criminal prosecutions against businesses and business owners in particular, as there is often difficulty in establishing intent given that the harms resulting from the incident may be disguised as the cost of doing business or may be so technical that it may be difficult to translate to a jury. For example, consider certain environmental crimes, which may be premised on technical codes that are often difficult to decipher to the average layperson. In such cases, the defense will often argue that the business or corporate executive defendants were simply trying to run their business. Jurors may struggle with trying to understand the legalese involved in such arguments, which could work for or against the prosecution (Hans 1989).

Additionally, with few exceptions, white-collar crime cases generally take much longer to prosecute than do conventional crime cases. For example, it would not be uncommon for a prosecutor to spend the same amount of time on a single defendant fraud case as another matter involving 30 drug defendants. Consequently, deciding to bring a white-collar case is a decision that will impact and commit somewhat limited resources. Some prosecutor’s values or goals impact the allocation of resources among cases, which influences whether a case will move forward (Friedrichs 2010; Payne 2017).

Prosecutorial discretion with regard to white-collar crimes is also influenced by the potential effects of prosecution on the community (Friedrichs 2010). For instance, prosecutors may be wary of aggressively pursuing a case against a company or corporation that employs a large number of community members out of fear that the dissolution of the company could result in high rates of unemployment. This is not to suggest that prosecutors would ignore infractions or crimes. Instead, they may propose some type of resolution that punishes, yet does not bankrupt, the company or corporation.

As representatives of the government in legal matters, prosecutors are accountable to many different groups. Among the groups are community members and politicians. Both groups may apply pressure to prosecutors to pursue or not pursue cases against particular groups or individuals. They may also influence the level of aggressiveness with which a case is pursued. Pressure on prosecutors from these groups with regard to white-collar crime typically differs from any pressures involved with prosecuting conventional crimes as white-collar offenders are more likely to be powerful individuals with many powerful connections.
The complexities associated with (and expertise needed to try) many white-collar crimes also influence prosecutorial discretion. Prosecutors may often lack familiarity with certain industries or businesses, making the prosecution of actors in such organizations more challenging. For example, consider a securities fraud case involving complex financial instruments. The prosecutor may be unfamiliar with those instruments and have to spend valuable time learning about the specifics of them. Again, this drains away resources from other matters and influences the use of discretion.

In addition, corporate white-collar crime defendants are more likely than those accused of conventional crimes to be able to hire more expensive, more seasoned, and more devoted defense attorneys (Payne 2017). As an example, in cases involving accused corporate executives, certain insurance policies (often referred to as Director and Officer or “D&O” policies) maintained by the same corporation are often used to pay for the services of white-collar defense attorneys. In such a scenario, the corporate executive has less to lose in challenging his or her prosecution than the conventional street crime defendant (e.g. a drug dealer) because the corporate executive faces far less financial pressure in mounting and maintaining such a defense. Prosecutors know this and must account for it, and the other factors discussed above, when deciding which cases to prosecute.

The successful prosecution of white-collar crimes is important for the effective enforcement of such crime, although it has been challenging on a number of fronts. Prosecutors must consider and contend with these and other factors, something that is easier said than done.

Deciding Who and What to Charge

Prosecutors wield tremendous power in the decision of who to charge with crimes. In white-collar cases, this decision is often complicated by a variety of factors. Because white-collar crimes often require that the prosecutor prove the specific intent of the defendant (that is, that the defendant knew what they were doing was corrupt or illegal at the time they performed the alleged criminal act), the prosecutor must carefully examine the actions of a variety of individuals in each white-collar context. For example, consider an accounting fraud. The specific accounting entries are often entered by lower-level accountants, who are supervised by mid-level executives. These accounting entries are then often reviewed by outside auditors. Finally, in most corporate contexts, the Chief Financial Officer, Chief Executive Officer (CEO), and a Board of Directors are ultimately responsible for the activities of the entity. The prosecutor must decide which of these actors is responsible for the criminal entries. In such cases, the putative defendants often point the finger at each other, making the task all the more difficult. A careful review of the evidence and strategic decisions with regards to the investigation (including who to approach first and who to offer better deals to) are the tools prosecutors use to make such decisions.

The possibility that entities, in addition to individuals, may be criminally culpable and may therefore become targets of the investigation and eventual defendants requires additional analysis by the white-collar prosecutor. As is obvious, a prosecutor cannot put a corporation in jail, but a prosecutor’s decision to file charges against an entity can have serious (and sometimes entity-ending) consequences. For example, in March 2002, prosecutors charged Arthur Andersen LLP, one of the five largest accounting firms in the country (with roughly 90,000 employees worldwide), with a single count of obstruction of justice. The charge, and eventual conviction, crippled Anderson and effectively put it out of business, even though, three years later, the Supreme Court reversed the verdict.
Alternatively, prosecutors often face considerable criticism for charging lower-level employees with corporate crimes, while allowing the high-ranking executives in the corporation to remain an ongoing concern. Critics argue that the individuals are merely scapegoats, used by the corporation to shield liability from senior executives and the entity itself. These scapegoats have been referred to as “the Vice President in Charge of Going to Jail” (Apuzzo and Protess 2015).

Plea Bargains and Deferred Prosecution

Prosecutors may engage in plea bargaining once a defendant is charged in a white-collar case. They are not required to do so; however, plea bargaining benefits the prosecutor because it avoids a trial (which requires a significant use of resources) and guarantees a conviction. It benefits the defendant as he or she typically faces less severe consequences (e.g. community corrections as opposed to incarceration) if they choose to plead guilty rather than be convicted at trial. The use of plea bargaining is prevalent with regard to white-collar crime, for instance as federal courts in 2016 used it in:

- 98.1% of embezzlement cases,
- 98.0% of forgery/counterfeiting cases,
- 95.7% of money laundering cases,
- 95.2% of antitrust cases, and
- 94.5% of fraud cases (US Sentencing Commission 2016).

Rates of plea bargaining for all crimes generally hover around 90%.

Plea bargaining in white-collar cases differs in some ways compared to its use with conventional crimes. For starters, prosecutors tend to have fewer tools at their disposal to encourage plea bargaining in white-collar crime cases compared to most other crimes. For example, in the federal system, a bevy of charges carry mandatory minimum prison sentences, including certain drug crimes that mandate a minimum of 10 years in federal prison. This is a significant tool that prosecutors can use to encourage a defendant to plead to a lesser charge and avoid such consequences. In contrast, there are very few white-collar crimes that carry a mandatory minimum, making it more likely that a defendant will take the risk of going to trial.

Similarly, the majority of street criminals who appear in court on serious charges possess a significant criminal history, and this history provides prosecutors with additional tools that assist with plea bargaining. For example, in the federal system, if a defendant who is charged with a violent crime has been convicted of two prior crimes of violence, they may face a minimum of 15 years in federal prison if the prosecutor chooses to charge the case in a certain way. In contrast, white-collar defendants tend to have clean criminal records, and there are few criminal justice penalties that impose increased penalties on white-collar offenders for any reason.

The high quality of representation for some white-collar defendants may also impact plea bargaining. A stronger defense likely means a more rigorous case for the prosecution, thus they may seek to dispose of it through plea bargaining. Alternatively, white-collar offenders – often because of their lack of prior convictions – tend to seek to avoid jail time or minimize its longevity through aggressive plea bargaining.
Another approach used by prosecutors is a “deferred prosecution agreement” (DPA). A DPA allows a defendant – often a corporation – to avoid the filing of criminal charges and a conviction if the defendant agrees to take certain actions and avoids additional criminal behavior for a period of time fixed by the agreement. For example, a pharmaceutical corporation might enter into a DPA with the Department of Justice as a result of improper billing to the federal government. In exchange for no formal charges being filed, the corporation might agree to install additional compliance measures, permit outside inspections by an individual chosen by the Department of Justice, and institute additional education of its employees regarding ethical billing. The agreement might cover a period of five years, and if the company avoids additional criminal activity during this time, the corporation would avoid any issuance of criminal charges at all. Damage to employees and shareholders who did not commit illegal acts may also be mitigated by negotiating DPAs (Christie and Hanna 2006).

DPAs have become increasingly common since 2005, largely due to their many benefits, which include:

- permitting companies to avoid the stigma or other negative effects associated with a criminal trial;
- minimizing the likelihood of collateral damage, such as the loss of jobs for innocent workers when a company is forced to shut down;
- enabling the collection of fines and restitution;
- mandating reforms within the company; and
- permitting close examination of the company’s behavior (Reilly 2015).

There are some scholars, however, who oppose the use of DPAs. In his assessment of the use of deferred prosecution, Law Professor Peter Reilly stated: “this alternative dispute resolution vehicle makes a mockery of the criminal justice system by serving as a disturbing well-spring of unfairness, double standards, and potential abuse of power” (Reilly 2015, p. 307).

Defense

Akin to prosecutors, defense attorneys also face challenges and obstacles in white-collar crime cases. In comparison to traditional street crime, there is often a vast number of records to review and witnesses to prepare for in white-collar cases (Leto et al. 2007). Consequently, these cases are routinely very expensive to defend, and although it is often assumed that white-collar criminals can afford expensive retained counsel, that is not always the case (Weisburd et al. 1991). Ultimately, defending white-collar defendants can be challenging; however, defense attorneys are assisted by various factors unique to many white-collar crime cases.

Difficulties and Assistance in Defending White-Collar Crime Cases

Several issues challenge defense attorneys in white-collar crime cases, challenges that are not always present in the defense of those convicted of conventional crimes. Primary among the challenges is the fact that white-collar crime cases can be time- and resource-intensive and defense attorneys must be prepared to present a clear and organized defense in dealing with sometimes complex issues.
White-collar crime cases can also be difficult to defend due to the fact that prosecutors are often hesitant to bring white-collar cases unless they are solid cases with overwhelming evidence (Lawless 1988). As noted earlier, prosecuting white-collar crime cases often requires extensive resources, and prosecutors would seemingly be hesitant to proceed through a time-intensive case if they believed that case was weak.

Discovery in white-collar crime cases can involve gigabytes of data and tens of thousands of pages of material, including emails, reports, memos, and related items (Henning 1999). Prosecutors are more likely to have trained staff to search the documents, while many defense firms do not have the same luxury. For this reason, defense attorneys often must be skilled in sifting through large allotments of information in search of material they can use to build their defense.

Defense attorneys also face the difficulty of dealing with a different kind of witness in white-collar crime cases than they do in more traditional cases. For instance, witnesses presented by the prosecution in white-collar crime cases are less likely to have criminal backgrounds and thus are seen as more credible. Prosecutors are also more likely to include expert witnesses in white-collar crime cases, which requires defense attorneys to prepare for their expert testimony (Abramowitz and Bohrer 2008).

Despite these difficulties, defense attorneys in white-collar crime cases are assisted in several ways. For instance, their clients often lack a criminal history, and their crimes are typically non-violent in nature. The defendants were often employed at the time of their arrest, and many lead conventional lives. They are generally not viewed the same as conventional criminals (e.g. violent offenders), and for this they may receive the benefit of the doubt from judges at sentencing (Bennett et al. 2017).

Defense attorneys are also assisted by the prosecution having to prove its case in criminal court. The burden is on the prosecution in criminal cases, whereas the defense can simply do as the title suggests: play defense. As noted above, intent is particularly important in white-collar crime cases. Many of the questionable actions committed by defendants may appear as “business as usual,” or the defendant may claim that they were acting on the orders of others. They may claim that they didn't understand the nature or illegality of their actions, and did not intend to commit a crime.

Types of Defenses

To understand the process by which defense attorneys address white-collar crime cases, scholars interviewed public defenders and discovered the three approaches often available to those representing a white-collar defendant (Leto et al. 2007). The three strategies include a:

- process-oriented defense,
- discovery-oriented defense, and
- client-oriented defense.

Those who take a process-oriented strategy tend to be formulaic in nature and will follow the same set of steps regardless of who they are defending or what the case facts and circumstances may be. A more flexible approach is the discovery-oriented strategy. With this approach, the defense attorney reviews all of the court records and discovery available to the defense and then formulates a strategy based on what they find. The third strategy an
attorney might choose is the client-oriented one. Here the attorney seeks guidance from the defendant on how they want to approach a defense (Leto et al. 2007). When a defense attorney chooses an approach, they are not locked into it. Often they may change approaches throughout the case process, and how they approach their counterpart on the other side can range from cooperative to threatening.

There are several types of defenses to white-collar crime regardless of the strategy chosen by the attorney. The most common is the claim that the defendant did not have the criminal intent necessary to constitute his or her actions as a crime (Benson 1985; Heenan et al. 2010). Other defenses often used include that the defendant was acting in good faith and was therefore not aware a crime was being committed (Fischer and Sheppard 2008), or that they acted on advice of their counsel before taking action on something they are now being charged with as criminal (Heenan et al. 2010).

Regardless of the defense chosen, the defense attorney often takes a leading role in attempting to control or prevent the social stigma that may attach to the defendant from being charged with a criminal act (Mann 1985; Payne 2017). White-collar defense attorneys often suggest that the publicity surrounding the alleged crime is already enough punishment for a formally upstanding member of the business community (Benson 1985). Due to the fact that white-collar crime cases are often more complex than conventional crimes, white-collar defense has become a legal specialty and may involve a public relations piece or campaign.

Sentencing White-Collar Criminals

It is often suggested that white-collar criminals receive particularly lenient penalties in relation to conventional criminals and considering the harms white-collar criminals cause. There has been much debate and inconsistency regarding the sentencing of such offenders, although strong arguments could be made that historically, white-collar offenders were treated very leniently. More recently, however, particularly following the white-collar crime scandals around the turn of the twenty-first century, sentencing of white-collar offenders has become more extreme (e.g. Stadler et al. 2013). Sentences for convicted, high-profile, white-collar offenders now more regularly exceed 25 years in prison (Cullen et al. 2009).

The sentences imposed on white-collar offenders in the past decade or so seem to be more closely related to the impacts of the crimes, which have become increasingly harmful in the past several decades. Consider the significance of the following cases:

- Bernie Madoff’s fraud was estimated to involve roughly $65 billion and 4800 victims. It was the largest financial fraud in US history, and resulted in Madoff being sentenced to 150 years in prison in 2009.
- Robert Allen Stanford received 110 years in prison in 2012 for orchestrating a $7 billion investment fraud.
- Russell Wasendorf Sr., former CEO of Peregrine, received a 50-year sentence for defrauding clients of $215 million over 20 years.
- Bernard Ebbers, former Chief Executive of WorldCom, received 25 years in prison for his role in an $11 billion accounting fraud.

These are a few of the many significant penalties that have been imposed for white-collar crimes in the past few decades, although some may argue that these and related penalties
are not severe enough. Regardless, the punishments contrast many earlier penalties when white-collar offenders were treated relatively leniently by the courts (Friedrichs 2010).

Factors Influencing Sentencing

Similar to sentencing conventional criminals, various factors influence the decision-making of sentencing bodies with regard to white-collar criminals. The factors are considered in terms of the legalistic aspects of the offense, the characteristics of the offender, and public perceptions of white-collar crime. It is important to keep in mind that judges and other sentencing bodies have various levels of discretion with regard to sentencing. The legalistic factors include the amount and nature of the loss resulting from the crime, which are particularly powerful influences on sentencing in white-collar cases. Generally, higher or more significant losses result in more punitive sentences (Dervan and Podgor 2016). For example, in federal court, the US Sentencing Guidelines take the loss amount into account when setting the defendant's offense level. As noted below, the Guidelines are currently advisory in nature; however, they continue to provide guidance with regard to sentencing practices. In turn, a higher offense level is likely to increase the defendant's length of sentence.

Class and status have historically influenced sentencing practices, and it is argued that “non-elite” individuals who commit white-collar crimes (i.e., offenders that do not appear to have a higher than average level of status or power) are treated more punitively than their higher-status, white-collar counterparts (Tillman and Pontell 1992). The occupational prestige associated with many white-collar criminals provides them a “status shield” that has historically contributed to them receiving less punitive sentences than street criminals. Other factors that influence sentencing include the federal judicial district in which the white-collar case was heard (Hagan et al. 1980) and the available sanctions that could be used to punish offenders (Waldfogel 1995). Further, white-collar offenders are often able to hire more effective attorneys than street criminals, thus their likelihood of success in the courtroom, including at sentencing, is enhanced (Swigert and Farrell 1977; Tillman and Pontell 1992). The financial resources available to white-collar offenders could also make them more suitable candidates for non-custodial sanctions such as restitution and fines (Schanzenbach and Yaeger 2006).

Historically, judges have been reluctant to impose prison sentences on white-collar offenders. This has occurred for various reasons, including the fact that many white-collar criminals who are convicted have no prior record and have stable jobs and family lives. Further, there is a belief among some that white-collar offenders have suffered enough in response to the embarrassment and loss of employment and/or professional licensing resulting from their conviction (Wheeler et al. 1988). Judges tend to identify with white-collar offenders to a greater extent than they do with other offenders, as they often have similar backgrounds (Tillman and Pontell 1992). This, in turn, can generate more sympathy with regard to the treatment of white-collar offenders in court, including at sentencing hearings.

Public perception of white-collar crime is important in many respects, including the need for the public to be wary of potential victimization, to discourage potential offenders, and to ensure that those who commit such crimes are appropriately punished. With regard to the latter, legislators and other government officials respond to their constituents, and public outcry regarding white-collar crime would seemingly result in more punitive treatment of white-collar offenders. This, in turn, would also seemingly discourage those
who might consider engaging in white-collar crime. Public perception of white-collar crime is also important given the role of the public in serving on juries and electing judges, prosecutors, and legislators.

In reviewing the existing research literature, researchers noted three distinct periods with regard to public concerns for white-collar crime. The initial period covers the first half of the twentieth century, and is recognized as a time of general indifference to such crimes. The second period saw increased attention to white-collar crimes from the 1970s until the early 2000s, as Watergate and the Savings and Loans crises generated additional public consideration. The third period began around the turn of the twenty-first century with a series of high-profile white-collar crimes, including those committed by Enron, WorldCom, and Bernie Madoff. These cases generated an enhanced public awareness of white-collar crime and the associated harms (Cullen et al. 2009).

These and other notable white-collar crime cases were highly covered through the media and other outlets, thus generating much societal interest in such crimes. Public concern for ensuring that those committing white-collar crimes are punished and future crimes are discouraged has increased, which would seemingly impact legislators, law enforcement officials, and others tasked with addressing white-collar crime. The historical public perception of the white-collar offender as a “non-dangerous businessman” has shifted to some extent. White-collar criminals have been increasingly viewed as equally or more culpable or despicable than conventional criminals as their wealth, status, and prestige make their crimes less warranted, and there is a concern with the betrayal of trust (Cullen et al. 2009). This has been particularly true for the high-profile corporate offenders whose crimes have contributed to the loss of multiple millions or billions of dollars. This change in perception could have notable impacts on sentencing practices; however, it has not been a complete change, as many in society still do not recognize the significance of white-collar crime (Michel 2016).

Legislation Impacting the Sentencing of White-Collar Offenders

Various legislative acts have attempted to provide a greater sense of justice for white-collar criminals, particularly with regard to sentencing practices. The Sentencing Reform Act, passed in 1984, was part of the Comprehensive Crime Control Act. The Act created the US Sentencing Commission, which is responsible for developing strategies for promoting fairer sentencing at the federal level through sentencing guidelines. The Federal Sentencing Guidelines, when first adopted in 1987, were mandatory in nature; they were then enhanced following the Enron scandal that began in 2001.

Following the US Supreme Court’s decision in *United States v. Booker* (2005), the Guidelines at the federal level of government were revised to being advisory in nature, which gave judges back the discretion to sentence as they wish. The Court’s decision in *Booker* was the culmination of a series of cases in which the courts considered the constitutionality of the Act. Some argue, as a result, that white-collar sentences post-*Booker* got tougher (Buell 2014; Bourtin 2017). However, some research suggests that (at least for fraud cases) federal judges are predominantly sentencing at the bottom of the Guidelines’ range (Bennett et al. 2017), and other research in the area found that a “significant majority” of white-collar defendants received sentences of imprisonment shorter than those suggested by the Guidelines. It was further noted that the judges who imposed sentences below the Guidelines made them “dramatically shorter” than recommended (Hewitt 2016, p. 1018).
Some states use sentencing guidelines in efforts to provide consistency and fairness in sentencing. An evaluation of Florida’s sentencing guidelines found that white-collar offenders were treated more leniently than other offenders, although the relationship varied by the type of offense, the offender’s social status, and whether the sentencing occurred prior to or after the Enron case. Among other findings, the researchers noted that those who defrauded the government or consumers received more lenient sentences than credit card fraud offenders, and offenders who committed white-collar offenses associated with higher social status (e.g. Medicaid provider fraud) received more lenient treatment than those who committed offenses perceived to be committed by individuals of lower social status (e.g. public assistance fraud). The researchers also noted the impact of the Enron case, as offenders sentenced following that case were more likely to be incarcerated than those sentenced prior (Van Slyke and Bales 2012).

Additional legislative action occurred following the turn of the century when, responding to a series of high-profile acts of white-collar crime, the federal government issued the Sarbanes–Oxley Act of 2002 which was designed to crack down on corporate crime. The Act was signed by President George W. Bush on July 31, 2003, and provided many restrictions on, and greater accountability of, corporate practices. The legislation created new criminal statutes, amended existing criminal statutes, and enhanced the penalties for existing federal offenses.

Among the items included in the Act were severe penalties for altering or destroying vital documents, restrictions on personal loans from companies to top administrators, new regulations to address the conflict of interest among financial analysts and corporations, and extending the time period for victimized investors to file civil charges for fraudulent activity. It also called for improved ethics training, improved corporate governance strategies, and better understanding of internal control efforts (Canada et al. 2008).

The sentences for some white-collar crimes got tougher with the passage of the Sarbanes–Oxley Act. Among the enhanced penalties mentioned above, the Act doubled prison sentences from up to 10 years to up to 20 years for managers who falsified financial statements. The impact of the Sarbanes–Oxley Act and other recent attempts to confront white-collar crime through tougher enforcement practices, including tougher sentences, remains to be seen. Sound empirical assessment of the Act and other enforcement actions is needed.

The Sanctions Used to Address White-Collar Crime

The same sanctions used to address those convicted of conventional crimes have been used to punish and deter white-collar criminals. Probation is recognized as appropriate for many white-collar criminals primarily given that these individuals are recognized as capable of continuing to contribute to society and are not often viewed as violent threats to the public. Probation can also be viewed as too lenient as offenders may remain positioned to commit additional offenses.

Fines are also commonly used to punish white-collar offenders, largely due to the effects they can have on individuals who commit financially motivated crimes. Fines may be controversial as judges might find it challenging to impose an amount that serves as a punishment and/or deterrent (Friedrichs 2010). Other sentences used to enforce white-collar crimes include restitution, community service, occupational disqualification, organizational reform, corporate dissolution, and incarceration.
The relatively small number of white-collar criminals who are sentenced to prison often go to a minimum-security prison, which has fewer restrictions than medium- and maximum-security facilities. While some white-collar offenders (e.g. those who receive very long sentences) do end up in more secure facilities, many white-collar offenders end up in lower-security facilities given that they're less likely to have a criminal history and their crimes are non-violent in nature. They are generally not perceived as a risk or a threat to prison officials. Nevertheless, a prison sentence would seemingly have a significant impact on deterring white-collar crime, given the affluent backgrounds of many white-collar individuals, and the losses they could potentially suffer. White-collar prisoners are perceived to have a more difficult time adjusting to incarceration and serving time in general; however, some research suggests that white-collar inmates are not more likely than other offenders to have difficulties adjusting to prison life, have fewer institutional problems, and generally cope with prison life successfully (Stadler et al. 2013). Further, some research suggests that the threat of prison has little impact on the likelihood on them reoffending after they are caught (Weisburd et al. 1995). It is unclear as to what extent sentencing bodies consider the impacts of imprisonment and other sanctions on those convicted for white-collar crimes.

Suggestions for Future Developments

Many suggestions are offered for future developments with regard to the prosecution, defense, and sentencing of white-collar crime. These areas have undergone dramatic shifts in the past several decades, and finding an appropriate balance of what seems fair and appropriate appears difficult. The following suggestions are not comprehensive of all claims that would assist in further developing these areas; however, each offers much promise. Particularly, it is suggested that technological advancements be more often used in courtroom proceedings, the use of professional jurors be considered, greater cooperative efforts be encouraged, alternatives to incarceration be considered and used, and additional research in the area be conducted.

Enhanced Use of Technology

Attorneys realize that white-collar crime cases are often more resource-intensive than other types of cases. While these cases will likely continue to require more resources in the years ahead, technology could ease the burden on all court personnel (Dixon 2013). Technology has increasingly worked its way into the courts, for instance in the form of teleconferencing. The increased use of teleconferencing would, at the very least, save resources and address logistical problems. Technology can also assist with the presentation of evidence, for instance as visuals may be more effective in the courtroom than verbal communication. The filing of paperwork electronically has already impacted the courts, and should continue to do so. Along these lines, the increased use of technology would enable attorneys to more easily access files and documents in preparing and presenting their cases (Dixon 2013). White-collar crimes are often more complex than other types of crime, thus any assistance in locating information would be of benefit.
Professional Jurors?

The difficulties associated with serving as a juror, particularly in white-collar crime cases, and the inability of jurors to understand some legal terminology and procedure warrants consideration of professional jurors. Instead of using laypersons who might struggle in understanding white-collar crime cases, paid, trained professionals could offer greater consistency in rendering verdicts and sentences. Their familiarity with the courts and laws would make them more dependable and knowledgeable in white-collar crime cases. The pool of professional jurors could include retired judges, lawyers, law professors, or any individuals who complete the requisite training. Such an approach would create jobs, and funding for the positions would come, in part, from what is currently paid to jurors and from those charged with assembling jury pools (Diamond 2011).

Greater Cooperative Efforts and Specialization

As noted above, specialized white-collar crime prosecutorial divisions or units exist at the federal level and in many large cities. Such specialization is warranted given the large numbers of white-collar crime cases they encounter. However, one must consider that not all white-collar crime is a federal offense, and not all of these crimes occur in large cities. So, where does this leave the remaining jurisdictions?

Greater cooperative efforts and/or increased specialization is/are required to address this void. Prosecutors in smaller jurisdictions, including those in rural areas, should not be prompted to forego prosecution of cases that seem out of their comfort zone. Instead, they should be able to draw heavily on additional resources, particularly in the form of skilled prosecutors familiar with white-collar crimes. To be sure, this currently occurs, but greater cooperative efforts are warranted.

In a perhaps more radical realignment, it may be the case that regional units should be established throughout each state, whereby prosecutors familiar with white-collar crime and the laws surrounding it prosecute all cases within the region. It is well-established that white-collar crime differs from conventional crime, thus it may be the case that we need distinct offices that prosecute it.

Related to this, it may be the case that we need “white-collar crime courts,” or the like. Specialized courts have become increasingly popular throughout the United States, for instance as they address drug offenders, domestic violence, veterans’ issues, and guns (Strong et al. 2016). These courts, along the lines of the discussion of professional jurors, would be notably familiar with white-collar crimes, and this would subsequently enhance the adjudication process.

Alternatives to Incarceration

Incarceration may seem inappropriate for white-collar offenders, as some argue that the stigma of criminal conviction and the less violent threat to society posed by white-collar offenders suggest that alternative sanctions be applied. Braithwaite (1985) earlier provided
several alternative solutions to address the difficulties associated with sanctioning white-collar offenders via traditional punishments. In particular, Braithwaite suggested the use of:

- equity fines, through which offending companies are forced to issue and surrender new shares of stock to a victim compensation fund;
- publicity orders, which require offending companies to advertise in the media the nature and extent of their violation(s);
- internal discipline orders, which require the company to internally confront the violation and report their progress to the court;
- preventive orders, which include steps to prevent future violations (e.g. ordering a company to change its standard operating procedures);
- corporate probation, which involves the appointment of an expert to supervise internal reforms designed to address the violation; and
- community service orders, which require the company to perform some relevant service to the community as reparation for its offense(s).

These alternative sanctions provide options for sentencing bodies that enable them to consider alternatives to more traditional sentences.

Additional Research in the Area

There is a notable lack of research regarding all aspects of white-collar crime, including the adjudication process. Additional study is warranted with regard to attorney use of discretion, sentencing practices, and offender considerations with regard to committing white-collar crime. Such research could examine what factors encourage prosecutors to accept cases, plea bargain, file civil as opposed to criminal charges, and recommend particular sentences. Research with regard to defense attorneys could also focus on their use of discretion, for instance with regard to encouraging plea bargains, trial practices, and whether or not to accept cases. Additional research with regard to sentencing could help us better understand whether current policies and legislation are effective (e.g. has the Sarbanes–Oxley Act had an impact?), and put to rest the debate whether or not white-collar offenders are sentenced too harshly or too leniently.

Ultimately, white-collar crime will persist as our society continues to evolve. Technological advancements, enhanced opportunities to commit white-collar crime, and globalism are primary among the contributing factors (see Chapters 28 and 29, this volume). We expect much from our court systems, and require all involved to appropriately address all forms of crime. These and other suggestions for advancement would make their tasks much easier.

References


Introduction

Bernard Ebbers, former Chief Executive Officer (CEO) of WorldCom, was sentenced to 25 years in prison in 2005 for his part in the company’s misleading of investors. This sentence, although seemingly long, compares favorably with the 45-year maximum sentence Kenneth Lay received for his actions while CEO of Enron and the 150-year sentence given to Bernard Madoff in 2008. It presumably would be cold comfort to these men to know that they were not alone, but part of a trend in recent criminal justice responses to white-collar offenders. Stadler et al. suggest that, since 1998, prosecutions of white-collar offenses have risen, the likelihood that sentences will include incarceration has increased, and the length of that sentence will be longer as well (2013, p. 1093). This may reflect a more general hardening of public opinion toward white-collar offenders, particularly in the wake of the financial crisis and various costly investment frauds over the past two decades (Unnever et al. 2008).

As more white-collar offenders enter the criminal justice system, it is appropriate to consider what we know about the impact of punishment on them – the goal of this chapter. Such a goal implies an assumption, however, that white-collar offenders experience punishment differently to their non-white-collar criminal peers. A key question to be borne in mind then is whether white-collar offenders actually do differ in their experiences compared to other offenders and, if so, how. As shall be seen below, this is a subject that has far more frequently been written about than investigated. There is some evidence that white-collar offenders differ from other offenders in their criminal thinking, their adjustment to prison, and their likelihood to employ neutralizations, but more typically it is simply assumed that because of the unique status/demographic characteristics they possess, they must be worthy of special study. This is probably the case. However, given the wide variability in the characteristics of white-collar offenders, it is important to have regard for comparing like with like.

This chapter begins by outlining some of the common themes in the study of white-collar crime that inform an understanding of offenders’ correctional experiences. These
include whether white-collar offenders experience punishment differently to other offenders, what we know about the characteristics of white-collar offenders, and how they typically try to avoid internalizing a criminal identity. Following this, the chapter moves on to discuss different correctional experiences, beginning with imprisonment and including the shock of entry to the prison environment and the subsequent adjustment to prison life. The chapter then outlines the use of community corrections and the way they are received by white-collar offenders as well as some of the important considerations for thinking about white-collar offenders and their desistance from crime. The final section reflects on the role of shaming in punishing white-collar offenders, and more specifically the necessity of shaming in a manner that does not stigmatize. The conclusion highlights the difficulties of drawing firm conclusions about white-collar offenders’ correctional experiences and points to directions future research should consider.

Are White-Collar Offenders Especially Sensitive to Punishment?

A recurring theme in white-collar crime research is the question of whether or not white-collar offenders experience punishment differently to other offenders. Their profile as typically older, better resourced, and living more stable lives than other offenders would – on the surface – suggest that they do (Benson and Kerley 2000). This is frequently the starting point for thinking about whether any differentiation in white-collar offenders’ experience of arrest, processing, and punishment means they suffer disproportionately compared to other offenders. This is a subject that has often been speculated on, with suggestions in favor of white-collar offenders’ “special sensitivity” – the idea that the privileged lives of white-collar offenders make them ill-suited to cope with the rigors of being investigated and punished (Mann et al. 1980). This is particularly the case with a prison sentence, and, as we shall see below, much has been made of the “descent” into an unknown world that white-collar offenders must undertake when they are sentenced to prison.

Those who refute such a special sensitivity argue that these same characteristics mean white-collar offenders are well equipped to deal with being imprisoned (Benson and Cullen 1988). We shall come to the evidence for white-collar offender’s sensitivity to punishment below. For now, it is worth noting that what unites these two different ways of conceptualizing white-collar offenders’ experience of punishment is that they assume white-collar offenders are, by and large, a reasonably homogeneous group.

How Different Are White-Collar Offenders?

Assuming such homogeneity is probably a mistake. As with all things white-collar crime, definitional issues bedevil such discussions, but it is important to review the characteristics of “typical” white-collar offenders to situate assumptions that they are different from other offenders. Drawing upon an offender-based definition (e.g. Sutherland 1940; Shover and Hochstetler 2006) means it is almost axiomatic that white-collar offenders will be experiencing the unknown if caught, processed, convicted, and punished. The high social status and privilege integral to such definitions contrasts sharply with the agonies of criminal justice sanction, not least because it is assumed to be the first time many white-collar offenders experience them. Assumptions about class-based child-rearing practices and how these influence offenders’ attempts to explain their offending may also feature in explanations (Shover and Hunter 2010).
Offense-based definitions (e.g. Edelhertz 1970) are wide-ranging in their coverage and, as such, paint a varied picture of who white-collar offenders are. While some may be “elite” offenders, many more are rather modest in their means and their background (Benson and Kerley 2000; Weisburd et al. 2001). They are more likely than other offenders to be married, employed, and educated to college standard while being less likely to have come from positions of disadvantage (Benson and Kerley 2000), putting them on a rather different footing to other offenders. However, such aggregate portraits hide variability among white-collar offenders, variability that depends on the offense under consideration. For example, while the antitrust offenders in Weisburd et al.’s (2001) data were the advantaged, older, first-time, male offenders of popular mythos, those convicted of mail and wire fraud were far closer to the “average” non-white-collar offender. Benson and Kerley (2000) also demonstrate that the demographic characteristics of white-collar offenders can differ substantially based on offense type. Relevant for discussion of their experience of criminal justice, a meaningful number of those convicted of a white-collar offense have had previous contact with the criminal justice system (either for other white-collar offenses or for “traditional” crimes; Benson and Kerley 2000; Weisburd et al. 2001; Walters and Geyer 2004). This is important because, as shall be seen, much of the existing work on white-collar offending and corrections has assumed that white-collar offenders have little prior experience of criminal justice sanction. If a sizeable minority of white-collar offenders cannot be said to be experiencing criminal justice processing for the first time then the basis on which we assert that they are different from other offenders is somewhat shaky.

Criminal Identities

The final point to bear in mind is that white-collar offenders’ perceptions of their offending may be important. A common finding among white-collar offenders is that they reject any notion that they were complicit in their offending, thus denying any guilt and rejecting the imposition of a criminal identity (Jesilow et al. 1993; Klenowski 2012; Stadler and Benson 2012; Dellaportas 2014). These denials frequently draw upon the techniques of neutralization (Sykes and Matza 1957) – rhetorical devices that serve to minimize the criminality of an act and, potentially, any feelings of guilt. Employing such techniques means that: submitting an uncompetitive bid that falls foul of antitrust legislation is simply “standard business practice” (Benson 1985a, p. 591); defrauding government subsidy programs that provide medical care for the poor becomes about putting patients above adherence to bureaucracy (Jesilow et al. 1993, p. 173); or money taken was merely “borrowed” rather than “stolen” (Klenowski 2012, p. 468). It is the case that white-collar offenders do appear less likely to demonstrate guilt or identify as an offender (Stadler and Benson 2012). Importantly, however, those white-collar offenders who have prior convictions for non-white-collar offenses differ little in their criminal thinking compared with non-white-collar offenders (Walters and Geyer 2004).

How white-collar offenders feel about their offending relates to their experience of corrections for a variety of reasons. Offenders’ perceptions (e.g. of themselves as “not real criminals”) may lead white-collar offenders to distance themselves from other offenders, and thus lose out on informal sources of support. They may also impede interventions designed to help them, where those interventions rely on admittance of guilt to make progress. Attempts to force white-collar offenders to acknowledge their wrongdoing are
unlikely to be well received and may encourage anger and defiance. Equally, interventions may need to be sensitive to how they proceed to avoid reaffirming to offenders that they have done little that is wrong (Benson 1985b).

All of the above suggests that discussion of a generality of experience for white-collar offenders is difficult. Notwithstanding this, what follows is a consideration of what we know so far about white-collar offenders’ experiences of punishment. The discussion below tends toward an offense-based definition of white-collar crime, as this is what most of the studies cited have employed. Accordingly, the term “white-collar offender,” as used below, refers to anyone convicted of a white-collar offense. Exceptions will be noted. What follows draws upon a range of sources of information. Surveys of white-collar offenders allow us to infer their experiences with corrections as a population, albeit superficially. However, a detailed understanding of the experience of punishment is probably best accessed via qualitative work, including interviews (e.g. Benson 1985a; Button et al. 2017), focus groups (e.g. Dellaportas 2014), and autobiographical writing (e.g. Shover and Hochstetler 2006; Hunter 2015). Later sections assess the impact of community corrections and also the role of shaming in punishing white-collar offenders. We begin, however, by considering their experience of incarceration.

**Incarceration**

Sensationalist and tired news coverage about “club fed” institutions to the contrary, imprisonment represents a difficult time for prisoners. The problems of adjusting to loss of freedom, an increased risk of suffering violence, and having to deal with “empty time” are significant (Sykes 1958). Psychological adjustment to prison life is hard, and many prisoners may be ill equipped to cope with such pressures (Blevins et al. 2010).

It is in considering their incarceration that discussions about white-collar offenders’ special sensitivity to punishment come to the fore. The forced association with those they have little in common with and cannot relate to is thought likely to be particularly difficult. Shover and Hochstetler put it in particularly colorful terms and, although they draw upon an offender-based definition, such a contrast might equally be made for those convicted of white-collar offenses:

> For the first time in their lives [white-collar offenders] are processed and surrounded by those who do the dirty and low-paying work of the world. Jail brings them into close contact with men who are openly flatulent, whose fingers are indelibly stained from years of cigarette smoking, who seem incapable of omitting “fuck” from the conversation or whose bodies show unusual scars or tattoos. (2006, p. 137)

Counter to the suggestion that incarceration is particularly difficult for white-collar offenders, however, is that white-collar offenders are well placed to cope with the rigors of prison because their backgrounds are rather different from many of those they share their time with while incarcerated. Although the relationships are difficult to identify for white-collar offenders specifically, we know that – among prisoners generally – positive adjustment to incarceration has been associated with: age (MacKenzie 1987; Boothby and Durham 1999; Cunningham and Sorensen 2007), perceived control over environment (Reitzel and Harju 2000), level of education (Porporino and Zamble 1984), the presence of social support networks (Jiang and Winfree 2006), and participation in prison life (Hochstetler and Delisi
The Correctional Experiences of White-Collar Offenders

If these factors assist adjustment to incarceration, white-collar offenders may be expected to cope reasonably well with imprisonment, given what we know about their average greater age, education, and relationship status (Benson and Kerley 2000; Weisburd et al. 2001). Further, as Benson and Cullen (1988) suggest, white-collar offenders may have knowledge of bureaucracy – gained from years of work – that serves them well in a prison environment. This, plus their reading and writing skills, may put them in a better position than most prisoners to engage with the systems that are a necessary part of the prison bureaucracy (Hunter 2015), articulate their position on various matters, and therefore gain some small measure of satisfaction from the system.

For some time, such debates were largely theoretical. More recently, however, attempts have been made to measure whether white-collar offenders do indeed have a special sensitivity to incarceration. Stadler’s et al. (2013) analysis of 78 incarcerated white-collar offenders compared with 288 non-white-collar offenders incarcerated at the same two institutions suggests that white-collar offenders were no more likely to suffer from general difficulties in adjusting to prison life. They were also more likely to have made friends and less likely to report experiencing difficulties compared to other prisoners, indicating they actually coped better with some aspects of incarceration. Similarly, Crank and Payne (2015) focused on 6510 white-collar and non-white-collar prisoners’ psychological and behavioral adjustment to jail. Crank and Payne concluded that white-collar offenders were no more likely to have mental health issues, nor to have been cited for jail misconduct, than their non-white-collar peers.

As for their perceptions of imprisonment, white-collar offenders do not appear to differ from other offenders in rating the punitiveness of prison compared to alternative punishments (May and Payne 2018). However, the same analysis suggests that white-collar offenders and property offenders differ in identifying the aims of prison; the former identified prison as having retributive and rehabilitative goals, while the latter emphasized the deterrent and incapacitative effect of prison (May and Payne 2018, p. 238). This focus on rehabilitation suggests that white-collar offenders may be more likely to take advantage of opportunities afforded by prison programs that aim to help them resettle, but also that they may be more likely to resent their imprisonment if these programs are not present or are perceived as inadequate.

While there appears to be some difference between white-collar and non-white-collar offenders’ experiences of imprisonment, we are not in much of a position to say how these groups arrive at such outcomes. One question the above leaves outstanding then is how white-collar offenders adjust to prison, compared to other prisoners. Qualitative accounts focus on several different aspects of the prison experience for white-collar offenders, putting us in a good position to understand how they actually experience the impact of imprisonment. The most regular themes to emerge concern initial prison experiences and adjustment to prison life.

Entering Prison

One of the more enduring features of white-collar offenders’ accounts is initial entry to the prison environment (Breed 1979; Hunter 2015). Often recounted in exacting detail by white-collar offenders is the way prisons process inmates, including the issuing of standard prison attire, removal of personal possessions, and the awarding of a prison identity designation. Prison entry procedures have long been identified with attempts to remove a sense of individual identity (Goffman 1968), but it is perhaps here that we see the greatest expression
of the difference between the lives white-collar offenders had and the characteristics of their new environment. These are an almost universal part of autobiographical writing by white-collar offenders (and a narrative often recounted in interviews as well), inviting the audience to share the horror of entering a world unlike any that they have encountered before. One white-collar offender recounts being given a prison identity card complete with bar code:

The ultimate stroke of dehumanisation! I was as significant as a box of corn flakes. Everything there was to know about me could be viewed on a computer screen by scanning my bar code. (Christensen 2005, p. 32)

Also part of such accounts is first impressions of the prison environment that emphasize the menace of the offender’s new surroundings. Former politician Jonathan Aitken recalls his first night in prison with other inmates chanting at him:

… they would then ask a question: “What shall we do to effing Aitken [or effing Aitken’s private parts] tomorrow?” From the other three sides of the exercise yard came a thunder of obscene responses detailing in explicit terms what type of (expletive deleted) activity they would inflict on this or that (expletive deleted) organ of my body in order to demonstrate what they thought of (expletive deleted) Tory Cabinet ministers. (2000, p. 30)

Implicit in such accounts then is the contrast between what white-collar offenders “had” and where they are now. It is perhaps easiest to see here that the lives of some white-collar offenders make the experience of incarceration particularly difficult. A further difficulty for prisoners (generally) concerns the nature of time in prison. It is difficult to escape the feeling that time is wasted and futureless (Meisenhelder 1985). All prisoners are keenly aware that they miss important events while in prison (Shover 1985); the passing of family members’ birthdays and other milestones serve as reminders that the world carries on without them. Although there is little evidence about how white-collar offenders experience day-to-day prison life, there is no reason to think they are immune to such concerns. This highlights the notion that incarceration – particularly for the first time – is likely to be a difficult experience for anyone, and that some of this difficulty comes from the particular nature of incarceration. When the concern is an existential one, such as that concerned with the passage of time and the reflection on one's life that this encourages, one's background may not make much of a difference – for good or ill – in how prison is experienced.

Adjusting to Prison

Despite the above experiences, and as research more broadly suggests, white-collar offenders do adjust to prison life. They seem willing to make friends (Stadler et al. 2013) and adjust well to the rigors of incarceration (Crank and Payne 2015), some even viewing the enforced inactivity as a blessing following the stress of concealing their offending and the subsequent criminal investigation (Hunter 2015). They may also be in possession of skills that make them valuable within prison cultures. Some white-collar offenders have reported making use of previous legal training to set themselves up as “prison lawyers,” providing legal advice to their incarcerated peers (Christensen 2005, p. 101). Others may draw upon entrepreneurial backgrounds to teach business classes (Bond 2003, p. 298). Some of the white-collar offenders Hunter (2015) considered coped with their imprisonment by relating the power-
lessness they felt to previous times in their lives when they had lacked agency (when starting new jobs for example). Others made sense of prison by drawing links between the bureaucracy that governs prison, and their working lives, as Benson and Cullen (1988) suggest they might. As former politician Jeb Magruder discovered:

I already knew how the system worked at the top; now I was finding out how it worked at the bottom. There really isn't much difference. In Washington and in the business world, if you want to get things done you have to find out who makes the wheels turn, and it isn't always the person whose name is lettered on the door … In prison it was the same. (1978, p. 129)

White-collar offenders may be helped with their adjustment by finding that they are well regarded within prison. Such was the case for Dhami's (2007) participants, who felt that their high status and the assumption that they had significant financial resources garnered them respect from other prisoners and from prison staff, although this advantage did not exist in maximum-security facilities.

The above studies suggest that the special sensitivity of white-collar offenders to incarceration may be overstated, albeit relying on a rather modest empirical base. However, while white-collar offenders may exhibit no special sensitivity to prison, such is not the same as concluding that they find incarceration easy. Many of the pains of imprisonment would appear to have little respect for demographic characteristics, and are accrued from incarceration per se. In keeping with suggestions made by those who refute the special sensitivity hypothesis (Benson and Cullen 1988), the way some white-collar offenders adjust to the difficulties of imprisonment is by drawing upon their pasts. Employing one's specific personal capital to cope with adverse situations is unlikely to be specific to white-collar offenders, however. Perhaps the difference between them and other offenders is in the specific strategies they employ more so than in their general approach. For example, most prisoners will not have the legal or business experience to offer the advice Christensen or Bond did. Nor may they be as familiar with bureaucracy as Magruder.

Community Corrections

Most white-collar offenders are likely to be subject to some form of supervision in the community at some point, a term used here to describe all sanction efforts that do not involve or are in addition to incarceration. Most commonly this will involve some element of supervision by probation services. As with imprisonment, there may be assumptions made about how necessary probation supervision is for white-collar offenders. In this instance the concern may be that the traditional purpose of community supervision of offenders may be less relevant for those convicted of white-collar offenses because they are already well integrated into the community. This perception even extends to probation officers themselves (Benson 1985b).

Mason (2007) has argued that probation services in the United States have moved in recent years from a treatment model that gave priority to assisting offenders to one more concerned with risk management (see also Robinson and Ugwudike 2012, who make a similar observation for England and Wales). This punitive turn may be experienced negatively by white-collar offenders; such processes are likely to deny probationers agency, with probation officers less concerned with helping offenders to resettle (Mason 2007). As noted above, white-collar offenders may be unlikely to view themselves as offenders, denying any
wrongdoing or any harm caused. Where this is the case, they may be unlikely to view attempts to monitor their activities as legitimate, instead experiencing them as intrusive and unwarranted invasions of their personal lives (Mason 2007), and therefore as stigmatizing (Payne 2003). As is the case with imprisonment, white-collar offenders may be able to draw on their experiences dealing with bureaucracy to ease their time on probation. As one of Mason's participants reported:

I thought probation was horrible. But … I knew what had to be done and understood that to get by you had to follow their procedures by the book. If they want some information or want you to report then get it done and have your ducks in a row. You can't fool around with government and their forms. (2007, p. 30)

Equally problematic, however, may be the perception from probation officers that they are not able to help white-collar offenders because there is little they need from supervision. Where those supervising white-collar offenders see themselves as “going through the motions,” they may reinforce an identity that avoids acknowledging wrongdoing (Benson 1985b). And of course, white-collar offenders can claim that they need little support, viewing their supervisors as unhelpful (Button et al. 2017).

White-Collar Offenders After Punishment

The experience of punishment is likely to last beyond any formal sentence. As with most offenders, white-collar offenders are likely to find themselves in a position of needing to reestablish their lives once punishment has ended. The specifics of this are likely to differ, but we might broadly suggest that this involves some sort of financial independence and acceptance back into the wider community. Many white-collar offenders are pessimistic about their ability to manage this, however, fearing that a conviction is too much of an obstacle to allow them to successfully resettle (Hunter 2010; Button et al. 2017). We know that white-collar offenders are likely to desist from crime (as, indeed, are most offenders) following punishment, but that this tends to be later in life than other offenders and complements the fact that their age of first offense is likely to be significantly later as well (Benson and Kerley 2000; Weisburd et al. 2001). This notwithstanding, the concerns they have are not trivial and can be wide ranging. Practical difficulties can include having to sell the house one can no longer afford, opening a bank account, and obtaining a mortgage (Button et al. 2017). More generally, they may face difficulty finding employment, having to deal with being shamed, and concerns about the loss of status that accompanies conviction and the perceived decline in respectability (Button et al. 2017).

Finding Employment

Finding work is the concern that seems to loom largest for white-collar offenders. A recurrent theme in their accounts is the importance of employment. Despite (or perhaps because of) this they seem to stand a better chance than other offenders of returning to stable employment after punishment (Kerley and Copes 2004). The probable explanation for this is that white-collar offenders are in possession of skills acquired through previous employment that enable them to find work, criminal conviction notwithstanding. The
average older age of white-collar offenders at time of first offense (Weisburd et al. 2001) means they have had time to develop this resiliency compared to other offenders, and may also explain Kerley and Copes’ (2004) observation that the advantage white-collar offenders enjoy in this regard disappears for those aged 24 or under at time of first offense or first period of incarceration.

As above, however, statistical analyses obscure the experiences of white-collar offenders attempting to secure employment. Qualitative accounts suggest that, whether or not they are ultimately successful, white-collar offenders experience anxiety over what they will do after they have been punished. They worry about the stigma they will face (Button et al. 2017) and the opportunities that will be denied them (Hunter 2009; Dellaportas 2014), both impacting upon their sense of who they are. White-collar offenders are less likely to be invested in a criminal identity (Stadler and Benson 2012). The suggestion that follows from this is that their identities are centered around employment and family routines and it is therefore regaining these that is of primary importance. Implicit here is the assertion that not just any employment will do. It should be employment that is broadly in keeping with what one did before, not least in terms of the income it garners. It is necessary to consider, therefore, whether the simple fact of employment is enough to suggest that offenders have – at least in their own eyes – resettled successfully. There are questions about what constitutes successful resettlement and whether any employment is sufficient to signal this, or whether only employment comparable with that which was previously held “counts.”

Once again, there is some room for nuance when different types of white-collar offender are considered. Many types of offense associated with white-collar crime feature offenders who are members of professional bodies (e.g. accountants or lawyers). Where this is the case then returning to membership of and employment under a professional body seems unlikely for offenders, especially when their employment was the context for their offending and where dishonesty is a feature of the offense (as it frequently is in white-collar crime; Breed 1979; Benson 1984; Button et al. 2017). We might also include those in public office as unlikely to make it back following conviction. In the United States, for example, although there is little consistency across state jurisdictions, most state bar associations are likely to at least investigate any lawyer who faces a felony conviction. Such investigations carry with them the possibility of suspension of license or disbarment (Burge 2017). Although most states permit those disbarred from legal practice to apply for reinstatement, American Bar Association (ABA) statistics suggest the chances of successfully doing so vary widely by state (ABA 2016). Similar risks exist for those who hold licenses to practice medicine. Such obstacles have implications for white-collar offenders’ attempts to reestablish themselves. Those white-collar offenders who do not rely on a professional body’s acceptance would seem to be in a stronger position, at least in this respect, while those who can rely on professional networks built up prior to their conviction may be able to draw upon these to help reestablish a career (Button et al. 2017).

Shaming White-Collar Offenders

An important area in corrections research regards the shaming that is inherent in efforts to punish offenders. This work stems largely from Braithwaite’s (1989) theory of reintegrative shaming, which argues that punishment delivered in such a way that the offender is reintegrated back into society is more effective at eliciting future compliance with the law. Such approaches involve communicating the undesirability of the act, but not the actor, leaving the offender a means of accepting wrongdoing and pledging not to repeat it. The converse
to such a process involves the stigmatization of the offender which, at its worst, may leave them defiant and angry in the face of an “unjust” system, with an increased likelihood of offending the result, as the offender’s stake in conformity is weakened (Ahmed et al. 2001). The key point here then is that any communication of wrongdoing is a means of eliciting shame. Formal criminal justice processes that follow arrest, investigation, and conviction are important, but so too are extra-juridical proceedings such as how conviction is reacted to by the offender’s community. Reintegrative shaming involves the community indicating that the offender is to be allowed back in, signifying that they are not an irredeemably bad person (Braithwaite 1989).

Also important for the process of shaming is how feelings of shame are dealt with by the offender. Where offenders acknowledge shame they are more likely to develop empathy for victims and more likely to accept their wrongdoing (Ahmed et al. 2001). Those who place blame for the offense externally to themselves or who deny victimization took place are more likely to respond negatively to attempts to communicate disapproval, often displaying anger and humiliation. Reintegrative shaming approaches are concerned with eliciting shame acknowledgement, while punishments that stigmatize reduce the chance of such acknowledgement happening (Ahmed et al. 2001).

The impact of shaming reintegratively has been investigated in a variety of contexts (Makkai and Braithwaite 1994; Hay 2001; Tittle et al. 2003; Zhang and Zhang 2004; Tyler et al. 2007). While support for the theory that reintegrative shaming is associated with a decreased chance of recidivism (compared to stigmatization) is mixed, white-collar offenders might be expected to be particularly open to approaches that are reintegrative in nature. As Levi (2002) notes, they are more likely to have a stake in society, including a reference group they respect and who can communicate wrongdoing in an inclusive rather than stigmatizing way. White-collar offenders may also benefit from public perception of their offenses as not very serious (Gabbay 2006), which might create a more permissive environment within which they can acknowledge their wrongdoing.

One of the concerns of the reintegrative shaming approach is that many traditional sanctions applied to offenders are stigmatizing in nature. Imprisonment, for example, expresses wrongdoing in a condemnatory fashion (Ahmed et al. 2001). The process of dealing with suspected offenders can also be exclusionary and hence stigmatizing. Adversarial systems of criminal justice may appear to presume guilt or limit an accused’s ability to represent herself, for example. This is frequently how white-collar offenders experience criminal justice. They report pain and anger at criminal justice systems that are perceived as out to get them (Benson 1985a, b; Dellaportas 2014), frustration at not being able to inform media portrayals of them and their offenses (Benson 1993), and the humiliation of imprisonment experiences that deny them agency (Dellaportas 2014). Such stigmatization potentially attenuates their stake in society, inhibiting the process by which they might acknowledge shame. Compounding this are the extra-juridical sanctions white-collar offenders may be subject to. As was noted above, accompanying prosecution for some white-collar offenders is the loss of their employment or – where access to such employment is regulated – they may be barred entry for a period (possibly forever; Dellaportas 2014; Button et al. 2017). Such a punishment represents a form of stigmatization, with the professional group acting as a community that communicates its disapproval of the offender in a powerful way (Dellaportas 2014), denying a return to previously valued roles and excluding them.

We can say with some confidence then, that white-collar offenders feel stigmatized by many of their correctional experiences. What we are less certain of is how this relates to repeat offending (a key part of shaming theory). However, in a series of articles Murphy and
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her colleagues (2008; also Murphy and Harris 2007; Murphy and Helmer 2013) explore the relationship between shame and self-reported offending for tax offenders. Those who identified their punishment as stigmatizing were more likely to report having offended since their initial punishment (Murphy and Harris 2007), with such stigmatization being related to feelings of resentment (Murphy 2008). Murphy and Helmer (2013) demonstrate that forgiveness from loved ones and the state (in the form of state agencies) can be an important mediator of shame, and therefore of reoffending. Specifically, when offenders felt that state agencies and loved ones had forgiven their transgressions, they were less likely to reoffend.

The criminal identities held (or not) by white-collar offenders are also likely to be associated with how they perceive their punishment. Reintegrative shaming practices rely on the offender acknowledging their shame at an offense, with the prerequisite for this being that offenders accept their guilt. As noted above, such expectations may be problematic for white-collar offenders, who have frequently been observed as denying wrongdoing, possibly to neutralize any shame that might be felt at their offending (Benson 1985a). This creates some difficulties for attempts to shame them in a fashion that is reintegrative because it precludes the opportunity for demonstrating remorse and for having that remorse acknowledged. It may make it more likely that any attempt to punish white-collar offenders is perceived as stigmatizing.

White-Collar Offenders’ Status Concerns

Implicit to discussions of employment and shaming is the concern offenders have with their status. There is considerable evidence that white-collar offenders believe the eyes of the world are on them as they attempt to resettle (Benson 1993; Dhami 2007; Hunter 2009). This potentially raises a difficult issue for white-collar offenders in being seen to have reformed. There is a performative aspect to successful adjustment to desistance from crime, such that an important part of desisting is not only making the transition to non-offender, but having others acknowledge that this transition has taken place. Relevant to this performance is what Giordano et al. (2002, p. 1013) identify as the “respectability package” of employment and marriage and their importance for desistance from crime. Quite apart from its social control potential, what possession of such a respectability package can do is demonstrate that the offender has changed, part of general commitments that signal that one is a different person. One challenge facing white-collar offenders in this regard, however, is that, as they are frequently in possession of such a respectability package at the time of their offense, little about maintaining it suggests that change has taken place. Society may be more likely to acknowledge desistance efforts if it appears the offender has come a long way from who they were when they offended, but white-collar offenders frequently lack the ability to do this (Maruna 2012). This might explain why sometimes rather large and effusive demonstrations that change has taken place are employed by white-collar offenders. Religious conversion narratives are sometimes employed (Hunter 2015); so too are accounts of white-collar offenders taking on a professional-ex identity.

Professional-Ex Roles

Much of the discussion in this chapter has assumed white-collar offenders wish to put as much distance between themselves and their conviction as possible, trying to reestablish themselves and leave the stigma of their offense far behind. However, for some, the offender
label that has been applied to them may be perceived as such an impediment to moving on that they determine to use it to fashion a life after conviction. This phenomenon has its parallels with offenders more generally – for example, when those who have recovered from substance misuse then seek and gain work as substance misuse counselors (Brown 1991). Such has been termed becoming a “professional-ex” (Brown 1991), where a new identity is forged that incorporates key aspects of who one was.

Some white-collar offenders may attempt to operate in a “poacher turned gamekeeper” role, using their knowledge of offending to identify transgressions by others. Frank Abagnale, subject of the book and film *Catch Me If You Can*, and Barry Minkow (2005) exemplify this pathway out of crime (although Minkow was subsequently convicted of further fraud, a rather rare case of a poacher turned gamekeeper turned poacher!). Other white-collar offenders attempt to trade on the knowledge they have of the criminal justice system by positioning themselves as holding knowledge that might help other offenders navigate arrest, trial, and punishment. This is often expressed through forming or joining “prison consultancy” companies that offer to help offenders prepare for prison (*White Collar Advice* and *Prison Consultants* being just two examples), although at least one former white-collar offender has written a “guide book” for those sentenced to prison, including: a glossary of prison slang, directives for preparing for imprisonment, and advice for navigating prisoner relationships (Tayoun 2002).

Regardless, the key part of such strategies is that they alleviate difficult decisions about how much of a deviant past to disclose. Indeed, former deviance becomes a prerequisite for performing the new role, turning a presumptive disadvantage into a boon. Many offenders struggle with knowing how much of their (criminal) pasts to disclose. The advantage of adopting a professional-ex identity then is that it permits an option for information disclosure that allows for honesty in talking about one’s past, circumventing concerns about how much to tell people about offending. Hunter (2015) and Hunter and Farrall (2015) provide a more detailed picture of the advantages professional-ex roles have for white-collar offenders who are trying to resettle.

**Punishing Corporate Offenders**

In this chapter I have focused on the experiences of individual – rather than corporate – offenders. This is because it is difficult to talk about how a corporation “experiences” punishment. Corporations cannot always be punished in the same way as individuals; most obviously, they cannot be sent to prison. They can, however, be subject to fines and other sanctions that may limit their ability to trade. In this sense then it is useful to consider briefly how corporations respond to punishment. The body of work that has considered this is not extensive, but much of it is grounded in or aims to test a deterrence-based rationale for punishing corporations, i.e. that if punishment is felt to be particularly costly relative to the benefits of the offense then it will reduce the chance of further offending. However, Simpson et al.’s (2014) meta-analysis suggests that the evidence does not support the deterrent impact of punitive sanctions against corporations. The same data suggest that corporations may be best deterred by multiple approaches to sanction them, while regulatory policy is also a key determinant of whether a corporation can be deterred from further offending by state intervention (Schell-Busey et al. 2016).

Simpson et al. (2014) hypothesize that too much regulatory action may encourage defiance – and thus further offending – as corporations may feel unfairly targeted by
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regulatory efforts. It therefore also makes sense to think about corporate offenders’ experiences within a shaming framework (Braithwaite and Drahos 2002). Regulatory action that might be considered reintegrative in nature rather than stigmatizing has been associated with increased compliance with the law among organizations (Makkai and Braithwaite 1994). As with much that concerns corporate crime, however, solid conclusions are difficult to come by. As Simpson et al. (2014) and Schell-Busey et al. (2016) note, different studies that purport to study corporate crime can vary widely in the robustness of their methodology, the unit of analysis (e.g. company, industry), and the way they define corporate crime (on the difficulties of such, see Rorie et al. 2017). There is thus still far more we need to know about how corporations react to attempts to curb their behavior.

Conclusions

This chapter has sought not only to outline the way white-collar offenders experience corrections but also – perhaps somewhat paradoxically – to point out the difficulties of drawing firm conclusions from what we do know about their experiences. As the research cited above implies, information on white-collar offenders’ experiences of corrections is not extensive, and so several directions for future research are suggested by the above. There are many suggestions that could be made based on the current work, but the focus here is on the broad questions that need answering to advance our understanding.

The easiest recommendation to make, and therefore perhaps the best starting point, is that we need to know more about how white-collar offenders experience punishment. The above studies are useful, but the field is rather reliant on a few oft-cited investigations. As one example, only recently has the subject of white-collar offenders’ special sensitivity been empirically investigated, despite its assumptions (and counter-assumptions) being over 30 years old. Further, much of what we do know is based on qualitative work (e.g. employing interviews or autobiographical accounts). This means that, while we have some rich data on offenders’ responses to particular situations, we are not yet at a point where we can begin to speak to anything approaching a more general punishment experience for white-collar offenders. Such an understanding could be advanced through survey work with white-collar offenders, mirroring approaches with offenders more generally (e.g. Hopkins and Brunton-Smith 2014). A focus on different jurisdictions would be useful here as well. The majority of the existing work focuses on the United States.

In furthering our knowledge, we should be sensitive to the range of characteristics white-collar offenders may possess. Given that we have evidence that offenders can vary by offense, we should think about their punishment experiences in ways that reflect this. One possibility is to focus on offenders grouped by offense and/or whether they have been convicted previously. Others have identified different desistance trajectories based loosely on offending type (Farrall et al. 2014), and grouping white-collar offenders in a similar way might prove useful. However we group them, the goal should be to avoid assuming all white-collar offenders are the same.

The content of this chapter also reflects the balance of current scholarship on white-collar offenders in that what little empirical work there is focuses heavily on imprisonment. We thus know extremely little about how white-collar offenders experience non-carceral punishment. It is while under supervision in the community that offenders begin to take the steps that they hope will reestablish them and overcome the obstacles that may stand in their way. This, as well as the role of probation officers, makes their supervision a formative
time, in which their (non-criminal) identities may be challenged and the perceived legitimacy of criminal justice systems will come to the fore. Beyond what is cited above, however, we know virtually nothing about how these processes play out. We know a little about the shame and stigma white-collar offenders perceive, but we do not know much about how these shape their post-sentence decision-making and attempts to rebuild their lives, particularly in a time when public attitudes toward white-collar offending may be hardening. Future (ideally, longitudinal) work should aim to trace the challenges white-collar offenders face when under community supervision and the role such supervision plays in their lives post-conviction.

Those convicted of white-collar offenses may have no special claim to suffer at the hands of criminal justice systems, but we do not actually know in any detail how their experiences might differ from those of other offenders. Let this be a further point for future research then. More comparative work between white-collar offenders and other offenders would be helpful to highlight the grounds on which different groups of offenders would benefit from scrutiny. Such an investigation should be sensitive to the backgrounds of white-collar offenders, given that these are the grounds for claiming they may represent a special case. Differences between different white-collar offender groups – and between them and other offenders – should be made more explicit.

Policymakers would benefit from understanding how they might best tailor approaches to white-collar offenders and the special demands such offenders present in order that punishment might attempt to be desistance focused. The role of shaming and the necessity of challenging non-criminal identities are important here, and greater knowledge of how white-collar offenders might be better shamed reintegratively would assist those who aim to help them make the transition into and (hopefully) out of the criminal justice system.

There is therefore wide scope for research into white-collar offenders’ correctional experiences. As we pursue this, however, we should bear in mind that while we should be sensitive to difference of experience, we should not assume it. Punishment is a difficult, potentially stigmatizing process for all offenders.

References


Punishing Corporations
Mark A. Cohen

Corporations have neither bodies to be punished, nor souls to be condemned; they therefore do as they like.

Lord Chancellor Edward Thurlow

This chapter explores the role of government-imposed punishment for corporate wrongdoing. Some legal scholars argue that individuals should be punished – not corporations. After all, corporations do not commit crimes – people do. Yet, a vast array of criminal laws apply directly to corporations. Why? While corporations are not “persons” with souls, they often take on a culture that looks much like the moral character of individuals. Corporations often have greater assets than individual wrongdoers that might be used to compensate victims. Furthermore, they might be incentivized to adopt internal policies and procedures that discourage employees from committing crimes. Regardless of the rationale, punishing corporations for the wrongdoing of its owners, managers, and/or employees has taken on an important role in the United States and elsewhere. This chapter focuses primarily on the role of corporate criminal punishment. However, just as the definition of corporate crime in the criminology literature is not limited to offenses that are punished through criminal procedures, corporations that commit identical offenses may be punished through separate legal institutions, i.e. one might be criminally prosecuted while another punished by regulatory agencies and/or administrative bodies. In fact, sometimes corporations – and individuals within those corporations – are punished by more than one such body for the same underlying offense. Thus, while this chapter focuses on corporate criminal punishment, it also examines the relationship between criminal, civil, and administrative remedies – as well as individual criminal punishment.

To understand how corporate punishment might be effectively used for governmental policy purposes, I start with background on the purpose of the criminal law and how it is applied to corporations in the United States. Next, I consider the economic theory of criminal punishment including questions such as: What is the purpose of the criminal law? How are sanctions to be determined from an optimal penalty framework? When should
firms versus individuals be held criminally liable for corporate wrongdoing? Finally, I examine what little empirical evidence exists on the use of criminal sanctions for corporate wrongdoing.

**Background on Corporate Criminal Law**

There is no one legal definition of crime. Instead, statutes generally define specific behavior deemed to be criminal. Nevertheless, several characteristics of crimes distinguish them from torts or regulatory violations. In addition to causing harm (to individuals or society at large), the distinguishing characteristic of crime, many legal scholars argue, is “moral culpability.” Thus, while an accident might cause substantial harm, it is generally not considered a crime unless there is mens rea or criminal intent. A harmful action caused through negligence or ignorance is not generally considered criminal even if the consequences are dire. An exception might be made for “willful ignorance” if an individual should have known or deliberately attempted to shield herself from knowledge of a crime.

This view of crime has largely been discarded in the case of corporate crimes, where strict liability offenses are common. In addition, under US law, virtually any illegal activity by an agent or employee of a corporation that takes place within the scope of their work can subject that company to criminal liability. This is true even if an employee acts against the wishes or direct instructions of company officials. This doctrine is known as “vicarious liability.” Thus, in the case of corporate crime, no criminal intent is generally required. Finally, an act does not necessarily have to be harmful for it to be criminal. Unlike torts, where there must be an injured party, crimes do not have to cause harm. Thus, attempted crimes and other illegal activities that never succeed are still criminal offenses. Finally, unlike torts, corporate crime might harm “society” at large, not any one individual.

Since virtually all corporate crimes can also be handled through civil, criminal, or administrative actions, the decision about which mechanism(s) to use is largely at the discretion of both regulatory agencies and criminal prosecutors. Oftentimes, regulatory agencies establish internal policies and guidelines to determine when they refer cases to prosecutors. For example, before referring to criminal prosecutors, Securities and Exchange Commission (SEC) investigators must obtain permission from supervisory personnel and “may consider, among other things, the egregiousness of the conduct, whether recidivism is a factor, and whether the involvement of criminal authorities will provide additional meaningful protection to investors” (SEC 2017, p. 91). Similarly, US Department of Justice (2017a, pp. 9–47, 120) policy indicates it may “decline” to prosecute organizations for Foreign Corrupt Practices Act violations when the company “would have been prosecuted or criminally resolved except for the company’s voluntary disclosure, full cooperation, remediation, and payment of disgorgement, forfeiture, and/or restitution.”

**Legal Theories of Corporate Punishment**

Why should the criminal law be used against corporations to enforce laws that can be enforced by regulatory agencies? The traditional reasons for imposing criminal sanctions on convicted offenders are summarized in the four goals of punishment: deterrence,
incapacitation, rehabilitation, and retribution, which have also been codified in federal criminal statutes (see 18 US Code § 3553 – Imposition of a sentence). Some have argued that a fifth reason to criminally punish behavior is to communicate moral condemnation for an act and thus to affect individual preferences about what is socially acceptable. All of these rationales are examined below and illustrated with a hypothetical seafood company charged with mislabeling its product “lobster” when in reality it is crawfish. Assume throughout this example that the corporate manager knows about the mislabeling and the company profits by $10 000.

Deterrence

The first possible rationale for corporate criminal liability and punishment is the failure of regulatory agencies or private citizens (through court actions) to adequately deter violators. For example, suppose the seafood manager knows she has a 10% chance of being caught and punished, and the penalty if caught is $25 000. Thus, the “expected penalty” is $2500 (10% of $25 000). The seafood supplier would expect to profit $7500 ($10 000–$2500) and the expected penalty would not be adequate to deter this illegal practice.4

Thus, deterrence would require a penalty of at least $100 000, with the expected penalty now $10 000 (10% of $100 000) – the same as the expected profit. Note that in theory, such a fine could be imposed by a state or local seafood inspection service, or civil courts if sued by restaurant owners, for example. There appears to be no need for criminal punishment. However, suppose any fine above $50 000 would force the company into bankruptcy. In that case, mislabeling once again looks attractive and a large fine is no longer an adequate deterrence. Instead, jail or prison sentences might be needed to adequately deter the owner from this illegal activity. This suggests that jail or prison sentences – and hence the threat of criminal law – might be needed for those offenses that cause very large harm or result in very large illegal gains to the offender.5

Incapacitation

The term “incapacitation” is often used synonymously with prison, because it removes criminals from society and therefore prevents them from committing other violations. Although a corporation cannot be incarcerated, other incapacitative sanctions can be imposed. Examples include debarment from future dealings with the government and revocation of an operating permit. Our seafood distributor, for example, could be considered incapacitated if it was no longer allowed to sell processed seafood – only fish that can be readily identified.

Rehabilitation

Rehabilitation of individuals generally requires some form of treatment or education program designed to affect future behavior. For corporations, this might take the form of “corporate probation” or other court-ordered requirements such as an employee training program, hiring a compliance officer, or conducting third-party audits. All of these approaches could be applied to our seafood distributor.
Retribution

The final punishment philosophy in criminal law is retribution (often called “just punishment”). The idea behind retribution is that punishment is administered because the offender deserves to be punished – even if it is beyond the amount that might be needed to deter the offender. For example, society might deem seafood substitution so heinous a crime that the corporation should be fined $1 million even if only $100,000 is needed for deterrence purposes.

Criminal Punishment as Moral Condemnation and Preference-Shaping Mechanism

Except for the problem of bankruptcy mentioned above, these four goals can just as easily be served through a combination of civil and administrative remedies. Thus, some commentators have questioned whether criminal punishment is needed to enforce regulatory offenses. One reason to use the criminal law is that criminal sanctions might serve another purpose – to shape preferences and “educate” potential violators about the moral consequences of their actions (Dau-Schmidt 1990; Buell 2006). This goal most directly links to the traditional view that “crime” generally involves moral culpability. By labeling an activity a crime, society is placing it outside the social norms of the community. The question, then, is whether criminalizing seafood mislabeling serves that role.

Restitution

Note that “restitution” is missing from the list of criminal sanction goals since victim compensation is not meant to punish the offender – only to make the victim whole. Traditionally, restitution was deemed a matter for civil courts and, until 1982, they were often the only recourse for crime victims. Although federal criminal courts are now supposed to order victim restitution, the award generally does not allow for nonpecuniary losses such as pain and suffering which might be compensable in a civil tort claim (Ortlieb 2016; Peters 2017). In theory, a consumer who was allergic to crawfish and was harmed by eating mislabeled lobster could have legal recourse for such damages in court. However, for more “public” damages such as environmental crimes, restitution might involve payments to the government for cleanup or the monetary value of natural resource damages.

Economic Theories of Corporate Punishment

Unlike legal theory, economic theory does not generally distinguish between criminal, civil, or administrative law. A penalty is a penalty regardless of who imposes it. However, while prison is a socially costly sanction, involving both taxpayer costs and lost productivity for the offender, monetary fines are thought of as wealth transfers that do not result in socially inefficient allocation of resources (Becker 1968). Thus, as suggested by the seafood example in the legal theories section above, one reason to use prison would be if the monetary penalty that would otherwise be called for was too much for the offender to pay.
While either punishment could be used to accomplish the same level of deterrence, prison costs society more to impose and thus is less desirable.

The basic insight of Becker’s (1968) seminal article is that potential criminals respond to both the probability of detection and the severity of punishment if detected and convicted. This is consistent with the rational choice theory of criminology. Thus, deterrence may be enhanced either by raising the penalty (e.g. the fine amount or the amount of possible prison time), increased monitoring to raise the likelihood the offender will be caught (e.g. more regulatory inspections or “sting operations”), or changing legal rules to increase the probability of conviction (e.g. removing evidentiary requirements that protect defendants). Becker’s model ultimately leads to an “efficient” level of crime, whereby the marginal cost of enforcement is equated to the marginal social benefit of crime reduced.

The notion that there is an “efficient” or “optimal” level of crime is often anathema to government enforcement agencies, who might consider no amount of crime “acceptable.” Yet, to an economist, this is a matter of resource allocation and trade-offs. “Zero crime” is unlikely to be attainable, and even if it were, few would want to live in a country where police and government agencies were on every street corner or monitoring all financial activities. But if we believe in Becker’s model, why not simply increase penalties so much that nobody would find it rational to commit a crime? In the context of street crime, this might require draconian punishment such as life without parole or the death penalty for crimes that are less serious than murder. Yet, for various reasons (including both moral and utilitarian), society is unwilling to impose such a high cost on offenders. Similarly, in the case of corporate crime, there are often concerns that punishment could be too stringent. First, there is always the bankruptcy constraint – akin to the death penalty – and unless the corporation is inherently an illegal enterprise and/or there are good substitute corporations who do act legally, society might suffer significant harms by shutting down an entire company. Thus, there may be limits on how high a penalty is feasible or desirable – for political reasons, wealth constraints of corporate offenders, and for purposes of preserving marginal deterrence (Polinsky and Shavell 1979). Second, as punishment is increased, so is the risk of “over-deterrence,” where firms take socially costly actions to avoid being charged with criminal wrongdoing. In the extreme, an entire industry might shut down as it is deemed “too risky” to operate in.

Gain Versus Harm to the Offender

The seafood substitution example showed how a potential corporate offender can be deterred by imposing a monetary sanction equal to the gain from the offense divided by the probability of detection. As long as expected gain is less than expected penalty, the rational company will not violate the law. However, as noted above, the risk of over-deterrence is also a concern – especially for corporate offenses. For example, suppose the seafood company purchases its lobster from a supplier who substitutes crawfish without the seafood company’s knowledge. Now the seafood company risks being criminally liable (under theories of vicarious liability) for substitution even if no law violation was intended. The seafood company could take reasonable precautions to avoid this violation by only working with reputable suppliers, randomly inspecting seafood, etc. These are costly (but probably reasonable) measures to take to avoid being labeled a criminal. Yet, they are unlikely to be foolproof and occasionally a well-meaning company might be criminally liable. If the penalty is too draconian, the socially beneficial activity of providing seafood might be stifled as
no legitimate company would want to enter that business with such high risks. Thus, Becker’s model, and economists in general, prefer to set an “optimal penalty” based on the harm caused by the offense (multiplied by the probability of detection) rather than the gain to the offender. In that case, we would only see “efficient” violations of the law – when the social benefit of the violation exceeds the harm caused. In our example, an occasional crawfish mixed in with lobster might be preferable to a world where the price of lobster is substantially increased to account for perfect monitoring.

While the lobster example might seem contrived, consider the common problem of pollution. Even the best-intentioned company that installs pollution control equipment might have an accidental spill. Since pollution is generally a byproduct of a socially beneficial activity, we might not want to deter firms from engaging in socially beneficial production to avoid the risk of a spill. To reduce pollution too much might create inefficiencies and result in “over-deterrence.”

In 1991, the US Sentencing Commission (“Commission” or “USSC”) issued “Guidelines” for judges to follow when sentencing organizations convicted of federal crimes (see USSC 2016). The Guidelines calculate fines based on the maximum of gain or harm. For example, suppose a significant percentage of seafood eaters were severely allergic to crawfish. Now, a fine equal to the offender’s gain might significantly under-deter substitution to the extent harm exceeds gain; and a fine based on harm might be more appropriate. On the other hand, a reason often mentioned for using gain is that it is easier to estimate than harm – especially for nonmonetary harms such as environmental hazards.

The Role of Nonmonetary Sanctions

As noted above, for very harmful crimes, the optimal penalty may bankrupt the corporate offender. This possibility might provide an incentive for firms to take too much risk (Cohen 1987, pp. 33–34). An alternative approach to dealing with insolvency is to impose nonmonetary sanctions. As discussed earlier, incarceration is not the only form of nonmonetary sanction. Organizations may be forbidden from engaging in certain lines of business or professions. Similarly, “rehabilitation” sanctions might be imposed on organizations, such as being placed on “probation” whereby the court monitors future compliance or remediation activity, or the institution of new compliance programs.

Individual Versus Corporate Liability and Punishment

In the eyes of the law, the fact that both a firm and its employees are convicted of the same identical offense, for example, does not reduce the severity of the sanction imposed on any one party. The only exception might be restitution, where the size of payments to victims would not depend upon the number of offenders. In economic theory, however, the situation is more complicated. On the one hand, employers and employees are generally considered good stand-ins for the corporation when deciding who should be criminally liable (Segerson and Tietenberg 1992; Polinsky and Shavell 1993). However, corporate punishment might be more appropriate in some instances. For example, Arlen and Kraakman (1997) argue that by allowing corporations to escape vicarious liability in some circumstances, they can become an effective monitor of employee behavior and become a low-cost
method for government agencies to enforce the law. That is largely the approach taken in the Guidelines, where companies are given up to a 95% reduction in penalties for having an effective monitoring program and voluntarily reporting the crime.

**Empirical Evidence on Corporate Punishment**

**Corporate Crime Trends**

Studying trends in corporate crime is difficult because there is no national victim survey or other systematic source of data on corporate offenses. Instead, researchers can only look at the number of corporations who settle charges of criminal wrongdoing. Because we do not know the underlying rate of offending, we do not necessarily know whether any observed trends are due to changes in the pattern of offending or changes in government enforcement. Unlike for street crimes, which are mostly handled and reported on by state and local police and courts, our knowledge of corporate crimes is mostly limited to federal prosecutions and courts. While many states also have corporate criminal liability and actively pursue organizations for criminal prosecution, little data exists on the extent of state prosecutions. The number of corporations pleading guilty to federal crimes averages 150–300 annually. The Commission was aware of 1659 corporate convictions between 1983 and 1987, about 332 annually (Cohen et al. 1988). However, that number appeared to have dropped considerably following the imposition of the Guidelines. During the first 10 years of the Guidelines, Murphy (2002, p. 709) reported that the Commission was aware of 1494 cases, about 150 per year. The most recent Commission (2017) report indicates 834 organizations were sentenced over the previous five years, an average of 166 per year.

It is unclear why the number of organizations sentenced appears to have dropped after the Guidelines went into effect. While this might reflect either reductions in corporate offending or the rate of discretionary criminal prosecutions, it is also possibly an artifact of reporting methods, as the Commission data is often incomplete (Alexander et al. 2000). Researchers who have attempted to conduct comprehensive studies of sentencing practice for organizations often ignore Commission data and instead rely upon other publicly available information, although this is often difficult because the data themselves are buried in regulatory agency and court documents that are not easily accessible even if the public has a right to know. They also typically focus on publicly traded firms, which almost always have to report criminal pleas and settlements through mandatory SEC filings, and are likely to be reported about in the news media.

Alexander and Cohen (2015) report on publicly traded firms sentenced to federal crimes between 1997 and 2011. They also report on non-prosecution agreements (“NPA”) and deferred prosecution agreements (“DPA”) during this time period. NPAs and DPAs are negotiated settlements of criminal charges between companies and the US Attorney’s office that allow firms to settle charges through monetary and/or nonmonetary terms, while not having to plead guilty. Typically, NPAs/DPAs include an acknowledgement of the facts of the crime and commitment that if the company violates the terms of the agreement, it will plead guilty to the underlying offense. These agreements began to appear in the early 2000s following the demise of Arthur Andersen, and the concern that some criminal convictions could lead to severe collateral consequences such as debarment from government contracts or losing certain operating licenses – essentially a death penalty in some instances.
As shown in Figure 20.1, the number of NPAs, DPAs, and plea agreements signed by publicly traded companies has grown substantially. In 1997, only 11 criminal cases involving public companies were settled, but rapid growth began around 2005, leading to a fourfold increase in the number of settlements by 2011. While there is no definitive evidence as to whether this increase was due to increased corporate wrongdoing or increased enforcement effort, it is noteworthy that the US Justice Department set up the Corporate Fraud Task Force in 2002 to prosecute what was a perceived increase in corporate wrongdoing (partly following the Enron scandal). In its first two years of operations, the Task Force reported more than 500 corporate fraud convictions, compared to only 56 such convictions as of September 2002 (these figures include privately held companies and individuals within their organizations; Corporate Fraud Task Force 2004). This is not the first time the Justice Department has increased enforcement of corporate wrongdoing. There was a significant increase in cases settled in 1989 and 1990 following a series of scandals – where many of the largest defense contractors engaged in various forms of procurement fraud and kickbacks. Figure 20.1 also illustrates the rapid growth of DPAs and NPAs starting in the early 2000s, while the number of plea agreements stayed relatively constant. DPAs and NPAs now represent about half of all settlements by publicly traded companies.

Table 20.1 reports on the type of offenses typically charged by federal prosecutors. The first column reports on all organizations that pled guilty or were convicted of a federal crime as reported by the Commission in 2016, while the second column represents all publicly traded companies who pled guilty or agreed to settle with an NPA/DPA from 1997 to 2011. Environmental offenses represent 23.5% of Commission-reported settlements, and 18.7% of all publicly traded settlements. Fraud is higher in the Commission database (23.5%) compared to publicly traded (11.3%), but food and drug offenses are comparable (12–13%). Antitrust offenses are more predominant among large publicly traded companies (24.5% compared to 9.1%).

The last two columns in Table 20.1 highlight differences in enforcement patterns. Environmental and antitrust offenses are rarely settled through NPAs or DPAs. In both cases, separate criminal divisions of the US Department of Justice have their own internal
policies and practices against such settlements, highlighting the discretionary nature of criminal enforcement (Alexander and Cohen 2015, notes 160–161).

Scope and Magnitude of Corporate Punishment

Prior to 1991, sentences for organizations convicted of federal crimes were constrained only by statutory minimum or maximum penalties and generally negotiated between the prosecutor and company subject to judicial approval. Few criminal charges are settled at trial; over 95% of organizations plead guilty.11 When Congress passed the Comprehensive Crime Control Act of 1984, it voiced concern that monetary penalties were systematically too low and called for increased severity of corporate sentences (Alexander et al. 1999, p. 395). In response, the Commission studied prior sentencing of corporate offenders and ultimately concluded that penalties were too low. This background research was published in Cohen (1989, 1991), where it was shown that the median fine for 961 convicted organizations was $10,000 from 1984 to 1990, with the mean fine being $117,801. When including other sanctions such as voluntary or court-ordered restitution, civil penalties, and other publicly available monetary payments, the median “total monetary sanction” was $25,000, while the mean was $341,378 (Cohen 1996, table 3).

Perhaps more striking when reviewing sanctions prior to the 1991 Guidelines was the relationship between monetary harm and the sanction. Restricting the sample to 200 firms where monetary harm could be estimated and the firm could afford to compensate (i.e., where current assets minus current liabilities exceeded the harm caused by the offense), Cohen (1991) found the median ratio of fine to harm to be 0.17; thus, the typical company convicted of a corporate crime was fined 17 cents for every dollar of harm caused. The median ratio of total monetary sanctions to harm was about 1.06. Thus, total monetary sanctions for the typical firm just covered the harm from the offense. From economic theory, this would only be optimal if the probability of detection were equal to one—something that is highly unlikely. From a criminal retribution standpoint, this would also seem to be less than the deserved penalty unless all of these offenses were accidental or

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<th>All organizations (2016)</th>
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</tr>
<tr>
<td>Food &amp; drug (%)</td>
<td>12.9</td>
</tr>
<tr>
<td>Antitrust</td>
<td>9.1</td>
</tr>
<tr>
<td>Import/export (%)</td>
<td>6.1</td>
</tr>
<tr>
<td>Money Laundering (%)</td>
<td>5.3</td>
</tr>
<tr>
<td>Othera (%)</td>
<td>19.7</td>
</tr>
</tbody>
</table>

a Includes bribery, drugs, immigration, racketeering, copyright infringement, obstruction of justice, tax, food stamps, gambling.
b Most of these cases are foreign bribery cases under the Foreign Corrupt Practices Act.

without culpability. Of course, as noted above, monetary sanctions might not be the only penalty imposed on companies convicted of crimes. Moreover, individuals within the corporation might be charged with the same crime and punished accordingly.

The analysis published in Cohen (1991) had an impact on the final Guidelines the Commission adopted in November 1991. While the Commission did not necessarily adhere to any one theory of punishment, the Guidelines were clearly written with both “retribution/just punishment” and “deterrence” in mind. The Guidelines provide for a detailed calculation of offense seriousness and offender culpability, leading to a prescribed range of monetary sanctions as well as other provisions such as mandatory restitution. The “seriousness score” depends on the nature of harm and/or gain from the offense – whether monetarily calculated or through a scoring system that the Guidelines require. The “base fine” is then calculated based on the maximum of harm, gain, or the fine associated with the seriousness score from the Guidelines fine table. Next, the base fine is adjusted upwards or downwards using a multiplier that depends upon the “culpability score,” which is based on offender behavior prior to and following the criminal investigation. Factors that increase the culpability score include:

- attempting to hide illegal behavior or obstruct justice;
- high-level corporate involvement.

Factors that decrease the culpability score include:

- voluntary reporting to government once illegal conduct becomes known;
- effective compliance programs in place prior to offense.

In the extreme, a firm whose top management was not involved in the crime, had an effective compliance program, and voluntarily reported the violation may receive up to a 95% reduction in the fine. On the other hand, a firm that obstructs the investigation and/or where high-level management was directly involved in (or otherwise encouraged) the offense could be fined as much as four times the harm or gain. This fine is in addition to mandatory restitution and is constrained by any minimum or maximum statutory fine provisions. While the Guidelines were mandatory, judges did retain some authority to depart from the Guideline fine range (upwards or downwards) with explanation – although either side could then challenge the validity of the departure on appeal.

Accordingly, criminal fines and total monetary sanctions for organizations rose after the Guidelines went into effect in November 1991 (see Alexander et al. 1999). For example, as shown in Table 20.2, for publicly traded companies sentenced prior to the Guidelines, the median fine was about $900,000 compared to $4.5 million post-Guidelines for firms sentenced through 1996 (all figures in 2017 dollars). Similarly, the median “total sanction” (including restitution or other monetary payments such as cleanup costs, disgorgement, and civil penalties agreed to at the time of a global settlement) increased from $2.4 to $6.5 million.

Alexander et al. (1999) were also able to compare companies that were subject to the new Guidelines to those that were sentenced after the Guidelines went into effect, but whose sentences were not subject to the new Guidelines. Interestingly, while fines were greater in cases where the Guidelines were legally binding, the increase in total sanctions was about the same. Thus, while the Guidelines clearly had an impact on both fines and total monetary sanctions, there were likely other factors judges considered that led to increased total
sanctions even for firms not legally subject to the new Guidelines. While the explanation for this finding is not fully resolved, it is plausible that judges changed behavior based on more punitive social norms as expressed through the Guidelines, and/or felt external pressure to impose restitution even in cases that were not subject to the new Guidelines.

While originally mandatory, in 2005, the US Supreme Court ruled the Guidelines were only advisory, and that judges could make their own assessment of the appropriate penalty. While the Guidelines are no longer mandatory, federal courts have determined that judges must still calculate the Guideline sentence and consider it in the sentence they impose, hence the Guidelines also become a point of departure for companies and prosecutors in negotiating settlements.

Monetary penalties for corporate offenders have continued to increase over time. Based on the data published in Alexander and Cohen (2015), the median criminal fine during the period 1997–2011 increased to $7.8 million in 2017 dollars (nearly 10 times pre-Guideline levels), and the mean increased to $49.1 million in 2017 dollars (nearly 20 times pre-Guideline levels). The total monetary sanction has also increased significantly over time. For example, during the most recent time period (1997–2011), the mean total sanction for criminal pleas was $85.5 million – more than four times the mean sanction of $19.4 million pre-Guidelines.

Medians and means can obscure the largest penalties. Even in the pre-Guidelines era, one firm was fined $28.8 million – considerably more than the median fine, which was under $1 million. During the 1991–1996 time period, the largest criminal fine was $340 million, levied against Daiwa Bank for covering up trading losses – an offense that involved top management. The Guidelines fine could have been over $1 billion, but the government agreed to a lesser amount as the bank had repaid over $377 million in losses to customers, sold its US subsidiary, changed top management, and taken other measures to ensure this would not happen again (see Truell 1996).

Table 20.2 Median and mean criminal fines and total monetary sanctions imposed on publicly traded corporations sentenced for federal crimes, 1988–2011 (millions of 2017 dollars).

<table>
<thead>
<tr>
<th></th>
<th>Number</th>
<th>Median</th>
<th>Mean</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Criminal fine</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1988–October 1991 (pre-Guidelines)</td>
<td>99</td>
<td>$0.9</td>
<td>$2.8</td>
</tr>
<tr>
<td>November 1991–1996</td>
<td>34</td>
<td>$4.5</td>
<td>$27.8</td>
</tr>
<tr>
<td>1997–2011</td>
<td>329</td>
<td>$7.8</td>
<td>$49.1</td>
</tr>
<tr>
<td><strong>Total monetary sanction</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1988–October 1991 (pre-Guidelines)</td>
<td>101</td>
<td>$2.4</td>
<td>$19.4</td>
</tr>
<tr>
<td>November 1991–1996</td>
<td>34</td>
<td>$6.5</td>
<td>$71.8</td>
</tr>
<tr>
<td>1997–2011 (combined)</td>
<td>486</td>
<td>$13.1</td>
<td>$98.1</td>
</tr>
<tr>
<td>• 1997–2011 (Pleas)</td>
<td>329</td>
<td>$11.3</td>
<td>$85.5</td>
</tr>
<tr>
<td>• 1997–2011 (NPAs)</td>
<td>91</td>
<td>$15.2</td>
<td>$129.0</td>
</tr>
<tr>
<td>• 1997–2011 (DPAs)</td>
<td>66</td>
<td>$35.1</td>
<td>$118.0</td>
</tr>
</tbody>
</table>

*a Excludes several-billion-dollar total sanction against Exxon Corporation for oil spill from Exxon Valdez. See Alexander et al. (1999).

The bottom panel of Table 20.2 also reports on the mean total sanction for DPAs and NPAs. The data on DPAs/NPAs do not include the category “criminal fines,” as these agreements do not generally specify whether a penalty is being paid in lieu of a criminal fine – they only indicate that monetary penalties are being paid to the federal government (or other government entities). Thus, we can only compare total sanctions over time. As shown in Table 20.2, total monetary sanctions for NPAs and DPAs are higher than plea agreements. For example, while the median total sanction was $11.3 million for pleas, it was $15.2 million for NPAs and $35.1 for DPAs. Mean total sanctions were $85.5 million for pleas, compared to $129 million for NPAs and $118 million for DPAs (all figures in 2017 dollars).

The fact that both criminal fines and total monetary sanctions have been steadily increasing over time does not necessarily mean sanctions are more punitive. It is possible that increased sanctions are partly or wholly due to increased severity of the crimes themselves. In fact, Alexander and Cohen (2015, pp. 584–585) show that the median ratio of total monetary sanction to maximum fine calculated by the Guidelines is unchanged throughout the 1997–2011 time period. That is, controlling for offense severity and offender culpability, total monetary sanctions have been relatively stable since the Guidelines were adopted. This is true even though the Guidelines became voluntary around 2004–2005. Thus, the finding that monetary penalties have increased since 1991, and that NPAs and DPAs tend to have larger monetary sanctions than pleas, appears to largely be attributable to the offense and offender – not to any change in sanction punitiveness.

Punishment of Individuals for Corporate Criminal Wrongdoing

There have been few studies examining the extent to which individuals versus corporations are punished for corporate crimes. Cohen (1996, p. 403, table 3) reports that of the 981 corporations convicted of federal crimes pre-Guidelines between 1984 and 1990, 63% had at least one individual convicted. However, the rate of conviction is much higher among firms that are “closely held” with owners being managers (71%) versus those where owners are not managers (39%) (Cohen 1996, p. 407). Consistent with legal theory of punishment (but inconsistent with economic theory), Cohen (1996, pp. 405–406, tables 5 and 6) finds that having an individual convicted along with the corporation does not affect the magnitude of the corporate monetary penalty. Recent Commission data find somewhat lower individual conviction rates, with 53.8% of organizations sentenced during 2016 having an individual convicted for the same underlying offense (USSC 2017). Of those individuals convicted in 2016, 26.5% were owners of the firms, 5.4% were managers/supervisors, 13.0% board members, and 55.2% “not high level officials.” None of these studies examine individuals convicted for corporate crimes when there is no corresponding conviction for their organization – an area ripe for research, but for which it would be extremely difficult to gather data.

Nonmonetary Sanctions

Before the Guidelines went into effect, about 30% of companies pleading guilty agreed to some form of probation, and 20–25% of companies guilty of government fraud were suspended or debarred from future government contracts (Cohen 1991, pp. 265–266). In a handful of cases, firms agreed to “community service” such as cleaning up an environmental
hazard or contributing money to a local community group. However, the Guidelines appeared to have significantly changed the nature of nonmonetary sanctions, calling for organizational probation requirements that might include court-approved compliance programs – including the appointment of a corporate monitor in cases where the company did not have an effective compliance program in place. While Cohen (1991) could not identify any instances of these type of provisions out of the 288 plea agreements reviewed pre-Guidelines, Alexander and Cohen (2015, table 13) report that about 30% of all criminal settlements (including DPA/NPA and plea agreements) by publicly traded companies now contain provisions requiring a court-appointed monitor. They also report other terms of probation commonly agreed upon such as employee training (44%), changes in a firm's audit procedures (42%), addition of a corporate ombudsman and/or hotline (27%), and other changes in compliance procedures (33%). These provisions are consistent with a rehabilitation model of criminal sanctions – even if the companies themselves might consider them costly and/or punitive. While the main goal is likely to reduce the likelihood of future criminal activity for that firm, these provisions might also increase the likelihood that if a violation occurs in the future the government will be more readily able to detect it.

In addition to government-imposed sanctions, an important nonmonetary punishment might be diminished reputation of individuals and/or corporations that commit corporate crimes. These reputational losses might ultimately manifest themselves as either monetary or nonmonetary forms of punishment. For example, a convicted corporation might suffer from declining sales if customers lose faith in its trustworthiness, increases in the cost of credit if creditors believe this is a higher-risk company, and decrease in stock value if the market views these reputational penalties will hurt future profitability. Similarly, for individuals within a corporation, even if they are not personally charged with a crime, they might lose their jobs, forgo bonuses and future promotions, and have difficulty obtaining future employment. Other nonpecuniary costs might include losing friends and generally being shunned in the community.

Previous authors have demonstrated that the market value of publicly traded companies declines upon public announcement of alleged serious criminal allegations and/or convictions (see, e.g., Alexander and Cohen 1999). Alexander (1999) finds further evidence of top management turnover, lost customer relationships, and stock market impacts. These losses appear more pronounced when the wrongdoing involved fraud to customers as opposed to regulatory violations, which do not necessarily result in damaged firm reputation among customers. Indeed, some evidence suggests that for regulatory crimes such as environmental violations, any stock price reduction is fully explained by the expected cost of penalties and cleanup – with no additional “reputational” loss to firms (see, e.g., Karpoff et al. 2005). Although I am unaware of empirical evidence on the reputation loss to individuals convicted of organizational crimes, one study (Lott 1992) finds that a significant portion of the monetary cost to offenders convicted of white-collar offenses such as fraud is the loss of post-conviction income.

Example of Corporate Punishment

To illustrate the complexity and trade-offs associated with imposing corporate punishment, this section examines one of the largest criminal fines ever imposed in the United States. In 2009, Pharmacia & Upjohn Company, Inc. paid a $1.195 billion criminal fine, plus $105 million in criminal forfeiture, for illegal marketing and kickbacks related to sale of
prescription drugs.\textsuperscript{18} The parent company, Pfizer, Inc., also paid $1 billion to the federal government for overpayments by Medicare, Medicaid, and other insurance programs (see US DOJ 2009). The plea agreement states that the company and government agreed the “gain” to the company from illegal marketing of its drug Bextra was $664 million.

Under federal law, an organization convicted of a felony can be fined no more than $500,000 or twice the loss or gain from the offense, whichever is greater.\textsuperscript{19} Thus, the maximum possible fine for this offense was $1.328 billion (or double the $664 million gain). The “culpability score” for this offense was determined to be 8 out of 10 points. All corporate offenders start with a base culpability score of 5, with Pharmacia & Upjohn Company, Inc. receiving an additional 5 points for being an organization with 5000 or more employees where a high-level individual within the organization “participated in, condoned, or was willfully ignorant of the offense; or tolerance of the offense … was pervasive throughout the organization.”\textsuperscript{20} However, a 2-point reduction was awarded because of the company’s “full cooperation.” A culpability score of 8 results in a multiplier of 1.6 to 3.2 times the base fine – $1.0624–$2.1248 billion. However, because the maximum statutory fine is $1.328 billion, the fine range under the Guidelines became $1.0624–$1.328 billion. The plea agreement called for a fine slightly below this maximum, $1.195 billion. With the additional $105 million in forfeiture, the total monetary penalty to Pharmacia & Upjohn Company, Inc. was thus $1.2 billion, with an additional $1 billion in civil payments to the government by the parent company, Pfizer, Inc.

In addition to the government penalties, the companies ultimately paid out hundreds of millions (if not billions) more in civil settlements. Numerous personal injury claims – both individual and class action claims – were filed and settled. In 2008, Pfizer reported it took a $894 million charge against earnings that included “$745 million to settle personal injury claims, $89 million related to consumer fraud claims, and $60 million to settle lawsuits brought by state attorneys general” (Saul 2008). In 2016, after a lengthy court battle, more than 10 years after the criminal behavior stopped and 7 years after the criminal penalties were imposed, Pfizer agreed to pay $486 million to shareholders who owned stock between 2000 and 2005 when the mislabeling occurred (Stempel 2016). Overall, the company and its subsidiaries paid more than $3.5 billion in criminal fines and civil claims.

Perhaps most instructive about this case is not the size of the penalty, but how the company was ultimately penalized. Instead of pleading guilty to a crime, Pfizer established four wholly owned subsidiaries – with the shell corporation that pled guilty, Pharmacia & Upjohn Company, Inc., being far removed from its parent. As one critical report noted, Pharmacia & Upjohn Company, Inc. “was excluded from Medicare without ever having sold so much as a single pill. And Pfizer was free to sell its products to federally funded health programs” (Griffin and Segal 2010, para. 26). One of the prosecutors noted, “If we prosecute Pfizer, they get excluded, a lot of the people who work for the company who have not engaged in criminal activity would get hurt” (Griffin and Segal 2010, para. 30). Pfizer also had “to sign a corporate integrity agreement with the Department of Health and Human Services. For the next five years, it requires Pfizer to disclose future payments to doctors and top executives to sign off personally that the company is obeying the law” (Griffin and Segal 2010, para. 38).

In addition to the punished corporate entities, two individuals were criminally convicted – one sales manager was fined $75,000 and given two years’ probation, while another (who also destroyed documents in an attempt to cover up some of the criminal details) was given home confinement for six months, three years’ probation, and no fine (Edwards 2009a). No higher corporate officials were indicted, and it is not clear what – if any – action
the company took against top officials who participated in or condoned this illegal activity. M. Anthony Burns, who served as Chairman of the Board during the years of illegal activities, remained a member of the Board through 2013. Jeffrey Kindler, who had been Senior Vice President and General Counsel (and thus chief compliance officer for the firm) since 2002, became Chief Executive Officer (CEO) in July 2006 and Chairman of the Board in December 2006. He retired in December 5, 2010, and received $3.2 million in annual incentive award for 2010 (120% of his target level), although it appears his retirement was an early departure that might have been partly due to the company's legal troubles (Elkland and Reingold 2011).

What impact the punishment had on the firm's reputation, future profits, stock value, etc. is unclear. As one report noted, the $2.3 billion fine amounted to about three months of corporate profits; but that is not a trivial number if it is compounded by reduced future business. As noted, however, Pfizer did not lose the ability to market its drugs in the future to any customers. Although it is difficult to quantify, it does not appear Pfizer suffered long-term reputational damage or lost profits (Edwards 2009b). It is also instructive that this was Pfizer's fourth settlement over illegal marketing claims – one of the reasons prosecutors claimed they insisted on such a severe punishment in this case. On the other hand, company executives claimed at the time of settlement that the company had once again reformed itself following allegations of criminal wrongdoing (Harris 2009). Although not documented, it is also possible that individuals involved (those criminally prosecuted as well as others) suffered reputation and future earnings losses.

**Deterrent Effect of Punishment**

Ultimately, one would like to know the extent to which criminal punishment deters corporate violations – and whether the benefits of improved corporate behavior (if any) outweigh the costs associated with enforcement and punishment. That is a lofty goal that is far from being met. Unlike street crimes, victims of corporate wrongdoing often are unaware of their victimization; hence it is almost impossible to measure the crime rate in a corporate context. Moreover, because numerous legal institutions (including civil, administrative, criminal) at all levels of government have jurisdiction over corporate behavior, even if we could measure the crime rate it would be difficult to attribute behavioral changes to any one enforcement action.

The few studies that have attempted to evaluate the deterrent effect of government penalties have mostly focused on administrative and civil remedies – not the criminal law. In the context of environmental enforcement and monitoring, while most of the evidence demonstrates the deterrent effect of inspections and monitoring, there is also limited evidence that higher penalties deter violations (Cohen 2000; Gray and Shimshack 2011). However, there is virtually no evidence on the effectiveness of criminal sanctions. A comprehensive meta-analysis of corporate deterrence studies over all domains (Simpson et al. 2014), concluded that while most results showed a modest positive effect of punitive sanctions, relatively few found statistically significant effects.

What remains to be determined is why the empirical evidence on the deterrent impact of punitive corporate sanctions has yet to be firmly established. As we have seen in this chapter, oftentimes nonmonetary and/or remediation-type sanctions are imposed – and these might have as much or more of an effect on future corporate criminal behavior. In addition, monetary sanctions are often only a small fraction of firm earnings or value and do not
always result in consequences for top management or the board. On the other hand, there is some evidence on the deterrent impact of corporate punishment based on more indirect evidence. Alexander and Cohen (1999) draw inferences about the deterrent effect of market-based sanctions (e.g., reductions in stock market value) by comparing publicly traded companies convicted of crimes to a matched sample of similar corporations without serious allegations of criminal wrongdoing. They conclude, “While past penalties have not been high enough to eliminate corporate crime altogether, they appear to have been high enough to prevent crime from being a good investment for shareholders” (Alexander and Cohen 1999, p. 32). Thus, much like rational choice theory of crime, where most individuals are deterred by their internal calculations of the benefits and costs of committing crime, it appears that well-managed companies whose top executives are acting in the interest of shareholders are generally deterred from committing crimes on behalf of their corporations.

### Corporate Criminal Punishment Globally

This chapter focuses on the United States largely because it is the only country where corporate criminal sanctions have been extensively studied. In addition, vicarious corporate criminal liability is not as well established in many other countries. Thus, what is legally considered a corporate crime in one country might not be defined as such in another. For example, criminal liability for corporations engaging in foreign bribery was first established in the Bribery Act of 2010 in the United Kingdom – similar to the 1977 Foreign Corrupt Practices Act in the United States. However, under the UK law, there is no criminal liability for the corporation if the company had “adequate procedures” in place to prevent such wrongdoing.

Following passage of the Bribery Act, the United Kingdom adopted the US model of DPAs in some of the larger and higher profile cases where there was concern of collateral sanctions. The first DPA was with Standard Bank, which was involved in illegal payments to Tanzanian officials. Included among the reported global settlement of over $36.9 million were $25.2 million in fines and disgorgement of profits and $4.2 million to the US Securities and Exchange Commission for failing to disclose these payments to investors (UK Serious Fraud Office 2015; see also US Securities and Exchange Commission 2015). Soon thereafter, Rolls-Royce signed DPAs with three countries (United States, United Kingdom, and Brazil) and agreed to pay $800 million in penalties settling long-standing bribery allegations (US DOJ 2017b).

The recent Volkswagen scandal in which over 10 million diesel automobiles were sold worldwide with rigged emissions systems illustrates how different countries punish corporate criminal behavior. While the same facts essentially apply in every country, both laws and prosecutorial norms vary widely. In the United States, Volkswagen pled guilty to a crime and paid a $2.8 billion criminal penalty for selling over 500,000 rigged vehicles, as well as billions more in civil settlements (Eisenstein 2017). German courts also imposed a €1 billion criminal fine against the company (Riley 2018). Although cases are still pending as of early 2019, reports of criminal and/or civil investigations are underway in scores of other countries including Canada, Norway, South Korea, Spain, Switzerland, and elsewhere (Parloff 2018; see also Reuters 2017a, 2019; Volkswagen 2018). In some cases, countries (Germany, United Kingdom, Spain, and Luxembourg) apparently took action only after the EU threatened to sue them for failing to prosecute Volkswagen, and in several countries.
(Czech Republic, Lithuania, and Greece) laws did not call for corporate fines (de Carbonnel 2016; see also Reuters 2017b). In other countries such as Australia, legal action appears to be limited to civil courts (class action lawsuits) and/or regulatory agency enforcement and penalties (Stewart 2016).

**Future Research and Policy Implications**

While not without controversy, corporate criminal punishments are viewed by prosecutors as an important tool in the federal government’s attempt to deter and punish corporate wrongdoing. Corporations settling criminal charges are paying millions and sometimes billions of dollars in monetary sanctions and are subject to nonmonetary sanctions that affect their company’s future operations. However, perhaps what this chapter demonstrates more than anything else is our scarcity of knowledge about the impact of criminal punishment on organizations settling charges of criminal wrongdoing. When do more severe sanctions deter corporate criminal behavior and when (if ever) do they result in socially undesirable over-deterrence? Are civil sanctions a substitute for criminal sanctions against a corporation, and if not, what is the added impact of being charged criminally? Are sanctions better placed on corporations or the individual wrongdoers within the organization? These important policy-relevant questions are ripe for future research.

**Notes**

1 Cited by John Poynder (1844) Literary Extracts, p. 268. London: John Hatchard & Son. Thurlow was Lord Chancellor of Great Britain from 1778 to 1792.
2 Much of this section is based on Cohen (2001), which focuses exclusively on environmental crimes.
3 Cornell Law School (n.d.) defines Tort as “… an act or omission that gives rise to injury or harm to another and amounts to a civil wrong for which courts may impose liability.”
4 This simple example ignores transactions costs such as legal costs associated with defending against criminal prosecution. The underlying analytics remain the same, however.
5 Alternatives to criminal punishment might be preferable. For example, the government might consider increased *ex ante* (i.e. before the event) monitoring of seafood when *ex post* (i.e. after the event) bankruptcy is a concern. See Cohen (1987) for a discussion of *ex ante* monitoring versus *ex post* fines in the face of bankruptcy.
6 The pre-Guidelines data are based on an extensive record search by US District Courts to inform the newly formed Commission on prior practice. The post-1991 Guidelines data are based on ongoing annual reporting by the courts to the Commission – and it has been documented that not all corporate criminal convictions are routinely reported on by the courts (Alexander et al. 2000).
7 A few private organizations have attempted to develop publicly available, searchable databases of corporate criminal offenses, although their sampling methodology and coverage is unclear. For example, the Project on Government Oversight (POGO) collects data on alleged misconduct by federal government contractors, and provides access through its “Federal Contractors Misconduct Database” https://www.contractormisconduct.org. The Corporate Research Project maintains a database on over 300,000 corporate violations that have been subject to civil and/or criminal prosecution by over 40 federal government agencies and the Department of Justice, https://www.corp-research.org.
8 Alexander and Cohen (2015, pp. 553–558) summarize the arguments in favor of and against the use of NPAs and DPAs.
9 Figure 20.1 is compiled from data on corporate criminal sentences published by Alexander and Cohen (2015). Note that some offenses result in multiple agreements – e.g. signed separately by a parent company and its subsidiary. However, combining these offenses into one agreement does not significantly change the patterns shown here (see Alexander and Cohen 2015, figure 1).
10 See https://www.fbi.gov/history/famous-cases/operation-illwind.
11 For example, in Fiscal Year 2016, the Commission reported three organizations convicted at trial (2.3%) out of 132 organizations sentenced under the Guidelines.
12 For a discussion of the Guideline's purpose, see Desio (n.d.).
13 The Guideline fine provisions did not apply to environmental offenses and certain other offenses where the harm was deemed to be primarily nonmonetary. Furthermore, as discussed below, the Supreme Court ruled in 2005 that the Guidelines were no longer mandatory.
14 Even after being promulgated, the Guidelines did not apply to “older offenses” that occurred prior to November 1991 and did not continue past that date. Thus, there were a set of cases sentenced after November 1991 but not subject to the new Guidelines.
16 According to the Commission (2006, p. v), “… the circuit courts now have uniformly agreed that all post-Booker sentencing must begin with calculation of the applicable guideline range.”
19 18 U.S.C. §§ 3571(c) and (d) – Sentence of Fine.

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Section V

White-Collar Crime: An International Perspective
Introduction

Given the diversity of political, economic, legal, and social conditions and developments in European countries throughout history, it soon becomes clear that it is inappropriate to assume a specific and consistent “European” perspective on the issues of white-collar and corporate crime. Europe today encompasses both common law and civil law jurisdictions, long-established and new democracies, long-lasting capitalist societies and newly established free-market economies; only very recently, during the past three decades, have these countries undergone a radical change from command economies.

As to economic conditions, the annual gross domestic product per capita currently varies between US$106,000 (Luxembourg) and US$2,700 (Moldova). In 2014, among the member countries of the European Union, median gross hourly earnings ranged from €25.50 (Denmark) to €1.70 (Bulgaria). In September 2018, the unemployment rate varied between 2.3% in the Czech Republic and 19% in Greece. In particular, countries in Southern Europe have been hit hard by the financial and economic crisis of 2008 and its consequences, including strict austerity policies imposed by the “Northern Eurozone.” Some countries have very export-driven economies, and trade balances vary significantly. Despite major cutbacks since the 1980s, some Western and especially Northern European countries still have a comparatively well-developed welfare system, while elsewhere social protection is (much) more limited.

And yet, Europe has a long history of common trade, with regional economies already having been connected by trade in the Roman Empire, or with the House of Medici, the Welser, the Fugger, or the Hanseatic League controlling significant parts of the European economy during the Late Middle Ages and early modern Europe. Nowadays, the European Single Market encompasses large parts of Europe, and European legislation plays a huge role – this is also true when it comes to definitions of and responses to business-related crimes.

There has long been a paucity of pan-European academic discourse and exchange on economic crime (Huisman et al. 2015). Language barriers and a lack of institutional frameworks can be identified as major reasons for this – the European Society of
Criminology was founded only two decades ago, in 2000. Necessarily subjective and selective, this chapter aims at throwing the spotlight on some major developments of white-collar and corporate crime and, particularly, its control in the European context.

**Beginnings**

Discomfort about greed ("pleonexia") as a potentially harmful characteristic of "business" can be traced back as far as *Plato* and *Aristotle*, and it is also rooted in Judeo-Christian thinking (Manstetten 2018). However, in the course of time, profit-seeking has shifted from being seen as evil to being perceived as a virtue among an emerging class of merchants. This was underpinned by the evolution of Calvinist and liberal economic thinking, which remains based on the assumption that individual profit-seeking, guided by the "invisible hand of the market," will lead to generally positive outcomes – an idea already expressed in the subtitle of Mandeville's book "The Fable of the Bees" (1714) ("private vices, public benefits"), and famously put in a nutshell almost three centuries later in Stone's film "Wall Street" (1987): "greed is good." While modern history has witnessed a tremendous increase in prosperity, such a position has always been at risk of being blind to fraud, excessive risk-taking and other harmful or unfair business practices, exploitation of labor and other forms of abuse of power, and detrimental consequences like excessive inequality, economic bubbles, or environmental degradation.

Regulatory violations that would fall within today's concept of economic crimes have been known for more than 2000 years in Europe. Across the centuries, specific forms of fraud (e.g. food), usury, bankruptcy, health hazards, or counterfeiting have been penalized and given rise to (sometimes draconian) punishment (Tiedemann 2014). In growing urban economies, medieval guilds increasingly functioned as regulators (Ponsaers 2015). The criminalization of price collusion in the course of the French Revolution is sometimes identified as the beginning of modern European economic criminal law (Tiedemann 2014, p.34). During and after World War I, massive shortages pushed the expansion of laws and law enforcement directed against crimes such as usury or anti-competitive practices. Despite all such multifaceted accounts of "economic crimes" throughout European history, we need to keep in mind that in the course of overseas trading and colonialism from the sixteenth century onwards, exploitative economic activities and severe wrongdoing (which today would clearly constitute breaches of international criminal law at the intersection of state and corporate crime) went largely unpunished (Huisman et al. 2015, p. 4).

Several authors have pointed out that the Dutch criminologist Willem Bonger (1876–1940) can be identified as an early, somewhat overlooked pioneer of white-collar criminology (Slapper and Tombs 1999,p. 2; Hebberecht 2015,pp. 125–132). Quite in line with the traditional skepticism toward commerce outlined above, but from a Marxist perspective, Bonger assumed that the "capitalist production regime" would influence the "social organization," namely by weakening altruism and fostering egoism. The nature of the consequent crimes would differ between the social classes. As to "bourgeois criminals" and economy-related crimes, Bonger distinguished between three forms of crime: crimes committed in reaction to declining businesses, crimes that (independent from economic downturns and facilitated by opportunities as well as a lack of control) are "simply" motivated by greed, and crimes where offenders from the start intentionally make use of the commercial sphere to enrich themselves (Hebberecht 2015). This and similar typologies have been used (and elaborated on) by white-collar criminologists in Europe and beyond.
Developments

However, as seen in criminological studies more broadly, most theoretic impulses and empirical insights on white-collar and corporate crime in the twentieth century came from outside (continental) Europe, namely from scholars in the United States (Slapper and Tombs 1999, p. 2). This is true for debates on definitions, structures, and causes, as well as on the control of business-related crimes. In many European countries, political as well as academic attention to “crimes in the suites” and in the business world – and especially empirical research that is going beyond merely definitional discussions and the reproduction of official statistics (which are still barely informative when it comes to economic crimes; see Walburg 2015) – has significantly increased only in the past four to five decades (Albrecht 1999; van de Bunt and Huisman 2007; for a recent pan-European overview, see the contributions in van Erp et al. 2015).

Some cases of white-collar and corporate crime that occurred during the twentieth century might indeed be identified as specifically “European” in the sense that they happened under unique historic circumstances. The involvement of corporations and industrialists in the crimes of the Nazi regime (1933–1945) – where they enabled, exacerbated, or facilitated genocide and other (international) crimes – exceeds by far other “ordinary” business-related crimes and yet only recently has raised the attention of white-collar criminologists. The involvement of German companies in the Nazi atrocities, which might be characterized as corporate-facilitated state crimes (Matthews 2006), took very different forms – sometimes very proximal, sometimes more distant. The motivations behind the collaboration varied, too: from individual or corporate profit-seeking to loss prevention, from anticipatory obedience and latent anti-Semitism to moral-free striving for technological perfection (van Baar 2015).

The second half of the twentieth century was largely characterized by the Cold War and the division between Eastern and Western Europe. In the East, a “shortage economy” (one in which shortages of goods are “found in all spheres of the economy,” happen regularly, have an impact on citizen and economic behavior, and are not temporary; Kornai 1995, p. 13) contributed to the rise of gray and black economies (see Chapter 10, this volume) and fostered corruption. Besides personal enrichment, corruption allowed some flexibility that the rigid centralized system otherwise did not permit, e.g. for directors of publicly owned enterprises who were dependent on supplies to maintain production (Pleines 1998). After 1989, during the “gold-digger” period of transition from a planned economy to free-market economy, the rapid and largely unregulated privatization of former public enterprises provided enormous opportunities for criminal activities, amplified by a lack of functioning enforcement agencies. In many former socialist countries, old connections that had survived the change of the regime played a major role in providing such opportunities (Inzelt 2015, p. 188), but in the special case of Germany after reunification, most actors (on the side of the bribe-givers and -takers, fraudsters, or embezzlers, as well as on the side of the authorities) came from West Germany or Western countries (Boers et al. 2015, p. 167).

In West Germany, on the institutional level, the growing attention for business-related crimes was reflected by the introduction of specialized public prosecutor’s offices for economic crimes and corruption from the 1960s onwards. As to substantive criminal law, major steps were taken in 1976 and 1986 with a substantial extension of law to include crimes like subsidy fraud, investment fraud, computer fraud, and illegal employment. In the late 1990s, bid rigging, commercial bribery, and bribery of foreign public officials were criminalized (Dannecker and Bülte 2014, pp. 49–68). Here, just as with regard to environmental law
(which has been expanded stepwise, too), processes of increasing international harmonization of economic criminal law can be observed. With the international bribery act of September 10, 1998 (“Gesetz zur Bekämpfung internationaler Bestechung”), Germany implemented the Organisation for Economic Co-operation and Development (OECD) convention on combating bribery of foreign public officials in international business transactions from 1997, which aimed at strengthening good governance and economic development as well as ensuring similarity in international competitive conditions.

As the worldwide Siemens bribery scandal erupted in 2005, it demonstrated that the changes to anti-corruption laws (at least in the short run) had scarcely influenced and changed the corporate culture – institutionalized, formerly tax-deductible corrupt foreign practices – of Europe’s largest industrial manufacturing company (Lord 2014). Despite (and in the shadow of) rigid formal anti-corruption norms and policies established since the 1990s (Klinkhammer 2015), Siemens had been engaged (or continued to be engaged) in bribery in various countries, with an estimated US$1.4 billion in bribes having been paid in order to win and maintain overseas contracts between 2001 and 2006. Despite a massive expansion of compliance measures and staff in the aftermath of the scandal, recent charges of corruption against intermediaries selling Siemens medical equipment in China illustrate persistent difficulties – and indicate that cultural changes on the supply and the demand side of corruption are slow to come, if they ever take hold at all (as to recent empirical findings, see Bussmann et al. 2018).

National legislators and authorities are still faced with the dilemma of how to adequately punish the country’s corporations and managers doing unethical business abroad, especially without being able to protect them from rule-breaking by foreign competitors (Hoven 2018). The Siemens case illustrates that transnational corporations are increasingly subject to concurrent national regulatory regimes and (quite diverse) law enforcement efforts. With Siemens having been listed on the New York Stock Exchange since 2001, US authorities had come into play in enforcing the Siemens corruption cases under the Foreign Corrupt Practices Act. A major difference between US and German sanctioning styles is the higher relevance of sanctions against corporations in the United States, while in Germany investigations traditionally focus on individuals.

As a general tendency, some of the aforementioned (relatively) new laws “fight” abstract hazards for supra-individual interests, like trust in the capital market or free competition, without necessarily requiring the occurrence of a damage (e.g. subsidy or investment fraud, where false information as such is penalized). These laws also face criticism for being too vague or for unduly criminalizing mere negligence – it is a basic insight of white-collar criminology that economic crimes often are more ambiguous than “ordinary crimes” when it comes to drawing a line between right and (criminalizable) wrong. As a recent example, in the aftermath of the financial crisis of 2008, the German criminal justice system fell short of public expectations to hold individual bank managers accountable for excessive risk-taking (Kubiciel 2013).

Within the European Single Market, the regulation of business has increasingly been influenced by EU legislation. Today, harmonized regulatory standards concern a wide area of subjects (e.g. industrial safety regulations; see Kluin 2015). In this context, Europeanized criminal law responses to rule-breaking – traditionally at the core of national sovereignty – gain more and more importance. Apart from implementing these harmonization processes, the European Union itself plays a role as a potential victim and origin for fraud and corruption. The EU budget is largely dominated by farm subsidies and the Structural Funds and Cohesion Funds that aim at reducing regional disparities in income, wealth, and oppor-
On the institutional level, the European Anti-Fraud Office (OLAF) has been established to protect the European Union's financial interests and combat fraud and corruption in this context. However, as to its effectiveness, it is dependent on cooperation with enforcement authorities in the member states, which in part have quite unequal standards (Dannecker and Bülte 2014, p. 205).

Current Debates

The institutional and legal developments outlined above indicate that it would be inappropriate to claim that nowadays (unlike in Sutherland’s time) the general public, legislators, and law enforcement agencies still generally turn a blind eye to elite and corporate wrongdoing. Anyhow, it is highly disputed to what extent contemporary (criminal) law is an effective tool to prevent these crimes. As to law enforcement toward corporate crimes, major classical obstacles subsist, including: low detection risks; often complex facts and circumstances that are hard to investigate from the outside; a substantial imbalance of power and resources to the advantage of corporations; and difficulties in attributing individual responsibility. The strongly expanded substantive law adds to the prosecutors’ and courts’ already beyond-capacity caseloads.

As one result of this constellation, criminal proceedings have undergone a process of economization and consensualization (Theile 2009). Plea bargaining, largely unknown to the previous German (and continental) system of criminal law – which has traditionally been based on the ideal of an accurate assessment of an “objective truth” – has established itself, especially in complex proceedings against businesses and managers. On the one hand, this is criticized for enabling corporations to easily (and calculably) pay off their debts to society, but on the other hand it is feared that this instrument can lead to undue pressures on the side of the defendants (who might feel compelled to confess). In practice, plea bargaining quite often seems to meet the needs of all parties directly involved in the proceedings.

As a response to deficits and limits of classical command and control approaches, the idea of (enforced) self-regulation has gained importance in Europe, as it has in other regions. Compliance systems have been largely expanded – undoubtedly to avoid liability from the perspective of the corporations, but paired with public expectations that businesses can make an important contribution to curb corporate wrongdoing (Kölbel 2013). Somewhat remarkably, this optimism is questioned quite consonantly from a variety of perspectives including critical criminology, social systems theory, and rational choice, all of them arguing that the inherent logic of (capitalist) businesses ultimately requires an orientation toward economic goals (Slapper and Tombs 1999; Boers et al. 2004). From this point of view, despite the complexity and often unintended “irrational” outcomes of decision-making processes in corporations, controls and credible sanction threats – which can be translated into a cost-benefit calculus – remain crucial to inhibit corporate offending.

Currently, public expectations are linked to new initiatives to intensify sanction threats for corporations. Some civil law jurisdictions have recently introduced rules for corporate criminal liability, e.g. Austria (Fuchs 2014). Other countries, including Germany, still confine themselves to the possibility of imposing administrative fines. Practically, these fines are used very inconsistently by local prosecutors and regulatory authorities, and tend to play a minor role; this is also because they are not obligatory (Kubiciel 2016). Proponents of corporate criminal liability argue for: stronger criminal sanctions to symbolize their displeasure with
offending companies, public criminal trials to heighten potential deterrence impacts, an obligation for prosecutors to start investigations in cases of criminal offenses (as opposed to a margin of discretion when “only” administrative fines are expected), and the possibility to impose criminal sanctions for actions committed abroad (which is not possible in the case of administrative fines; Kubiciel 2016).

Traditional concerns regarding the attribution of guilt to corporations (i.e. legal entities) seem to be surmountable, and the currently underdeveloped German system of administrative fines is in need of reform (for a comparative view, see Engelhart 2014). Yet, the alleged preventive effects of corporate criminal liability (which has been included as a project in the coalition agreement of the current Federal Government in 2018) are still highly controversial (see, e.g., Fuchs 2014; Kölbel 2018). At the moment, empirical findings on the effects of deterrence- and compliance-based approaches are mixed (see, e.g., Schell-Busey et al. 2016), and suggest that the potential to stimulate a sincere corporate commitment to law-abidance by legal means should not be overrated (for a comprehensive discussion, see Kölbel 2017). In this context, relatively little attention has been paid so far to the interplay between the prosecution of individuals and corporations, and even less attention given to the intertwining (but also, arguably, often non-intertwining) of criminal and non-criminal regulatory law and law enforcement.

The revelation of a large-scale fraud by European carmakers (“Dieselgate”) in 2015 has (re-)directed scholarly and political attention to the relations between national governments, regulators, and key industries. Within organizations, “Dieselgate” motivates a closer look at criminogenic factors, including: autocratic leadership styles of corporate patriarchs (namely at Volkswagen) high pressures on engineers to meet increasingly strict emission standards without jeopardizing customer demand by increased costs, and a corporate culture where openly discussing problems and questioning goals set by the company leaders apparently was not welcome (Ewing 2017).

In their efforts to break into the US market, Volkswagen clearly stood out in aggressively deceiving US authorities and customers (“clean diesel”). Nevertheless, it soon became clear that almost all European diesel car manufacturers had used (often illegal) defeat devices,7 making sure that the emissions reduction system remained inactive under real driving conditions. In the European context, the circumvention of consumption and emission standards was pervasive and has been a longstanding tradition. Therefore, the case raises questions that go beyond a particular corporation and its deficiencies, or the personality traits of individual executives. Reports of parliamentary committees of inquiry and inquiries of investigative journalists suggest that the conspicuous discrepancy between emissions on the road and in the lab (and even its cause, the use of defeat devices) has long been well known not only to the companies’ leadership but also to the governments and the authorities, not least due to the campaigning of non-governmental environmental organizations.8

Anyhow, on several occasions long before 2015, German authorities clearly demonstrated that they were not willing to look into this matter and effectively enforce the emission standards. The Federal Ministry of Transport and the subordinated Federal Motor Transport Authority (who are in charge of type approvals) quite openly see their main responsibility in protecting the interests of the German car manufacturers. The personal intertwining between politics and carmakers is manifold. The most prominent example of this codependency, and the revolving doors phenomenon, is found with a former Minister of Transport becoming president of the interest group of the automobile industry in 2007. Considering that European authorities and governments seemingly turned a blind eye to this issue and, if anything, followed a highly lenient style in bringing the car manufacturers into “real”
compliance with the emissions limits in the very long run, the Volkswagen executives’ misjudgment might solely refer to their vulnerability and the possible legal consequences in the United States – where their influence on the adoption and enforcement of emission standards is vastly lower than in Europe.

After all, it seems fair to conclude that without the aggressive deception in the United States and the reaction of the US authorities, the excessive emissions would not have become a scandal in Europe. This case illustrates the particularities when it comes to the regulation of powerful key industries, the possible effects of being subjected to different enforcement regimes, and the difficulties of traditional industries and national governments having to adapt to radically changing economic, environmental, and customer demands.

The fear that high standards of accountability (and different levels of enforcement) for harms resulting from business activities at home and abroad will weaken national competitiveness influences policy debates in other areas, too. The debate on stricter responsibilities for human rights violations of corporate subsidiaries or in supply chains in developing countries is a current example. In 2017, France took a major step forward by adopting a corporate duty of vigilance law (Brabant and Savourey 2017). Until today, the German government is advocating voluntary, non-binding measures, and the current nationalist tendencies in major developed countries might make international agreements more unlikely.

**Conclusion**

Europe, given both its diversity and its increasingly integrated economy, provides rich opportunities for comparative research on the structures, causes, and control of white-collar and corporate crime (see, e.g., Lord 2014 [on the enforcement of bribery]; Almond 2015 [on corporate homicide]; Burkatzki 2012; Kubbe 2018 [on explanations of different levels of corruption]). Empirical research and academic exchange on these issues have rapidly increased in recent years; only a small fraction of these endeavors and debates could be discussed here.

Therefore, it seems a bit of an exaggeration to continue to speak of a blind spot with regard to economic crimes. Anyhow, still too little is known about the extent, structures, and development of corporate crime and its multifaceted varieties. While this is largely explicable by the well-known and persistent difficulties of measuring undetected acts of corporate wrongdoing, improving the often limited knowledge about the extent and structures of formal control of these crimes seems more easily feasible (Walburg 2015). Here, the diversity of authorities being involved in the investigation and prosecution and the interplay between these institutions deserve a closer look (Levi and Lord 2017, pp. 733–736); for several reasons (not least the discipline where scholars have their roots, e.g. criminal law), debates and research sometimes tend to be rather narrowly focused on criminal law responses. When it comes to different but intertwining national and international regulatory regimes that increasingly affect business activities, more research is needed, too.

Growing public attention to corporate wrongdoing is not always reflected by (sustainable) policy efforts. Tackling rule-breaking and harm-doing, especially in the course of transnational business activities, often needs joint international efforts. As European experiences show, for example with regard to common standards on taxation, it is difficult to overcome national (business) interests. But with many more exigent problems ahead, arising from the enormous size and power of transnational corporations from traditional and
new industries, from global inequalities, and from environmental challenges, there is no reasonable alternative. Finally, corporations and politicians should not be left alone to combat white-collar and corporate crime. The Volkswagen emissions fraud has once again demonstrated the necessity of truly independent regulators. Moreover, the power relations and convergences of interests between corporations and politics require a critical, active, and globally interconnected civil society that keeps a sharp eye on these powerful spheres.

Notes

7 See, e.g., Bundesministerium für Verkehr und digitale Infrastruktur (2016), Bericht der Untersuchungskommission “Volkswagen” at https://www.bmvi.de/SharedDocs/DE/Anlage/VerkehrUndMobilitaet/Strasse/bericht-untersuchungskommission-volkswagen.pdf?__blob=publicationFile. The companies often argued that this had been necessary for reasons of engine protection and therefore legal. As to an assessment from an engineering perspective, see Borgeest (2017).

References


White-Collar and Corporate Crime in China

Henry N. Pontell, Adam K. Ghazi-Tehrani, and Bryan Burton

Introduction

White-collar and corporate crimes remain a major social problem in China and play a significant role in politics on the mainland. Describing the substantial effects of corruption, one commentator notes: “The public’s outrage with the mounting corruption within the party organizations and government institutions is an important reason for explaining why so many people participated in or supported the pro-democracy student demonstration in 1989” (He 2000, p.243). The Tiananmen Square events received major international scrutiny and widespread support for the movement. More recently, President Xi has made corruption a centerpiece in his now life-long rule of the country. “In the past five years, Xi’s sweeping drive has punished more than 1.5 million corrupt Communist Party officials, including former political rivals and senior military leaders. Observers say such measures have boosted Xi’s popularity among ordinary people” (Baculinao 2018).

As in other countries, China’s economic issues are influenced by both domestic events and international conditions. For example, the negative economic effects of the 2008 financial crisis, brought on in no small measure by fraud in the mortgage industry in the United States (Nguyen and Pontell 2010; Shover and Grabosky 2010; Pontell and Geis 2014; Pontell et al. 2014), reached the Asia-Pacific region and included reduced demand for many of the area’s major exports, particularly tourism, manufacturing, and commodities.

Despite the significant impacts of these crimes in China, the study of white-collar and corporate crime there has been limited due to the absence of reliable data sources and the related issue of lack of funding for conducting systematic research. In China, as elsewhere, crime statistics must be looked at warily. They are controlled by political entities that can utilize them to achieve self-interested ends. This problem is aggravated in regard to white-collar law-breaking because the definition of the behavior often is an arguable matter and, as noted in other countries, the fact that it is often not reported means that it may remain hidden from public view for some time (Pontell et al. 2013). Moreover, Chinese authorities tend to consider white-collar offenses as crimes against the regime and its communist
ethos, whereas in capitalist societies, law-breaking by business elites typically is regarded more indulgently (Pontell et al. 2013).

Overall, this chapter examines theoretical issues related to the study of white-collar and corporate crime in China, illuminates these with case studies, and provides directions for future research. The following section, specifically, reviews criminological studies on white-collar and corporate crime in China, many of which focus on corruption.

**Types of Crimes and the Significance of Corruption**

Evidence indicating an increasing impact of white-collar offenses is seen in reports by China’s Ministry of Public Security that the number of violent crimes had declined while economic crimes—especially those involving fake products and smuggling—rose in the first six months of 2007. Murder, rape, arson, and bomb attacks decreased 9.1, 2.9, 7.9, and 27%, respectively, from the previous year, while the number of known economic crimes increased by 10%. “Cases involving the production and selling of fake or substandard products, smuggling and disruption of market order saw the biggest increases” (China Daily 2006). In addition, financial fraud cases (3695) and intellectual property (IP) cases (1094) increased 14.3 and 2.7%, respectively. There was speculation that this rise would continue as China transitioned from a planned to a free market economy (China Daily 2006).

In 2015, Chinese prosecutors began investigations into 54,249 officials, including both high-ranking “tigers” and low-level “flies,” for suspected involvement in 40,834 graft cases, while a little over 13,000 of them entailed abuse of power. Focusing on major cases in China, procuratorates investigated 4490 cases involving corruption, bribes-taking, and embezzlement of public funds worth more than 1 million yuan, up 22.5% from the year before. A total of 22 Chinese ex-officials at the ministerial level or above, including former senior Party leader Zhou Yongkang, were prosecuted in 2015, while 41 were subject to formal investigation.

More recently, however, it has been reported that this trend may be changing. A global survey of businesspeople conducted in 2018 found that the percentage of respondents who believed that corruption in Chinese companies was widespread dropped to 16% from 24% four years earlier. The biennial survey interviewed 2550 executives from 55 countries, including 50 from China and 50 from Hong Kong. Each respondent was asked only about their respective country. A fraud enforcement leader at the accounting firm Ernst & Young which conducts the survey stated, “The … enforcement on widespread corruption since 2013 in China definitely had an impact on perceptions of how widely such practices take place in the country” (Shen 2018).

Similar to the United States and elsewhere, the complexity of fraud exceeds the ability of law enforcement agencies to investigate it. Like anti-corruption campaigns, crackdowns on corporate crime tend to ensnare unsophisticated criminals who are not covered by the “protective umbrellas” of government officials. Moreover, inadequate legal protection for whistleblowers ensures that the discovery of high-status individuals or organizations who commit corporate crimes will remain difficult if not impossible in most cases (Cheng and Ma 2009). The resulting official statistics on corruption and other white-collar offenders do not paint an accurate picture of the true distribution of such offending, thus “trivializing” the social reality of white-collar crime in terms of actual costs, types, and pervasiveness (Pontell 2016). This same phenomenon of the massive “dark figure” regarding undiscovered white-collar and corporate offenses has been noted in the United States, and it is especially problematic given that policies are almost always formulated based on these necessarily incomplete official figures.
IP Theft

China has been under pressure from the US government to expand and intensify the criminalization of IP infringement violations and the imposition of penalties (Liu 2010). China enacted Trademark Law (1983), Patent Law (1985), and Copyright Law (1990) but problems remain, including the aforementioned issue of low-efficiency enforcement due to local protectionism common to the other white-collar crimes (Chow 2003). The production of counterfeit goods has been commonplace in China for decades. In the city of Yiwu, with a population of 1.2 million, 40,000 shops sell roughly 100,000 products, 90% of which are fake (Litke 2002). IP theft is one of the biggest risks a company takes when entering the Chinese market. Complex electronic equipment is stripped down to its component parts and reverse-engineered. Bootleg movies, music, and software overwhelm traditional markets in China, and fake prescription drugs are estimated to have killed 192,000 Chinese patients in 2001 (Cockburn et al. 2005). The proliferation of counterfeit iPhones and openings of fake Apple Stores indicate the inability or unwillingness of the government to exert effective control. Fake cell phones have been sold in China for years and are popular because of their readily affordable prices. The infringement on Apple’s trademarks does not end with their hardware. Apple has four official stores (two in Shanghai and two in Beijing), but during the summer of 2011 an American discovered a fifth (illicit) store in the smaller city of Kunming. The lack of cooperation between central and local governments, and between China and other countries, remains a major obstacle to effective enforcement (Yu 2008).

Although international pressure from Western countries has increased and enforcement has intensified, the Chinese legal system remains overwhelmed with IP cases. A frequent misconception of China is that it is a “lawless society” (Calavita 1983; Peerenboom 2002). Although China may fall short of traditional “rule of law” standards (particularly with minimal judicial autonomy in interpreting laws), it is important to realize that there may not be a lack of law in China. The issue, instead, might be the inadequate application of (perhaps) too much law (Potter 1999, 2016).

Corruption

The transformation and growth of China’s economy in the past 20 years is unprecedented in world history. According to most scholars, corruption is especially pervasive in developing and transitional societies (Yu 2008; Zimring and Johnson 2007). As a rapidly ascending superpower, China has experienced rampant corruption in both the government and private sector (Yu 2008). As researchers note, “White-collar crime and official corruption in particular have been a serious concern in China and have attracted wide attention during the course of the nation’s economic reform” (Zhang et al. 2008, p. 127).

Unlike in Western countries, particularly the United States, campaigns to control corruption are a regular feature of Chinese life and often involve draconian penalties. Such policies also have latent consequences. For example, in recent years, there have been reports that death sentences for commercial fraud have increased because of a burgeoning trade in body parts that can be harvested under controlled conditions from offenders who are executed (McGivering 2006).

In examining criminological theories offered to explain the causes of Chinese corruption and economic offenses, Yu (2008) surmises that their increased prevalence is an unintended consequence (or latent function) of reform policies. The relevant criminological perspectives
include: (i) social control theory which emphasizes the importance of conditions such as attachment to parental values in preventing individuals from engaging in illegal activities; (ii) anomie theories which view crime as resulting from normative deregulation, social structural strain, and lack of legitimate opportunities combined with an overriding cultural ethos that stresses the need for wealth and its associated acquisitions; (iii) rational choice models which consider the role of criminal opportunities in motivating and enabling particular forms of crime (Benson and Simpson 2018); and (iv) cultural explanations that focus on traditions or values among persons from different backgrounds and varying experiences (Yu 2008, p. 167). China’s rapid societal transformation would allow all of these perspectives to be in play in varying degrees in producing increased white-collar and corporate lawbreaking.

Why Corruption Flourishes in China

State-Owned Enterprises

Unique to China is the additional issue of the relatively high proportion of state-owned enterprises (SOEs). These are firms where the state has significant control through full, majority, or significant minority ownership. Defining characteristics of SOEs are their distinct legal form and operation in commercial affairs and activities. While they may also have public policy objectives (e.g. a state railway company whose official goal is to make transportation more accessible), SOEs are different from government agencies established to pursue purely nonfinancial objectives.

Compared to other companies, SOEs have specific corruption risks because of their closeness to governments and public officials, and the scale of the assets and services they control. There can be problems of conflicts of interest if governments give contracts to cronies, as well as with corruption, if politicians believe they can use the money generated by SOEs for their own ends (OECD 2018).

According to a Xinhua news agency report in 2012, “By 2011, the CCDI (Central Commission for Discipline Inspection) investigated about 21,000 graft cases after inspecting more than 425,000 government-funded construction projects across the country, and exposed more than 60,000 ‘small coffers’ leading to punishment on [sic] more than 10,000 officials.” And although China has been considering dropping the death penalty for economic crimes as part of legal reforms, China expert Borge Bakken believes that the growing trend of corruption is not simply related to punishment, stating that “China is one of the two countries that has the death penalty for economic crimes. It has no deterrent effect on corruption. It’s about the opportunities, a lack of legal structures and a lack of control mechanisms” and that “The party is watching itself and is all powerful. If you have political backing, you can be exempted from punishment for any corrupt activities” (Wong 2012).

Corruption and Guanxi

A comparative perspective to the topic of corruption allows for a better understanding of the phenomenon in China. Zimring and Johnson (2007) note that the value of such work is not simply to document differences and similarities among countries and systems, but to effectively analyze the distinctive character of domestic practice and policy. Such comparisons
highlight more than simply observed variations between countries, but “what is distinctive (and problematic) about domestic arrangements” (Zimring and Johnson 2007, p. 457).

One exceptional societal institution in China linked to corruption is guanxi. It refers to interpersonal relationships that result in the formation of obligations by one party in exchange for continued favors by another (Dunfee and Warren 2001). Central to the economic and infrastructural development of China, it is best understood as a consistent pattern of interaction between parties, unlike a mere single case of bribery or exchange of favor. It involves trust, credibility, and a very firm relationship between parties over a period of time (Yang 2011). Such connections typically involve government actors, SOEs, and other state-backed companies.

It is common practice for government officials to accept gifts or monetary incentives in exchange for political favors. Such political behavior occurs due to a weak system of governance with limited checks and balances, and a culture that views the wealth of an individual as acceptable even if it is obtained in a legally ambiguous manner (Collier 2002). Lin (2001) notes that the lack of an independent judiciary and poor enforcement mechanisms ensure the limited capacity of the legal system to prevent governmental corruption. Guanxi may also be influenced by rapid social changes including urbanization, privatization, and building infrastructure (Pontell et al. 2017). Such changes have produced a new business culture in China that is characterized by both a decline in professional morality and social responsibility and a dominant ideology that sees guanxi as an acceptable form of behavior (Millington et al. 2005).

Guanxi is beneficial for political actors, as increased affluence and the promise to consistently build upon China’s infrastructure increasingly guarantee political legitimacy in an economy that contains a large proportion of SOEs. In this environment businesspersons receive not only state support but also the ability to economically grow their companies (Ling 2011). The widespread acceptance of guanxi thus allows the government to rapidly build the economic infrastructure with the trust that it will be adequate, reliable, safe, and completed in a timely manner (Tang 1997). This trust not only fosters political legitimacy, but also allows for the continuance of corruption and the cultivation of guanxi between business and political actors.

Because of the social web that guanxi is built upon, corruption through bribery is difficult to track and detect, even compared to the United States (Ghazi-Tehrani et al. 2013). Officials are able to collect large amounts of kickbacks and bribes due to their “protective umbrella” (baohu san) built from their guanxi network. “Gray income,” or monies whose legality cannot be confirmed, includes corruption money and bribery as well as earnings from guanxi gifts, and constituted an estimated 12% of China’s GDP in 2012 (Kuhn 2014). Seventy percent of gray income is earned by the richest 20% of the population. These ambiguous funds are viewed as a conventional facet of life in China, and are used for payment of such items as hospital care and school enrollment. The sheer prevalence of guanxi and the gray income it produces make it exceedingly difficult for anyone trying to conduct business to avoid gaining such funds in practice (Ling 2011). Bribery within the context of guanxi demonstrates China’s tacit willingness to continue to participate in corrupt exchanges, which not only affects national credibility, but product safety as well.

In recent years, guanxi has changed form, moving from favor exchange and relationship building to power sharing and exchange through circumventing the law for resource attainment (Luo 2008). This new bastardized form of guanxi provides a process by which bribery can proliferate in the name of cultivating “social relations.” Analyses of financial frauds,
policing, and regulation indicate that the evolving nature of *guanxi* may stem from the fundamental incompatibility between the current market economy and China’s continuing authoritarian rule (Cheng 2016).

**Corruption Crackdowns**

In an attempt to reverse the “non-issue” status of corruption in Chinese society and to highlight the issue as a major social problem with potentially catastrophic consequences, the government has made it a leading issue in current politics. In a series of speeches in 2012, Chinese President Xi Jinping warned that endemic corruption could lead to “the collapse of the [Chinese Communist] Party and the downfall of the state” (Leung 2015). According to official statistics, China’s latest campaign against corruption has caught and punished about 270,000 officials at various levels of its government and vast bureaucracy. Most of the persons captured have been low- to mid-level party members and related bureaucrats, but the reach of current enforcement efforts has included some members of the Politburo as well (Leung 2015). It is estimated that between the mid-1990s and 2014, “16,000 to 18,000 corrupt officials and employees of state-owned enterprises have fled China or gone into hiding with pilfered assets totaling more than $135 billion” (University of Michigan 2014). Looking for the help of foreign governments in tracking down fugitives and pilfered funds, China initiated “Operation Fox Hunt” in 2014. The government reported that about 180 suspects had been returned to the country, mostly from Asia, South America, and Africa. However, the United States, Canada, and Australia are likely to have the highest numbers of corrupt Chinese officials, according to experts. These countries are relatively safe havens for corrupt officials for geopolitical reasons. The countries have collaborated with China in the past, but only on a case-by-case basis. This brings a distinct and important international element to China’s attempts to deal with its corruption problem that presents both major legal and political complications. “The challenges China faced getting U.S. help for the ‘fox hunt’ have at least as much to do with a political trust deficit as a lack of legal mechanisms for repatriation” (University of Michigan 2014).

More recently, authorities managed to return 124 corruption suspects previously on the run in a 17-month international manhunt that started in October 2014. The suspected offenders were repatriated or were persuaded to turn themselves in from 34 countries and regions (Xinhuanet 2018). By 2016, 40 out of 100 wanted fugitives listed in an Interpol “Red Notice” had been netted over the previous three years. Of those returned, 15 had already been sentenced to terms of up to life in prison; 9 had been accepted by courts awaiting sentencing; and 13 were under investigation or awaiting review (Xinhuanet 2018).

**Problems of Control**

**Limitations of State Control**

Recent studies move away from anomie explanations of criminality in China (as seen in e.g. Cao 2007; Gransow 1995; Zhao 2008) and present institutional arguments (Cheng and Ma 2009; van Rooij 2011; Yu 2008). One study of corruption of government officials concluded that not only did the lack of supervision of the ruling Party create opportunities for the abuse of power, but it raised the question of the limitation of its leadership to prevent corruption (Yu 2008). Ma and Ni (2008) note that officers of anti-corruption agencies are also Party members
who must be loyal to the Party. Dilemmas in anti-corruption efforts arose when they decided to discipline or prosecute corrupt officials when the Party told them to do otherwise (Yu 2008).

Corruption in China also goes far beyond the standard cases of bribery usually covered in the Western literature and has major consequences for the official recording of white-collar offenses more generally. Cheng and Ma (2009) found that 80% of bank fraud in China stems from some form of corruption. These criminals not only utilized guanxi wang (informal connection networks) but also baohu san (protective umbrellas) that exist between corporate actors and the government. The connection between local government interests and the personal profit of high-ranking officials makes both detection and prosecution of these crimes increasingly difficult. Beyond the issues of local protectionism (defang baohu zhuyi) is the fact that major fraud cases can be extremely complex and are difficult to ferret out more generally, as documented by studies in the United States (Pontell et al. 1994). For example, it has been noted that despite the creation of specialized units, the complexity of bank fraud cases exceeds the investigative capacity of law enforcement agencies, which are lagging behind criminals who increasingly use new advanced technologies (Cheng and Ma 2009). In 2008 only 70% of Chinese prosecutors had university degrees (not necessarily in law) and lawyers tended to find much higher-paying jobs in private practice. Detecting bank fraud was difficult due not only to inadequately trained prosecutors, but also to interferences from local authorities (Cheng and Ma 2009).

Problems also exist with regulatory personnel. Van Rooij (2011) describes environmental crimes as the result of a “vicious cycle” where weak enforcement and low compliance amplify each other. Such limited enforcement, he argues, is due to weak detection capacity produced by massive regulatory workloads. China has 40,000 labor inspectors for an estimated 30 million businesses, or approximately 750 businesses per inspector. Moreover, not only are inspection forces clearly overworked, but even properly staffed regulators would still be unlikely to detect violations from companies that are yang feng yin wei or “respectful by day, in violation at night” (van Rooij 2011). The few who are caught face underwhelming sanctions for their illegal activities; although the law allows up to 1 million yuan (US$160,000) in fines for environmental crimes, the average fine in 2006 was only 10,000 yuan (US$1,600) (van Rooij 2011).

Cheng and Ma (2009) and van Rooij (2011) also describe a lack of deterrence generated by law enforcement and the regulatory apparatus despite the use of “crackdowns.” For example, periodic intense enforcement – such as the use of “audit storms” designed to find the misappropriation of state funds – have been ineffective in producing long-term deterrence, as they affect relatively few firms (Yu 2008). “Hard strike campaigns” creating waves of arrests, convictions, and severe penalties have also been noted to have limited effects in regard to financial crimes. Such initiatives are soon over and another crime wave ensues (Cheng and Ma 2009). van Rooij (2011) notes that such official actions can lead to short-term “stop-gap effects” in campaigns against fake products, unsafe food, forced labor, illegal land usage, and industrial pollution, but that such responses have become more “ritualized shows” rather than initiatives with sustained impacts. Studies attest to the lack of enforcement capacity as a major structural problem facing official efforts to both prevent and deter white-collar and corporate crime.

System Capacity: White-Collar Crime as a “Non-Issue”

System capacity issues are frequently cited as major problems in the United States and have been studied in relation to both common and white-collar crime (Goetz 1997; Pontell 1984; Pontell et al. 1994; Tillman et al. 1997). For example, Tillman et al. (1997) found that a
system capacity model based on criminal justice workloads was more predictive of prosecution and punishment of offenders in the Savings and Loan crisis than either an alternate sanctions explanation (which argues that the availability of civil sanctions could replace criminal punishment) or an organizational advantage argument (in which offenders in “shielded” positions received more lenient treatment; Tillman et al. 1997).

Similarly, Pontell et al. (1994) found that criminal justice capacity issues were useful in explaining government responses to financial fraud in the United States and were simultaneously responsible for the official recording of such crimes. Goetz (1997) also uses a system capacity approach coupled with a class bias model to explain the under-reporting of white-collar crime in his study of arson for profit. The inherent difficulties in the detection, apprehension, and sanctioning of offenders brought to light by the current literature on white-collar crime in China may be better understood through a system capacity model. Enforcement resources and obstacles, in addition to existing law, need to be examined in order to more accurately assess the nature of white-collar crime in China. In their study of the Savings and Loan crisis in the United States, Pontell et al. (1994) examined financial crimes that were similar in nature to those studied by Cheng and Ma (2009) in China and note the difficulties inherent in stopping bank fraud. The complexity of these crimes and the fact that they are well disguised within ordinary business transactions further complicate enforcement efforts and put additional strain on an already overburdened response system (Pontell et al. 1994). Related to capacity issues is the problem of “‘non-issue’ making” (Crenson 1971; Goetz 1997). While white-collar crime is difficult to detect due to the absence of “clear-cut ‘villains’ and ‘victims’ the way that street crimes [have villains and victims],” (Rosoff et al. 2010) enforcement agencies also frequently ignore readily apparent white-collar crimes (such as air pollution or arson-for-profit) if such crimes provide economic benefits (Crenson 1971; Goetz 1997). This, in effect, makes white-collar crime a “non-issue” (Crenson 1971; Goetz 1997). China’s three decades of economic growth might not have occurred in spite of increasing white-collar crime, but rather in conjunction with it. The economic growth targets set since the Ninth Five-Year Plan3 may be incompatible with the enforcement of economic, health, and environmental regulations (van Rooij 2011).

An example of such issues might be found with the Sanlu Melamine Scandal. While food standards in China have been notably low (Pei et al. 2011) the Sanlu Scandal of 2008 led to a major legal change with the 2009 “Food Safety Law.” The incident involved purposefully adulterated food that resulted in the deaths of at least six infants (LaFraniere 2009). During the summer of 2008, 14 infants in rural Gansu province became sick with kidney stones. A few months later, the Chinese General Administration of Quality Supervision, Inspection, and Quarantine (AQSIQ) announced that tainted milk was making infants ill throughout China. Initial testing by the AQSIQ showed that the Sanlu Group was to blame for the contaminated infant formula (Bloomberg 2008). The formula that Sanlu had been manufacturing came from milk adulterated with melamine, an industrial compound used in the manufacture of many plastics. It had been used to fool both Sanlu personnel and government inspectors. Pure milk in China is required to contain 2.95% protein, and the test used to detect the amount of protein in milk relied on nitrogen levels (Breidbach et al. 2010). Melamine is a compound high in nitrogen. In an effort to increase profits, dairy workers diluted milk supplies with water and added melamine to increase the apparent protein content (Xiu and Klein 2010). With massive growth in food production in general, and dairy production in particular, the Chinese food industry regulation structure has grown to include 10 different agencies (Wei 2007). This diffuse system of regulation leads to two marked problems: first, regulatory “blind spots” due to ambiguity in task assignment; and
second, “buck-passing” where overlapping oversight results in ambiguity of responsibility (Ni and Zeng 2009).

When Sanlu executives learned of the illegal adulteration of the milk, they did not inform the local government (as they were legally obligated to do) until many months later. Nor did the local government institute a recall once they were notified. It was not until a New Zealand company, Fonterra (a minority stakeholder in Sanlu), was notified of the problem and informed the New Zealand Prime Minister that action finally resulted (Yardley and Barboza 2008). Approximately 300,000 Chinese infants were affected in addition to the six who died. It appears that the adulteration continued not because of corruption or bribery, but rather due to the regulators’ desire not to interrupt the tax revenue that flowed from the sale of the unsafe milk. The Chinese food industry is made up of over 170,000 food-processing firms. Of these firms, 72% employ fewer than 10 workers, 29% do not have any quality standards, 60% do not conduct quality checks, and 50% lack sanitation certificates or production licenses (Zhang 2012). In sum, the enactment of the 2009 Food Safety Law may not have changed much due to the government’s inability to supervise the potentially high number of offending firms.

The Media, Transparency, and the Discovery of White-Collar Crime

The lack of freedom of the press in China is a major obstacle to both discovering and preventing corruption. By comparison, some of the largest white-collar and corporate crime scandals in the United States have been uncovered by journalists investigating the Watergate (Woodward and Bernstein 1994) and Enron (McLean and Elkind 2013) scandals as well as the Savings and Loan crisis (Pizzo et al. 1989). Such in-depth reporting is not possible in China. This leaves central issues (including the lack of transparency and the abuse of self-management systems) as significant problems not only in terms of investigating cases of major corruption but also in a larger sociological sense; media reports often determine the social construction and reality of such offenses themselves. Independent journalists and newspapers in other countries act as an external control by increasing the cost and probability of detection (Dong and Torgler 2013).

Censorship is not a new strategy of the Chinese government and has been employed in multiple recent scandals over health and safety and even natural disasters (Ghazi-Tehrani and Pontell 2015). The Chinese constitution gives its citizens freedom of the press, but in practice, the “endangerment” of the country (and the party) usurps those rights with an all-encompassing “censorship pass” (Xu and Albert 2017).

Case Studies

In this section, we illustrate the issues described heretofore using specific examples of consequential white-collar crimes in China. These cases show evidence of the problems of censorship, the “non-issue” of white-collar crime, and the consequences of state corruption.

The Wenzhou Disaster

The Wenzhou train crash provides a rare case where it was impossible to fully prevent international media scrutiny of the role of corruption in a major physical disaster. Not a single newspaper in China featured the disaster on its front page, leading reporters and journalists
to post stories on the internet in protest – a rare occurrence in the country (Pontell et al. 2017). Although Chinese officials initially stated that the investigation of the crash should be open, transparent, and monitored by the public, when officials from the Railway Ministry later held a press conference, only state-owned media organizations were permitted to attend. Other media outlets were pressured to leave (LaFraniere 2011). The International Federation of Journalists (representing over 600 000 reporters in 131 countries) claimed the Chinese government was “denying the public their right to be informed about issues related to public safety, and engage in public debate about reform and improvement of the rail system” (Asia-Pacific 2012). The government’s response to the crash was to quickly bury the damaged train cars in a large pit before investigators had arrived on the scene. Officials did not release any detailed information on the disaster, first blaming foreign technological components and then lightning storms (Wang and Fang 2011).

Numerous criticisms resulted from the handling of the Wenzhou crash, exposing cracks in the ubiquitous censorship of the media by the Chinese government. Considered to be one of the world’s largest public projects, its swift-paced development and expansive nature signaled a mass transport system open to those beyond the elite. Suddenly faced with a poorly explained crash on a high-speed rail system meant to exemplify modern China, fears were raised that the government was indeed willing to sacrifice safety and lives in the pursuit of speedy development, international publicity, and standing among its citizens (LaFraniere 2011). The railway was the product of an unspoken agreement between the ruled and the rulers; the Party promised competency and performance, and the failure of such a high-profile project violated that trust. On the first anniversary of the Wenzhou train crash, the government banned all independent reporting of the event. The move was not unexpected, and many newspapers preemptively ordered that there be no coverage (Asia-Pacific 2012).

Gome Electronics

The Gome Electronics case demonstrates how difficult it can be to combat corruption. Huang Guangyu started Gome Electronics in 1987. By 1999, it had become the largest privately owned electronics and appliance retailer in both Hong Kong and mainland China. In 2004, the company began trading on the Hong Kong stock exchange and Huang became the richest man in China for the next four years (Parry 2010). In November 2008, Huang was arrested and accused of “economic crimes,” including bribing tax officials and the police, illegally converting US$177 million into foreign currencies, and having participated in an insider-trading scheme that netted him US$49 million (Wines 2010). He was sentenced to 14 years in prison, was fined 600 million yuan (US$95 million), and 200 million yuan (US$31 million) of his assets were confiscated. His net worth had been estimated at US$2.7 billion (Wines 2010).

The case of Gome Electronics may appear to be a rather clear-cut example of bribery and corruption, but interviews by the state-run newspaper Xinhua with Chinese political insiders indicate that the situation might have been otherwise. The Chinese courts never released the exact details of the case, leaving the possibility that Huang bribed some officials but not others. The ignored officials, the political insiders claim, were the ones who pressed charges (Wines 2010). As the Gome Electronics case indicates, corruption can be well-organized as well as systemic.
The 2008 Sichuan Province Earthquake

On Monday, May 12, 2008, an 8.0 magnitude earthquake struck China's Sichuan Province. The official government tally listed 68,712 people killed as a result of the quake, while another 17,291 were missing and presumed dead. School children accounted for 5,335 of those dead or missing. Another 546 children were left permanently disabled (Jacobs and Wong 2009). The Los Angeles Times quoted a Chinese professor who showered praise on the transparency of the Chinese government in the immediate aftermath of the disaster (Demick and Magnier 2008). However, protests soon followed reports that roughly 7,000 classrooms collapsed during the earthquake as a result of both “poor design” and “the use of substandard materials” (Ang 2008).

The government responded to protesting parents who had lost their only child by providing $8,800 in cash and an additional pension of $5,600. To qualify, the parents had to sign a contract promising not to protest. Those who declined to sign were threatened with “beatings or punishment” (Wong 2008). A teacher from one of the collapsed schools photographed the leveled buildings and posted the pictures online. He was arrested by the police and ordered to serve a one-year term in a “Reeducation through Labor Camp” (He 2008). This case demonstrates how government interests and actions – as well as limited media access – result in trivializing deadly effects of official corruption.

Conclusion

Although China clearly has different legal, economic, and political structures, common factors facilitating corruption exist with other countries. More detailed comparative studies may better disentangle the various relationships that encourage white-collar and corporate offending, and what mechanisms might best prevent them.

The degradation of social norms and morals regarding ethical business practices is not unique to China, and can be seen in institutions in developed nations worldwide. For example, Lessig’s (2011, 2013) work on “institutional corruption” demonstrates that corruption may come from even well-intentioned sources. “Institutional corruption is manifest when there is a systemic and strategic influence which is legal, or even currently ethical, that undermines the institution's effectiveness by diverting it from its purpose or weakening its ability to achieve its purpose, including, to the extent relevant to its purpose, weakening either the public's trust in that institution or the institution's inherent trustworthiness” (Lessig 2013). This also appears to be an accurate characterization of events in the United States as of this writing regarding the Trump administration's reactions to a major investigation of high-level government involvement in corruption and white-collar crime being conducted by Special Prosecutor Robert Mueller as part of his larger focus on the Russia hacking of the 2016 presidential election. In China, the continued push for economic growth, while well-intentioned, legal, and ethical, may in fact be resulting in corrupt outcomes that could ultimately jeopardize the public's trust of the government and SOEs.

Some have argued that the traditional Chinese reliance on the deeply rooted cultural phenomenon of guanxi is a major factor in explaining the persistence and scope of corruption. The general acceptance of guanxi helps explain why it took so long for public outrage to build up to the point where Party leadership was forced to respond. Moreover, it could reasonably be argued that all cultures and societies produce a form of guanxi, and that China's version is not different enough to explain the depth and severity of corruption in China today. More generally, local customs and mores may also fail to condemn some
acts of corruption because an obviously harmed individual victim is not present. Thus, even when local law makes the criminality of conduct clear, local morals may all but excuse it.

Over a half century ago, preeminent American sociologist Edwin Lemert (2000, p. 34) made a seminal point regarding what he termed the “unstable equilibrium in the societal reaction” to deviance, which relates well to such cultural explanations of corruption, and to what some consider to be widespread ambivalent attitudes of individuals toward it. He noted the “generalized culture conflict which affects such a large majority of the population that little consistent action is possible” (Lemert 2000, p. 34). This pattern exists for at least two reasons. First, there may be disinterest or ignorance on the part of many persons who may not have the necessary skills or background to make informed judgments. Second, many persons may have engaged in some form of deviance themselves. This may result in a situation “in which community tolerance is precariously stabilized just short of a critical point in the tolerance quotient at which collective action is taken” (2000, p. 34).

Lemert’s analysis suggests that community tolerance is central to the degree of white-collar offending as well as any other potentially unwanted forms of behavior a society experiences more generally. Reducing that tolerance necessarily entails a broad-based approach. Changes in law and various enforcement campaigns designed to threaten the population into conformity through deterrence are but one mechanism by which to potentially change community tolerance levels regarding corruption. Another approach that is likely to be less costly and more socially beneficial would be to change the popular long-standing narrative of corruption as a socially acceptable way of conducting business and politics. Narrative is a very powerful force in societies as it provides a manner in which stories are told and can thus influence more substantive changes in customs and cultures. Through a series of case studies in varying countries, including China, William Black (2007) has documented that “corruption kills.” This narrative is in stark contrast to the one that is typically invoked by those who defend or actually engage in corruption. Holding great potential for future research, it may also be an effective policy tool as a focus for anti-corruption campaigns and educational programs both in China and elsewhere.

Notes

1 In China, a public procurator is an officer charged with both the investigation and the prosecution of crime. The office is a feature of a civil law “inquisitorial,” rather than common law “adversarial,” system.

2 The Central Politburo of the Communist Party of China is a group of 25 people who oversee the Communist Party of China. Unlike “political bureaus” of other Communist parties, power within the Politburo is centralized in the Politburo Standing Committee, a smaller group of Politburo members.

3 China’s Five-Year Plans are a series of social and economic development initiatives issued since 1953. The Communist Party of China has shaped the economy of China through the plenary sessions of the Central Committee and national congresses. The Party plays a leading role in establishing the foundations and principles of Chinese socialism, mapping strategies for economic development, setting growth targets, and launching reforms.

References


White-Collar Crime in South and Central America: Corporate-State Crime, Governance, and the High Impact of the Odebrecht Corruption Case

Diego Zysman-Quirós

Introduction

Sutherland offered examples of bribery as indications of white-collar crime, and maintained that business was a more tainted enterprise than politics, however rotten politics might be. For this judgment, he relied on writers who presumably were in a position to know, including John T. Flynn, a highly respected investigative reporter, who had written: “the average politician is the merest amateur in the gentle art of graft, as opposed to his brother in business.” (Shichor and Geis 2007, p. 405)

It is not far-fetched to claim that in Latin America there is no tradition of empirical research in criminology, let alone studies about white-collar crimes (Gabaldón 2010; Granillo 2015). Even criminology of social reaction and the emerging studies of the law and economics currently are almost exclusively focused on studying common crimes, not white-collar crimes (Di Tella et al. 2010). Although there are thorough journalistic investigations about specific local cases which have had widespread repercussions, and social and anthropological studies about certain geographic “hot zones” as well as organized crime markets, most criminological studies of white-collar crimes are translations and theoretical approaches about the work of Edwin Sutherland and definitional debates which have not sought to establish new categories (Sutherland 1969 – translated by Rosa del Olmo; Pegoraro 1985; Aller 2005; Virgolini 2005; Alcaíno 2016). On the other hand, penal legal academic research has yielded findings in formal, but not empirical, terms about the legislation and characteristics of economic crimes, which are often considered as synonymous with white-collar crimes.

The term's ambiguity abounds in the social and academic discussion about defining white-collar crimes (Nelken 1997; Green 2004; Friedrichs 2010). Nevertheless, it might seem appropriate to consider an international scandal and transnational bribery crime of “black” corruption – one that involves billions of dollars – as a white-collar crime. It is even clearer that this case should be regarded as a white-collar crime if it has been committed by
one of the bigger corporations in Latin America and its top professional and millionaire executives. Indeed, there is no room for disagreement if it also involves present and former presidents of the region, presidential candidates, and high-ranking politicians.

The issue of nuclear and traditional corruption (such as bribes) rooted in Central and South America, and the legal reforms for combating it, is not new. For years, the main international and regional measurements of corruption have reinforced the views of the differences between the Global North and the Global South and have led to severe criticism of Latin America (Latinobarómetro 2017; Transparency International 2017). As stated by Brooks (2016, pp. 11, 179), the International Monetary Fund and the World Bank have generally put forward a certain Western ethnocentric idea of corruption, where political corruption in particular is seen primarily as a public issue. However, this idea is slowly changing and the fact that the private sector itself could be corrupt is now being acknowledged (Heywood 2015; Hough 2015). At the same time, some practices typical in the Global North, such as lobbying, networking, or “revolving doors,” are more or less invisible in international accounts of corruption (Shichor and Geis 2007, p. 411; Huisman and Vande Walle 2010, p. 122; Whyte and Poynting 2017).

Odebrecht SA is a Brazilian company conglomerate investigated in the titanic judicial case known as Lava Jato (Portuguese for “car wash”) for local and transnational bribes, money laundering, and other related crimes. It is not just a company that is “too big to fail” – it is one of the largest “multilatinas,” the largest construction company in Latin America, and the 13th largest construction company in the world.

However, in December 2016, Odebrecht acknowledged to the authorities of Brazil, the United States, and Switzerland that it had paid approximately US$788 million in bribes since 2001 to unidentified government officials, their representatives, political parties, and political candidates to obtain and secure more than 100 building projects in 12 countries in Latin America as well as Africa, namely: Argentina, Brazil, Colombia, Ecuador, Guatemala, Mexico, Panama, Peru, the Dominican Republic, Venezuela, Angola, and Mozambique. New information also suggests that millions of dollars were specifically directed to the illegal financing of political campaigns – even campaigns of opposing political sides – in said countries and El Salvador. In addition, it has been suggested that the company’s projects in Cuba were overpriced.

Odebrecht thus became the largest judicial case of corruption in the history of Latin America and the largest case of transnational bribery condemned by the United States’ justice system (in coordination with Brazil and Switzerland). Described in more detail below, the US Department of Justice agreed to a plea bargain with the company and one of its subsidiaries (the Braskem Petrochemical Corporation). This plea bargain resulted in a joint fine for the three countries of 3.5 billion dollars, imposed by the federal court of New York.

The case had, and still has, a huge social and political impact in Brazil and in all the other countries involved. All the presidents (and many of the former presidents) of these countries have made public statements in this regard. Latin American newspapers published documents, videos, special analyses, and interviews on a daily basis. Nevertheless, the Odebrecht case is also serving as fiction and entertainment, as demonstrated by a show launched worldwide and with enormous public controversy by Netflix at the beginning of this electoral year. O Mecanismo (Portuguese for The Mechanism, or systemic corruption) is a critical Brazilian series directly inspired by a tendentious and severe moral judgment of real politicians and businessmen still involved in Lava Jato’s investigation and specifically the Odebrecht case (Andreoni 2018).
There were numerous demonstrations against corruption in some countries, which, in turn, motivated legal criminal reforms on anti-corruption or corporate criminal liability and prevention in Brazil, Peru, Ecuador, Argentina, and other places (Coca Vila et al. 2017; Sozzo 2017a; Zysman-Quirós 2018). These demonstrations also prompted prosecutors and judges of most countries to launch numerous local criminal investigations.

The year 2017 seems to have been one of radical political change in Latin America, in which the scandal acquired a new dimension, being used as a weapon to influence elections in many countries. In 2017 there were 11 presidential and parliamentary elections in seven countries of Latin America, and in 2018 there were 11 elections in eight countries. In 2017, there were only two presidential elections, while in 2018 there were five: those of Brazil, Costa Rica, Colombia, Mexico, and Venezuela. Many high-ranking officials have been removed or have had to resign as a result of this corruption investigation. Presidents have also been removed by impeachment, while ex-presidents and political candidates have been imprisoned for corruption-related crimes in this case. Although there are obvious differences, the Odebrecht case is for Latin America comparable in repercussions and traction to the Enron case in the United States at the beginning of the millennium.3

In this regard, although the role of Odebrecht and its executives in the corruption case is not debatable, the involvement of high-ranking political figures is much more controversial, and nobody has pleaded guilty to charges brought against them. For this reason, in this explosive and widely publicized context, the case of the stepped-up judicial persecution against corruption in Latin America has been perceived differently in different countries.

Sympathizers of the accused governments – who are center-left or popular in many cases – consider it an excuse used by the new right for political persecution of leftist governments; namely, a case of “lawfare,” a new methodology that replaces the coups d’état of the past by using institutions of formal democracy as weapons in political struggle instead (Werner 2010; Brandão 2017; Sotelo Felippe 2017). Others (mostly those in favor of liberal criminal law) judge the case as a turning point in corruption – sometimes with grief and disappointment. Some consider it to be a Latino version of Italy’s 1990s Mani pulite corruption investigations that targeted links between mafias and politics (Nelken 1996), or as a milestone in justice against corruption, similar to the transitional cascade of justice against the military dictatorships of the 1970s and 1980s (Sikkink 2011; Allier-Montaño and Crenzel 2015; Zysman-Quirós 2017, 2018). At the same time, the most conservative see it as an exacted revenge against populist or corrupt moderate governments who have previously stood against previous dictatorships and neoliberal governments.

My purpose here is to analyze the issue beyond these frameworks. I do not intend to scandalize the international reader, once again, with the extent and diffusion of open corruption in the Global South, where criminology sees:

… state crime in terms of “the other” and “the self” and refers to poor states as run by gangsters, rogue states or failed states and we – the West – present ourselves as the police (Green and Ward 2004), even though we are also corrupt (Whyte 2015). (Brooks 2016, p. 32; see also Whyte and Poynting 2017)

My main interest in the Odebrecht case is neither definitional nor explanatory. It depends on another approach. In less than two years, the usual concern and debate about certain white-collar crimes and corruption of criminal systems has escalated socially and politically in an impressively fast and concerted manner across a large number of countries. This is all a consequence of a single regional case with great parallel ramifications in 10 South and Central American countries, Mexico, and two Southern African countries.
I do not aim to explain its causes here but to focus on the public perceptions, political struggle, and use of white-collar crime for governance. I am convinced that this South and Central American case study shows that, despite general traditional views about the tolerance and weak criminal prosecution and punishment of white-collar crimes, there are indicators that certain forms of high political corruption and some other related offenses could be becoming a powerful goal of government through law enforcement, at least in Central and South America.

Even though Sutherland's research on the corruption of the upper class shook the studies of the sociology of deviance in the first half of the twentieth century (Brooks 2016, pp. 2, 27), most theoretical approaches to corruption come from the disciplines of political science and economy. Nevertheless, a recent emergence of a more sociological criminology of corruption is growing in the field (Huisman and Vande Walle 2010; Brooks 2016; Whyte and Poynting 2017) and can be combined productively with the theoretical categories of state-corporate crime (Kramer et al. 2002; Green and Ward 2004) or – more appropriate to this case – corporate-state crime (see Friedrichs 2002, 2010; Friedrichs and Rothe 2014, p. 148). Since appealing to corruption crimes has become a fundamental strategy for the exercise of authority in different political and social areas, it is very interesting to also attend to the social reaction and to rethink this case from the approach of “governing through crime,” developed by Simon (2007).

The Odebrecht Case and Collaboration Agreements with the Criminal Justice System

Odebrecht SA: Structure and Services

Headquartered in Brazil, Odebrecht SA is the largest construction company in Latin America. It was founded in Bahia, Brazil, during World War II in 1944, and grew during the Cold War. It expanded in the mid-1970s during the civil conflict of Angola by developing good relations with both sides – the United States and South Africa (who favored the apartheid) on the one hand, and socialist USSR and Cuba on the other. These negotiations also took place in other countries with extensive violent conflicts between the State and insurgent groups, such as in Peru and Colombia (Lockward 2017, p. 92).

Its main activity is construction, but it also produces various goods and services, including chemical and petrochemical goods, engineering, construction, infrastructure, energy, chemicals, utilities, and real estate. It was responsible for the development of projects in Brazil related to transport and logistics, energy, sanitation, urban development, and public and corporate construction. In 1991, it developed the first Brazilian-built transport work in the United States (Metromover, in Miami). It was also responsible for the construction of buildings in Brazil for the 2014 World Cup (soccer) and the Olympic Games of 2016.

The conglomerate is made up of numerous companies operating in different areas: Construtora Norberto Odebrecht, Odebrecht Oil and Gas Foz do Brasil, Odebrecht Realizações Imobiliárias, Odebrecht Infraestructura, Odebrecht Agroindustrial Braskem, Odebrecht Administradora E Corretora de Seguros, Odeprev Odebrecht Previdência, Odebrecht Foundation, Mectron, and Odebrecht Energy. Braskem Corporation is one of the largest petrochemical companies in the Americas and it was effectively controlled by Odebrecht SA. The Brazilian state-controlled oil company Petróleo Brasileiro SA, commonly known as Petrobras, is also a minority shareholder in Braskem.
Odebrecht SA exports products and services to 98 countries, and in 2010 it was chosen as the “best family business in the world” by Switzerland's International Institute for Management Development (IMD). It is estimated that in 2014, before the scandal, its income had been $31 billion. At the time, the company had 168,000 employees in 28 countries. Nevertheless, during June 2019 Odebrecht SA filed for bankruptcy protection to restructure 13 billion of debt.

The *Lava Jato* Operation and Resulting Plea Agreements

The Odebrecht case arose from the *Lava Jato* (car wash) Operation, the largest corruption and money laundering investigation of the Federal Police of Brazil. The investigation started in Curitiba but has ramifications in Rio de Janeiro and other states. The operation was made public in March 2014 with the fulfillment of more than a hundred citations seeking both preventive and coercive remedies, with the ultimate objective of investigating a money laundering scheme suspected of moving more than 10 billion of the local currency (Brazilian reais). The case was extended to the directors of Petrobras, the largest state oil company in the country, and then to a large number of senior officials and government politicians (Azevedo and Batista Pilau 2018; Ministério Público Federal-Brazil 2018).

Marcelo Odebrecht, grandson of the founder and Odebrecht SA Chief Executive Officer (CEO) since 2005, was ninth on the list of Brazil's wealthiest billionaires at the end of 2015 according to *Forbes* ($13 billion) and the visible face of the company. Regarded as a young star at the World Economic Forum in Davos, he was arrested for bribery and money laundering in Brazil in June 2015. Marcelo Odebrecht seemed to be a businessman who was too big and too linked with power to be imprisoned. That is why he was shocked when, in March 2016, he was sentenced to 19 years and 4 months in prison in Curitiba along with other high-ranking executives (Vara Federal Criminal de Curitiba, Brasil, Sentença 13ª 2016). This was an unparalleled sentence for economic crimes of the elites in Latin America and particularly in Brazil, which had never before prosecuted its dictators (1964–1985) and complicit businessmen. Compare this to what Rudolph Giuliani achieved in the 1980s as a federal prosecutor, where – at times – he had top New York financiers in handcuffs.

After one year in prison, in exchange for substantial information through a *delação premiada* (plea bargain), Marcelo Odebrecht reduced his conviction to a total of two and a half years in prison and five years of house arrest, which he has been serving – in his mansion of San Pablo – since the end of 2017. Seventy-six other high executives later reached agreements or plea bargained to reduce their sentences in exchange for information. Most of them avoided pre-trial detention. The official videotapes of those statements, where executives and politicians are mentioned, were widely disseminated by justice officials and the media months later. Today, a large number of them are available on YouTube.

In December 2016, Odebrecht SA and its subsidiary Braskem SA signed and coordinated multijurisdictional agreements between the United States, Brazil, and Switzerland. In Brazil, the claims against the companies were completed through civil proceedings. In the United States, where some conspiracy acts were performed and whose banks intervened, the companies pleaded guilty. In Switzerland, the final destination of the companies’ money laundering efforts, they took a summary penalty order. However, the only prison sentences for criminal responsibilities were imposed in Brazil. Odebrecht
SA and Braskem pleaded guilty and agreed to pay a combined fine of $3.5 billion – the penalties imposed against Odebrecht SA amount to $2.6 billion (R$8512 billion) and those imposed against Braskem, $957 million – for having paid approximately $788 million in bribes to foreign government officials, their representatives, political parties, and political candidates in order to obtain and secure construction contracts in 10 Central and South American countries and two African countries. While the United States and Switzerland each received 10% of the total criminal fine's principal paid by Odebrecht SA by April 2017, Brazil will receive the remaining 80% over the next 14 years. In regards to Braskem, the United States and Switzerland received 15% each and Brazil received the remaining 70%. This was the largest-ever global transnational bribery resolution receiving judicial acceptance (US Department of Justice 2016a, 2016b).

As mentioned above, on January 12, 2016, Marcelo Odebrecht (in exchange for information and full cooperation) signed an Acordo de Leniência (a leniency agreement) with the Federal Public Ministry’s Força Tarefa “Lava Jato” (Brazilian Prosecutor Office’s “Lava Jato” Task Force) to:

1. proceed with other authorities or public entities with which the company negotiates other agreements related to the same facts, avoiding double penalties;
2. secure the compliance of Brazilian authorities to only share information with such jurisdictions that accept similar conditions applicable to Odebrecht SA and its executives as those reached in Brazil;
3. attest the extent of the company's cooperation directed to national and foreign authorities;
4. not sue the company or its executives due to the facts or conduct revealed as a result of the agreement;
5. withdraw any public bidding restrictions related to the facts of the agreement;
6. plead the unfreezing of assets and the end of other provisional remedies;
7. provide statements to third parties attesting to the fulfillment and content of the commitments made in the agreement (Ministério Público Federal-Brazil 2016).

The first instance federal judge of Curitiba, Sérgio Moro, approved this agreement in May. During this investigation Moro became an internationally prominent public figure, hated and loved by the people, press, and judiciary of Brazil and other countries (Fontevecchia 2017; Lockward 2017; Proner et al. 2017). On December 14, 2016, the Brazilian Federal Public Prosecutor’s Office also signed a leniency agreement with Braskem, Odebrecht SA’s petrochemical company. A week later in New York, on December 21, 2016, Odebrecht SA signed a long plea agreement with the United States Department of Justice, Criminal Division, Fraud Section of the United States Attorney's Office for the Eastern District of New York. This agreement was immediately made public in its entirety.

As part of these plea agreements, the Odebrecht company admitted being involved in a bribery scheme for more than a decade, going so far as to create a secret financial structure within the company that operated solely to account for and disburse bribe payments. This Setor de Operações Estruturadas or “Division of Structured Operations” (DSO; also known as the office of “Propinas”[tips] or “B-box”) was created in 2006. It reported to the highest levels within Odebrecht SA and managed the “shadow” budget which was funneled to a series of off-shore entities in Antigua, the Virgin Islands, Panama, and Andorra; these entities were not included in Odebrecht SA’s balance sheet. For these purposes, an operative manual of 60 pages, two special computer
systems, and an off-book codified communications systems were created. The DSO was originally established in Brazil, then moved to the United States, and in 2014 – after rejecting the convenience of El Salvador – moved again to the Dominican Republic (Lockward 2017, p. 40).

Odebrecht SA accepted responsibility for a one-count criminal charge of conspiracy to commit offenses against the United States in violation of Title 18, United States Code, Section 371; that is, violation of the anti-bribery provisions of the Foreign Corrupt Practices Act (FCPA). The gross pecuniary gain assumed was $3.336 billion (base fine).

Under the agreement, Odebrecht SA was mandated to comply with many conditions related to supporting the larger investigation and internal compliance efforts, including requirements to:

1. provide a description of the unlawful acts, identifying the agents involved (including public officials and representatives of other companies) in different countries;
2. present documents, information, and other relevant material discovered after the signing of the agreement, even those which are not under the custody of Odebrecht SA;
3. identify companies and bank accounts used abroad and to present bank accounts and statements;
4. present a list with each of the electoral donations made in the last 16 years;
5. present a list with all the beneficiaries of improper payments which currently have special forum;
6. act diligently in the course of the internal investigations and to encourage representatives, employees, managers, officers, shareholders, and third parties to adhere to the agreement;
7. completely cease its involvement in the unlawful acts;
8. bear the expenses related to any procedure requested by the authorities and to refrain from applying labor sanctions to those who collaborate;
9. enhance its compliance program, presenting an implementation schedule;
10. subject itself to independent monitoring;
11. renounce the benefit of national or foreign authority and the amounts deposited in detailed foreign accounts.

Braskem is listed on the New York Stock Exchange with publicly traded American Depositary Receipts (ADRs) subject to annual reports to the US Securities and Exchange Commission (SEC) and US anti-corruption legislation. On December 21, 2016, Braskem also admitted in New York to engaging in a wide-ranging bribery scheme and acknowledged the pervasiveness of its conduct. Between 2006 and 2014, Braskem paid approximately $250 million to various parties through Odebrecht's secret bribe payment system. Using the Odebrecht SA system, Braskem authorized the payment of bribes to politicians and political parties in Brazil, as well as to an official at Petrobras, the most important public company in Brazil. In exchange, Braskem received contracts with Petrobras, preferential rates for the purchase of raw materials used by the company, and favorable legislation and government programs that reduced the company's tax liabilities in Brazil among various benefits. Overall, Braskem made corrupt payments and profits totaling approximately $465 million.

As a result, Braskem agreed to pay a total criminal penalty of $632 million for conspiracy to violate the anti-bribery provisions of the FCPA while paying another $325 million in related settlements with the SEC and prosecutors from Brazil and Switzerland.
Impact of the Odebrecht SA Bribes and Illegal Financing in Latin American Politics

The International Scope of the Case

As a result of the agreement between Odebrecht SA and the United States, Brazil, and Switzerland, several countries in Latin America, such as Argentina, Ecuador, Peru, the Dominican Republic, Panama, and Venezuela, have opened judicial investigations regarding Odebrecht SA's business in said countries. In Brazil, the company began its corruption campaign in 2003 and continued until 2016. During this time, Odebrecht SA paid within its country approximately $349 million dollars in bribes made to political parties, foreign officials, and their representatives.

However, it is clear that Odebrecht SA's corruption crossed many borders. As a few examples:

- In Venezuela, the company acknowledged having paid about $98 million between 2006 and 2015 to “government officials and intermediaries” to “obtain and retain public works contracts.”
- In the Dominican Republic, it disbursed $92 million between 2001 and 2014 to “government officials and intermediaries” and, as a result, obtained a profit of $163 million.
- In Argentina, Odebrecht SA recognized having paid, between 2007 and 2014, more than $35 million to “intermediaries with the agreement that these payments would, in part, go to government officials.” Those bribes were related to “at least three infrastructure projects” and, as a result, the company reaped profits of $278 million.
- In Peru, they paid bribes totaling $29 million between 2005 and 2014 in exchange for benefits of $143 million.
- In Colombia, Odebrecht SA paid more than $11 million between 2009 and 2014 to win “public works contracts” and made a profit of more than $50 million.
- In Ecuador, Odebrecht SA mentioned that between 2007 and 2016, the construction company made corrupt payments worth more than $35.5 million to “government officials,” which generated profits of more than $116 million.
- In the United States, according to a report by the United States’ Department of Justice, between 2013 and 2015 the Brazilian construction company allocated about $18 million in bribes to government officials to secure public works contracts, with which it obtained $34 million in benefits.
- In Panama, Odebrecht SA admitted to paying bribes for other works in the amount of $59 million between 2010 and 2014.
- In Guatemala, between 2013 and 2015, Odebrecht SA made corrupt payments of approximately $18 million “to government officials” and received benefits of more than $34 million as a result.
- In Mexico, the payments are said to have been of $10.5 million, and Odebrecht SA obtained more than $39 million of benefits with the contracts secured as a result.
- From 2006 to 2013, Odebrecht SA claimed to have paid more than $50 million to government officials in Angola, where they made a profit of $261.7 million. In addition, between 2011 and 2014, they paid $900,000 in bribes in Mozambique (Lewis and Brooks 2017).
As a result of these revelations, in February 2017, the Brazilian General Prosecutor's Office signed an agreement to coordinate investigations with his counterparts from Argentina, Chile, Colombia, Peru, Mexico, Ecuador, Panama, Venezuela, the Dominican Republic, and Portugal. Some of the countries are still considering new special agreements. In several countries there were, or are at present, attempts to reach agreements for immunity in order to ensure the continuation of important public works projects and to respond to the damages of these bribes.

**The Political Fallout**

It is very hard to overlook that Odebrecht SA and its executives have even more political power now, as informers, than they could have had through bribes. Now, with just words, they can twist a candidacy or political election in a large number of countries. However, none of the state officials could benefit in the same way by turning state’s evidence.

Between 2017 and 2018 all the presidents and many of the former presidents of 10 countries in Central and South America made public statements regarding this scandal. Odebrecht executives reported that several of these presidents had received bribes or political financing from the company. Even the lawyer Ramón Fonseca (founder of Mossack Fonseca, the main legal firm responsible for the scandal of the “Panama Papers”) fueled suspicion against the president of Panama, Juan Carlos Varela (2014–2019), by accusing him of receiving campaign contributions from Odebrecht. Varela, in turn, accused former Panamanian president Martinelli and his family of corrupt acts and using public monies to pay for surveillance – Martinelli claims that Varela is falsely accusing him in an effort to deflect attention away from his own criminal acts.

The most recent former president of Colombia, Manuel Santos (who ruled from 2010 to 2018 and won the Nobel Peace Prize in 2016 for the historic peace agreement with the armed group Fuerzas Armadas Revolucionarias de Colombia [FARC]), was accused before parliament of having received corrupt funding for his political campaign, and there are also accusations of corrupt funding of his political opponents. Of the last seven constitutional presidents of Brazil after the military dictatorship, five were summoned to testify as defendants in the Odebrecht case, along with a large number of ministers and governors. The expresident in office, Michel Temer, was benefited by a law of immunity until his administration ends at the end of 2018. In 2019, he was effectively prosecuted.

President Medina of Guatemala resigned in 2015 to respond to other acts of criminal corruption while the presidents of Brazil (Dilma Rousseff) and Peru (Pedro Pablo Kuczynski) were dismissed in 2016 and 2018, respectively, via actual or impending impeachments focused on the investigations of the case. In the past two and a half decades – post-military dictatorships – there were only 17 other cases of impeachment or resignation due to the threat of impeachment. Even the 2014 presidential ticket Rousseff-Temer was close to being completely annulled by the Brazilian Superior Electoral Tribunal for fraud and corruption in the Lava Jato-Odebrecht case.

In addition, throughout Brazil and Peru – as well as in the main cities of the Dominican Republic, Panama, and Colombia – there were massive demonstrations of the population against Odebrecht SA, demanding the resignation of the government or concrete legal actions against the construction company. Many other officials and high-ranking businessmen in Brazil and other countries have been investigated, arrested, or raided, and many have agreed with the Prosecutor’s Office to provide new information on bribes, which is still...
being analyzed. Below is a list of cases involving political officials and their links to Odebrecht SA:

- At the end of 2017, the current vice president of Ecuador, Jorge Glas – a candidate promoted by former president Rafael Correa – was convicted and sentenced to prison for receiving bribes from Odebrecht SA.
- Former presidents in Peru, such as Ollanta Humala, have been on pre-trial detention or absconded (like the former president Toledo), or at least are under suspicion (like Alan García, who committed suicide in April 2019 to avoid arrest; Lockward 2017; Taj and Aquino 2019). Meanwhile, Keiko and Keiji Fujimori (presidential candidates of opposite parties that promoted and obtained the impeachment of President Kuczynski) were denounced for illegal financing. Both daughter and son of former president Alberto Fujimori – convicted in 2001 for corruption and crimes against humanity – obtained in 2017 a shameful and widely disowned humanitarian presidential pardon for their father as a means of political bargaining during the process of impeachment. During October of 2018, the controversial pardon was annulled by the justice. In addition, a few days later in another court proceeding Keiko Fujimori was arrested and imprisoned in pre-trial detention for having received irregular contributions of half a million dollars from Marcelo Odebrecht for her political campaign.
- Having stripped Rousseff of the presidency in Brazil, former president Lula da Silva (the president who concluded the presidency in 2010 with highly favorable political polling numbers, and the candidate with the best chance to face the elections in October 2018 before these allegations) became (in 2017) also the first president of Brazil ever to serve time in prison. This incarceration (after a highly emotional and controversial process) resulted directly from the investigation that gave rise to the Odebrecht case (Proner et al. 2017; Azevedo 2018; Langlois 2018). The October 2018 presidential election was won by Jair Messias Bolsonaro, an antisystem candidate often compared with current US President Donald Trump. But Bolsonaro is a former extreme rightist politician and ex-army captain widely described as racist, chauvinistic, and homophobic, and is known to support the tactics of the Brazilian military dictatorship (1964–1985) as well as the use of torture and armed self-defense. His presidential campaign speeches focused on combatting violent common street crime and insecurity – but also on Lava Jato and the hard fight against corruption. Besides, the controversial judge in the case, who ordered the arrest of Lula Da Silva, Sergio Moro, was later appointed as Minister of Justice by president Bolsonaro. In June of 2019, a new scandal occurred when the newspaper, The Intercept, published group chats showing that the then-judge and the prosecutors were inappropriately or illegally collaborating in secret (Fishman et al. 2019).
- In the well-known escalation of the political and social crisis in Venezuela, the former Attorney General of the country (formerly allied to “Chavismo”) fled to Colombia and – considering herself as an official in exile – denounced Nicolás Maduro (Chavez’s successor and current president of the country) and other officials for receiving large bribes from Odebrecht in the past two presidential campaigns. This gave rise to the Venezuelan Supreme Court of Justice – in exile – ordering an international capture, which is, at the moment, just symbolic (Meza 2017).

Governing through Corruption in South and Central America

In the 1930s, Sutherland (1983) stated that one of the characteristics of white-collar crimes is that the community and the media are much more lenient with them (see also Cullen
et al. 1982; Wheeler et al. 1988) and consequently, state efforts to control and punish them are traditionally weak in practice (Alvesalo and Tombs 2004, p. 166). However, as depicted in the specialized literature of the 1980s, research shows that public attitudes are not as permissive as initially believed or they had changed with the times (Grabosky et al. 1987; Nelken 1997, p. 919; Rosenmerkel 2001; Piquero et al. 2008, cited in Gottshalk and Rundmo 2014, p. 177). On the other hand, certain political scandals (e.g. Watergate) may have influenced the greater severity of judges (at least in the United States) who focus more on the seriousness of the offense than on the personal conditions of the accused (Weisburd et al. 1991).

With the exception of drug crimes and, more recently, gender violence, we do not find as many campaigns aimed at the general public as those against acts defined as corruption. There is probably a greater number of international and national organizations combating corruption than against any other white-collar crime; and no other kind of white-collar crime has been considered a violation of human rights like this one (Transparency International 2008; critically Nelken 2010). Corrupt behavior has had considerable repercussions in Latin America due to the widespread experiences of human rights violations during the dictatorships of the 1970s and 1980s and the difficulties with attempts at criminal prosecution. In fact, very recently, December 9 was established as international anticorruption day – one day before the International Human Rights Day adopted by virtue of the Universal Declaration of Human Rights in 1948. In this sense, the United Nations Office on Drugs and Crime’s (UNODC) Action Against Corruption and Economic Crime refers to these crimes and behaviors as follows:

Corruption is a complex social, political and economic phenomenon that affects all countries. Corruption undermines democratic institutions, slows economic development and contributes to governmental instability. Corruption attacks the foundation of democratic institutions by distorting electoral processes, perverting the rule of law and creating bureaucratic quagmires whose only reason for existing is the soliciting of bribes. Economic development is stunted because foreign direct investment is discouraged and small businesses within the country often find it impossible to overcome the “start-up costs” required because of corruption. (UNODC 2018)

As Simon (2007) put it, it is not the same to govern crime as to govern through crime. This critical concept does not ignore the existence and importance of real crime nor does it focus on the mere construction of moral panic (Cohen 2002). In his influential work, Simon expresses that governance through crime occurs when, beyond authentic and harmful threats of harm, crime is used strategically to legitimize the exercise of power or the search for it.

When we govern through crime, we make crime and the forms of knowledge historically associated with it – criminal law, popular crime narrative, and criminology – available outside their limited original subject domains as powerful tools with which to interpret and frame all forms of social action as a problem for governance. (Simon 2007, p. 17)

Simon says that crime has become a fundamental means by which the State exercises authority in different instances and social hierarchies. Basically, all institutional areas of government feel they must react to legitimate actions against it and this provokes interventions against crime that are mainly motivated by other reasons. Thus, the technologies, discourses, and metaphors of crime and criminal justice are expanded to society as a whole. The fear of crime – more than the crime itself – modifies the lives of those who suffer the criminal justice system but also of the rest of the population.
Although Simon focuses on how this strategy was employed in the United States in late modernity using the fear of common crime, he also traces different moments of governance. Among them, he highlights “early reflection” in the early stages of the New Deal of Roosevelt, when the government was willing to use criminal justice to intervene in the economy not only against criminals, but also against contumacious entrepreneurs. In the 1960s, it was especially Robert Kennedy in charge of the US Department of Justice who laid the foundations of governance through crime, coordinating the public prosecution of organized crime, the mafias, and their allies in unions and companies. Among the great social problems that really existed at the time, the problem of crime was the one that encountered the least political or legal resistance in the face of political decisions and changes (for example, civil rights, health care, war, or poverty; Simon 2007).

Several works have used – not always faithfully – these terms and ideas to study their application outside the United States (Deflem 2009; Baker 2010; Aitchison 2013) or in specific cases (Graham 2017), but they have not yet been used to understand the exploitation of certain white-collar crimes to govern. Here, we explain how governments, political parties, and social actors internationally have used the Odebrecht corruption case to achieve political goals.

Latin American countries, and particularly many involved in the Odebrecht case (Brazil, Colombia, Venezuela, Mexico, Guatemala, the Dominican Republic, El Salvador and, to a much lesser extent, Panama and South American countries such as Ecuador or Argentina) have comparatively high rates of violent crime (Briceño-León et al. 2008; UNODC 2014) and a high level of incarceration (Sozzo 2016; Hathazy and Müller 2016) especially compared to European countries. A Durkheimian functionalist approach would emphasize that all the attention should be directed at those serious affectations of the “collective consciousness” and the attention to other offenses should be relegated (Durkheim 1984). Thus, the widespread experience of crime and the fear of street crime (robberies, homicides, sexual crimes; Garland 2001; McLaughlin 2000; Lee 2007) – even the politically generated or mediated ones – have been thought to explain why white-collar crimes receive less public attention. White-collar crimes (whose social damage can be quantified in millions) are comparatively much less perceptible, mainly because the victims of these crimes are diffuse and hard to identify, thus they do not contribute to the concept of fear of crime (see Chapters 4, 5, and 6, this volume). However, thanks to general rooted assumptions about politicians (“mostly corrupt ones”) there are indications that corruption (political corruption and some of its other manifestations) is on the way to becoming a powerful and enduring method of governing through crime.

**Implications for Future Theoretical, Policy, and Research Work**

**Implications for Theory**

Friedrichs (2002, 2010; Friedrichs and Rothe 2014) has suggested that even when state-corporate crime has been a great contribution to the understanding of crimes of the powerful, it might be also useful to distinguish “… between those enterprises initiated by the public sector actors and those initiated by the private sector actors (i.e., state-corporate crime and corporate-state crime)” (Friedrichs and Rothe 2014, p. 147). Actually, corporate-state crime becomes relevant to explain criminal schemes developed by private corporations that can be carried out over time and space and beyond changes in who controls the
government. The Odebrecht case should be seen as a leading case of corporate-state crime in Latin America because – as far as we know – the creation of the bribery scheme in Brazil, the structure to manage the hidden budget, and the bribes to candidates and politicians of opposing political parties were globalized or exported into a dozen countries and different governments by the private sector to obtain or retain public works contracts in Latin America and Africa.

In this framework, the case study illustrates that governing through corruption integrates both types of opposing criminologies that Garland (2001, pp. 182–186) identified in The Culture of Control (see also Pratt et al. 2005; Sozzo 2017b). On the one hand, criminologies of the other dramatize crime and express condemnatory claims for lost values through a language of warfare. Such an approach can be observed in emotional demonstrations in cities, parliaments, and media coverage of handcuffed businessmen and political leaders.

In the other hand, however, criminologies of everyday life take a non-moral approach to corruption and those corrupted and are much more cold and rational, with an expert and technological focus on social order. Such an approach depends on legal frames valuing corporate situational prevention to minimize opportunities for corruption such as risk assessments, compliance, and self-regulation of corporations through ethical programs, compliance officers, or whistleblowers (never known before in Latin America), as well as prosecutions through bargains with accused organizations and individuals to obtain evidence in exchange for milder pre-trial treatment and punishment (called delação premiada, colaboración eficaz, or arrependidos).9

In other words, despite traditional perceptions about the tolerance for and weak criminal prosecution and punishment of white-collar crime (criticized in Grabosky et al. 1987), there may in fact be low tolerance toward (and a highly emotional and punitive response to) private-political corruption and corruptees. Such contradictions are not necessarily exclusive, though – one can attend to the claims of a society which is emotional, tired of crime, and sometimes punitive while also heeding the opposite representations of the same offenders promoted by legal expertise, technical penal management, and risk analysis of rational choices. Thereby, anti-corruption crusades combine both worlds: passionate, expressive, and retributive private and public attitudes and laws with extremely technical regulations, abstract considerations, and utilitarian procedural decisions.

Implications for Research and Policy

More than new white-collar definitional categories, Latin American countries probably need to move beyond journalistic information when updating current discussions and in-depth theoretical studies of real public and private white-collar cases, their particularities, and their treatment by the courts and other agencies of the criminal system. A much more detailed explanation of the particular reasons for these crimes is needed, but also of structural approaches that explain their diffusion or their greater or lesser public visibility and impact. Research should be deepened on what relationships are established between private capital and politics, productivity and local or global market position, and competence for certain business areas and consequences under governments of different political ideologies.

In addition, robust official and public data on white-collar crime, individuals, corporations, and case-by-case sentencing variations need to be produced. Beyond the
contrast between traditional crimes and white-collar crime, we should know the specific types of crimes and offenders/criminals (or corporations) that are effectively prosecuted, who and how many of them are actually sentenced, and what kind of penalties are imposed. Comparative studies of long-standing periods could indicate whether this interest in the investigation of high public and private corruption and corporate criminals in Latina America is the real target of enforcement or a circumstantial tactic in the political battle for power. It would also be necessary to research the relationship between the constant global and local economic crises and these crimes and prosecutions, and the motives of legal criminal reform and its impact on crime. Naturally, it is also necessary to add indicators to reaffirm or problematize the hypothesis of governing through corruption.

At present, the Odebrecht case illustrates how the public's historical differentiation between white-collar and other crimes (as theorists usually assume) can make scholars lose sight of certain dynamics between the social reaction to, and the fear of, common crime – especially in times of high crime rates, high imprisonment, and emotional crusades against corruption attributed to relevant private and public actors. Governance through corruption apparently does not necessarily contradict, but in fact complements, governance through ordinary crime.

Notes

1 All currency references are in US dollars unless otherwise noted.
3 The Odebrecht case is still ongoing (we can imagine that in the future there will be detailed journalistic research works and books about it), but it already offers a lot of material for criminal justice and criminological analysis. I have addressed only some aspects in this chapter. In more than 10 countries, there are extensive corporate and political histories, contexts, developed projects, very well-known actors, and different characteristics and it would be impossible to review all of them here.
7 Transparency International; International Anti-Corruption Academy (IACA); International Association of Anti-Corruption Authorities (IAACA); International Business Leaders Forum (IBLF); Independent Commission Against Corruption (ICAC); TRACE International; Resource Center of Regional Anti-Corruption Initiative for South East Europe; European Partners Against Corruption (EPAC); Global Organization of Parliamentarians Against Corruption (GOPAC); European Anti-Fraud Office (Office européen de lutte antifraude – OLAF); Asian Development Bank/Organisation for Economic Co-operation and Development (ADB/OECD) Anti-Corruption Initiative, etc.
9 The criminal investigations in Central and South America throughout the nineteenth and twentieth centuries, and still today, were marked by the traditional inquisitorial European legal culture (Langer 2007). However, the recent globalization and Americanization of the criminal process and economic crimes opened models of management (much more instrumental or cost-benefit) that are brand new and striking in Latin American legal practice.

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Prosecuting and Sentencing White-Collar Crime in US Federal Courts: Revisiting the Yale Findings

Miranda A. Galvin and Sally S. Simpson

Introduction

In the mid-1970s, a group of scholars at Yale University undertook a broad program of research to understand how white-collar crimes were assessed and responded to by various stakeholders in the United States’ federal justice system, including regulators, defense attorneys, and judges. Led by Stanton Wheeler, this body of work is known collectively as the Yale Studies of White Collar Crime. These studies involved an impressive dovetailing of quantitative and qualitative work including insights gained from participant observation, interviews, and analysis of federal court data. The impact on the field was palpable, drawing conclusions that challenged some long-standing notions about who constituted the population of interest and how they were dealt with by the criminal justice system. Specifically, one of the most remarkable findings was that well-off and well-educated white-collar criminals were often sentenced to prison more often than those with less status (Weisburd et al. 1990; Wheeler et al. 1982). However, this finding was juxtaposed with qualitative work showing that white-collar cases were treated favorably during the pre-sentence stages, as prosecutors engaged in negotiations with defense attorneys to determine the evidence necessary to convict white-collar offenders (Mann 1985; Wheeler and Rothman 1982; see also Katz 1979).

As interesting and important as these finding are, they are also dated. A great deal has changed since the data were collected. The 1980s and 1990s saw significant changes in criminal sentencing in the United States. The most important of these changes was the introduction of (at the time, presumptive) advisory guidelines for federal criminal sentencing. These guidelines were put in place both to reduce sentencing disparities across defendants and to increase the severity for certain crimes, among them white-collar crime. While the federal guidelines have not been completely successful in eliminating inter-defendant disparity, they nevertheless have reduced it (Mustard 2001). Recent studies using state data and select offenses have continued to find that white-collar offenders are treated differently (e.g. Van Slyke and Bales 2012, 2013), though the extent to which this is true at the federal level has been less examined. As extensive reviews of US white-collar research
Miranda A. Galvin and Sally S. Simpson are available elsewhere (e.g. Simpson 2013), we instead offer an example of research that updates a seminal piece on US sentencing of these crimes. This chapter considers prosecution and sentencing outcomes for white-collar and comparable financial crimes in federal court for a set of cases referred for prosecution between 2009 and 2011 and sentenced between 2009 and 2013.

The Yale Studies

The Yale Studies resulted in the publication of four books: Wayward Capitalists (Shapiro 1982), Defending White Collar Crime (Mann 1985), Sitting in Judgment (Wheeler et al. 1988), and Crimes of the Middle Classes (Weisburd et al. 1991). A fifth book, White Collar Crimes and Criminal Careers (Weisburd et al. 2001), later expanded the original study to track the offending careers of the original sample forward. Shapiro (1982) negotiated access to the nonpublic investigation and enforcement records of the Securities and Exchange Commission (SEC) and engaged in countless conversations and observations during a summer residence in the agency. Her work described the first stage of the justice process for many white-collar crimes: regulatory justice. Regulatory agencies, including the SEC, have long been studied by white-collar scholars who recognized that these agencies are most often utilized to respond to crimes committed in the course of occupations (Clinard and Yeager 1980; Sutherland 1939). She found that, contrary to expectations, the typical offense was small in scope, with relatively few victims and co-offenders. In addition, informal remedies were often used in place of formal prosecutions, though the extent to which this was the result of case characteristics or a negotiated strategy is not clear. However, larger, intentional offenses were more likely to be prosecuted.

In Defending White Collar Crime, Mann (1985) considered the other side of prosecution and investigation – that of the attorneys who defend white-collar criminals. His interviews with defense attorneys revealed that the most successful white-collar defenses were mounted before formal charging of an offense by limiting the information available to prosecutors. As a result, only the strongest white-collar cases made it to trial. However, defense attorneys again exerted significant strategies at sentencing by attempting to reduce offender blameworthiness and amplify the ambiguity of offenses. Negotiated pleas, he found, were more common before formal charging. After charging, both the defense counsel and the prosecutor were less likely to negotiate; defense attorneys were reluctant to admit any wrongdoing by their client in the context of ambiguous evidence, while prosecutors were less likely to negotiate due to the expended resources on complex white-collar cases.

Sitting in Judgment (Wheeler et al. 1988) reviewed the sentencing history of the same sample of white-collar cases using in-depth partially structured interviews with judges. The interviews exposed some of the challenges that white-collar crimes present for judges; the offenses are atypically complex, and the evidence of both intent and extent are more likely to be ambiguous. Even more troublesome, the offenders tend to present complicated profiles of risk: they are both guilty of serious crimes with large numbers of victims and also generally seen as pillars of their communities. Quantitative analysis of the Yale cases, however, found that high-status offenders were often sanctioned more harshly than lower-status offenders (Weisburd et al. 1991; Wheeler et al. 1982), suggesting that either seriousness drives these outcomes or that high-status offenders are punished more harshly than others.
Although tremendously influential, one of the largest limitations of the Yale Studies is that it utilized a sample of exclusively white-collar offenses.¹ As a consequence, the Yale Studies tell us how status affects punishment within white-collar cases, but can only hint at whether white-collar crimes are treated differently at prosecution and sentencing compared to other, non-white-collar offenses. A large number of other studies, many also conducted using federal sentencing data, have considered this question by exploring whether, net of other case and defendant characteristics, white-collar cases are given equal, less serious, or more serious sentences than traditional crimes.

Prosecuting White-Collar Crimes – An Early Advantage

Prosecutors have wide discretion in case processing; they determine which cases are charged and which are diverted, the conditions of charging, the conditions of plea agreements, and whether to drop cases altogether. Research suggests that these decisions are largely characterized by a “downstream” orientation (Frohmann 1997); in other words, prosecutors make decisions about cases thinking about how other actors, such as jurors and judges, will perceive the case. If it is likely that these other actors will be persuaded to convict the case, prosecutors move forward; however, if these actors are not likely to convict, prosecutors will be more likely to divert, dismiss, or negotiate a plea agreement (Albonetti 1990). Negotiated pleas are an important tool for prosecutors to assure conviction when there is uncertainty about one being secured. A number of factors can influence prosecutorial perceptions of case “convictability,” including evidentiary strength (Albonetti 1986, 1987; Holleran et al. 2010; Kingsnorth et al. 1998, 2001; Spohn and Holleran 2001), victim behavior (Holleran et al. 2010; Spears and Spohn 1997; Spohn and Holleran 2001), and offender characteristics (e.g. Albonetti 1986, 1987; Albonetti and Hepburn 1996; Baumer et al. 2000; Kutateladze 2018; Kutateladze et al. 2016; Spohn et al. 1987).

In addition to the Yale Studies, there have been a number of other, largely qualitative, works that suggest that white-collar crime prosecution is atypical compared to other types of offenses. A general theme of this research is that white-collar cases receive an advantage in prosecution, particularly in early case processing outcomes (Albonetti 1994; Hagan and Parker 1985; Jesilow et al. 1986; Tillman et al. 1997). On the one hand, white-collar cases, especially those involving financial transactions, generate long paper trails that could make the successful prosecution of these cases more likely. Yet, prosecutors and investigators may not have access to this information (Katz 1979). As a result, they may be forced to offer up concessions that produce sentencing discounts later on (Albonetti 1994, 1999). In addition, these offenses are generally more technically complex than traditional crimes, particularly those involving organizations (Ribstein 2009; Wheeler and Rothman 1982). It is difficult to determine responsibility when multiple actors are involved, adding uncertainty (e.g. Albonetti 1994, 1999; Jesilow et al. 1986). This suggests that white-collar cases may be more likely to receive discounts in the number or type of charges and counts they face.

White-Collar Sentencing – Leniency or Liability?

The Watergate scandal raised important questions and concerns about the role of power and privilege in avoiding criminal responsibility (Katz 1980). At the same time, critical criminological and sociological perspectives drew attention to the systemic ways in which
class, position, and power create and sustain a definition of legality that in itself reinforces those social structures (e.g. Black 1976; Quinney 1970). This confluence of historical and theoretical concern produced fertile ground for empirical studies of white-collar crime, and indeed, most of what we know about the sentencing of white-collar offenders comes from studies conducted in the 1970s and 1980s.

A number of explanations emerged around this time to explain why the criminal justice and societal response to white-collar crimes/offenders was often different in comparison to more traditional “street” crimes/offenders. Perhaps the most well-known (and widely assumed) of these was the leniency perspective, or “status advantage” (Simpson 2013). The status advantage argument posits that white-collar offenders and offenses receive differential treatment in the criminal justice system that results in less severe outcomes. One potential mechanism of this is the “special sensitivity hypothesis”; judges may be more reluctant to impose harsh sentences on socially privileged offenders because they see them as being especially unable to endure the hardships of prison, given their lack of experience with deprivation (Benson and Cullen 1988; Pollack and Smith 1983). However, judges may also worry about costs to the community when otherwise prosocial offenders are incarcerated (Giordano 1983; Jesilow et al. 1986), or that privileged offenders already receive sizeable punishments in the form of informal social consequences (Benson 1989). Other work suggests that white-collar offenders are advantaged because, aside from criminal involvement, they tend to be employed and in stable family relationships, and lack serious criminal history, which judges generally see as indicative of deserving lighter sentences, or because judges empathize with offenders who share their own social position (Wheeler et al. 1988). It is worth noting that many of these concerns echo the key elements of attribution theory (Albonetti 1991) and focal concerns (Steffensmeier et al. 1998), which are commonly employed in research exploring the sentencing of traditional offenses (Holtfreter 2013; Maddan et al. 2012).

In contrast, the status liability hypothesis predicts that white-collar offenders not only may not be protected by their socially privileged positions but may in fact draw additional ire from judges as a result of that position. If socially privileged offenders receive all of the benefits of high status, and yet still violate the law, this might be perceived as an affront to an implicit social exchange (Wahrman 1970, 1972). The uncomfortable disconnect between expected “goodness” of socially privileged persons and white-collar offending may similarly produce a sense of disquiet among judges, who then punish offenders with harsh(er) sentences (Giordano 1983). There is some reason, however, to expect that status is only a liability for extremely serious offenses (Rosoff 1989; Wiggins et al. 1965). Considering both status-liability and status-shield arguments together suggests that, in general, white-collar offenders may receive less serious punishment than low-status (non-white-collar) offenders. However, when the offense is very serious, status becomes a liability, resulting in harsher punishments (see Figure 24.1).

Unfortunately, there is limited and mixed empirical support for many of these arguments and assertions. Identifying white-collar offenders and offenses using traditional data sources has been challenging, in no small part due to definitional debates (see Friedrichs, Chapter 2, this volume). Faced with a choice of identifying white-collar crimes or white-collar offenders, John Hagan and his colleagues divided cases and offenders into two groups (“white-collar” and “common”), creating a four-category typology: white-collar offenders who commit white-collar offenses, white-collar offenders who commit “common crimes,” non-white-collar offenders who commit white-collar crimes, and non-white-collar offenders who commit “common crimes.” They found that well-educated (white-collar)
offenders who committed white-collar offenses got less severe sentences; in addition, where white-collar offenses are more common, even common criminals who committed white-collar offenses received less serious sentences (Hagan and Bernstein 1979; Hagan et al. 1980), though some offenses, like mail fraud, received very harsh sentences (Hagan and Nagel 1982). Importantly, however, in both mixed and exclusively white-collar samples, status is almost equally as often associated with leniency as liability (e.g. Albonetti 1994, 1998, 1999; Benson 1989; Benson and Walker 1988; Payne et al. 2011; Van Slyke and Bales 2012).

Other research focused on identifying white-collar offenses with the assumption that white-collar offenders will follow (though this is not necessarily the case; see Weisburd et al. 1991). What merits the label of a “white-collar crime” varies widely across studies. Tillman and Pontell (1992), for example, compare Medicare provider fraud to grand larceny cases committed by first-time offenders, observing that the white-collar cases were less likely to be incarcerated. Others have relied on embezzlement samples (Madden et al. 2012), or combinations of fraud, bribery, and embezzlement (Van Slyke and Bales 2012). These more recent studies offer evidence of both status advantage (Madden et al. 2012) and disadvantage (Van Slyke and Bales 2012).

The Present Study

The present study offers an updated and extended version of the Yale Studies by considering the role of white-collar status in a sample of white-collar and comparable crimes (Galvin 2018). In this chapter, we focus our analysis on the eight crimes identified in the Yale Studies as being common enough, and generally consistent with most scholars’ conceptions of white-collar crime: postal and wire fraud, bank embezzlement, antitrust, securities and exchange fraud, false claims and statements, tax fraud, and bribery. For the set of comparable crimes, we rely on cases eligible to be sentenced under Chapter 2B of the federal sentencing guidelines to ensure a degree of uniformity across sentencing options; thus, we include all other frauds and embezzlements, larceny, motor vehicle theft, transactions in stolen goods, and damage or destruction of property.

The literature above suggested that white-collar offenses and offenders may be advantaged at the stages of both prosecution and sentencing. We first consider the possibility that white-collar cases may be treated more leniently by prosecutors, resulting in an increased
likelihood in receiving negotiated pleas (i.e. a reduction in the number or severity of charges or counts, also known as “plea bargains”) using a logistic regression. Second, we explore whether white-collar cases are more likely to be incarcerated than comparable crimes, or for longer periods of time, using a zero-inflated negative binomial (ZINB) regression. The model is “zero-inflated” to account for the fact that incarceration sentences necessarily contain a high proportion of sentences of length “0” because many defendants are not incarcerated. It is important to note that the ZINB model assumes that cases with sentence length “0” result from two processes, or two types of cases. The first group are “certain” or “inflated” zeroes; if a case is a certain zero, we would expect this case to receive a sentence of zero months. Another way of thinking about these cases is that they are ineligible to receive a prison sentence, possibly because of the conditions specified in sentencing guidelines, or having a constellation of characteristics that would always result in leniency. Other cases we might expect could receive a prison sentence, but may not receive one (sometimes called a “discretionary 0”); you might think of these cases as those in which different judges could disagree about whether a case should result in a prison sentence. In the present analysis, cases that are more likely to be “inflated 0s” or receive shorter sentence lengths may be said to receive lenient treatment, while those that are less likely to be inflated zeroes and receive proportionally longer sentences can be said to receive proportionally harsher treatment. A zero-inflated negative binomial model is preferred to a zero-inflated poisson in this case, as indicated by a significant chi-square test (not shown).

**Data and Findings**

Before turning to the focal analyses of this chapter, a brief discussion of the data is warranted. First, note that the unit of analysis here is a “case-defendant” – a single individual defendant in a given case. The cases in this sample were referred for federal criminal prosecution between 2009 and 2011. This cohort of defendants was tracked through prosecution and sentencing using the Federal Justice Statistics Program (FJSP). The FJSP consists of administrative record extracts from five federal agencies: the Administrative Office of the US Courts, the Executive Office of the US Attorney, the US Marshals Service, the United States Sentencing Commission, and the Bureau of Prisons.2 Defendants are able to be identified across multiple datasets using dyadic “linkfiles” that contain identifier crosswalks. Defendants in this sample were followed from 2009 to 2013 or through sentencing, whichever occurred first. A more detailed description of the data, including the link procedure and coding, are available in Galvin (2018). The present analyses use only cases involving individual (i.e. not organizational) defendants sentenced under the Federal Sentencing Guidelines during the observation period, for a total of 16608 case-defendants (see Table 24.1).

Table 24.2 shows the results of the regression predicting whether cases received any of the following negotiated plea conditions: (i) reduction in the severity of the charges, as indicated by a reduction in the potential imprisonment or potential fines between case filing and disposition, (ii) a reduction in the number of counts between filing and disposition, or (iii) any unique charge dropped by the prosecution between filing and disposition. In general, these plea bargains do not occur in conjunction with one another, but have similar predictors (see Galvin 2018). Thus, we use a single indicator variable to capture any of the three conditions. This table reports odds ratios rather than coefficients for ease of interpretation. Odds ratios above 1.00 indicate an increased likelihood of a case receiving a negotiated plea, while odds ratios below 1.00 indicate a decreased likelihood of receiving a negotiated plea.
<table>
<thead>
<tr>
<th>Variable</th>
<th>Min</th>
<th>Max</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dependent variables</td>
<td></td>
<td></td>
<td>Coded “1” for all cases that were resolved via plea and also evidenced any of the following: a reduction in the risk of incarceration or fine for the most serious charge between filing and conviction, a reduction in the number of counts between filing and conviction, any charges being dropped by the prosecutor (nolle prosequi) or dismissed without prejudice. The reference category includes cases adjudicated through a plea without evidence of a reduction in charge severity, the number of counts, or the number of unique charges between filing and conclusion. Cases adjudicated not through pleas are excluded from this portion of the analysis.</td>
</tr>
<tr>
<td>Sentence length</td>
<td>0</td>
<td>2352</td>
<td>The length of incarceration (in months) prescribed by the judge at sentencing.</td>
</tr>
<tr>
<td>White-collar crime</td>
<td>0</td>
<td>1</td>
<td>Coded “1” for all cases referred for prosecution for any of the eight original Yale Studies offenses.</td>
</tr>
<tr>
<td>Plea</td>
<td>0</td>
<td>1</td>
<td>Coded “1” for all cases resolved by plea.</td>
</tr>
<tr>
<td>Any dropped charges</td>
<td>0</td>
<td>1</td>
<td>Coded “1” for cases in which any charges were dropped by the prosecutor (nolle prosequi) or dismissed without prejudice between filing and conviction.</td>
</tr>
<tr>
<td>Count reduction</td>
<td>0</td>
<td>1</td>
<td>Coded “1” for any case in which there were fewer counts at conviction than at filing.</td>
</tr>
<tr>
<td>Severity reduction</td>
<td>0</td>
<td>1</td>
<td>Coded “1” for any case in which the risk of incarceration or fine was less at conviction than at filing.</td>
</tr>
<tr>
<td>Offense score</td>
<td>1</td>
<td>43</td>
<td>The calculated offense severity score according to the federal guidelines.</td>
</tr>
<tr>
<td>Eligible no prison</td>
<td>0</td>
<td>1</td>
<td>Coded “1” for all cases in either Zone A of the federal sentencing guidelines or Zone B, as long as the court imposes probation with conditions of any of the following alone or in combination: intermittent confinement, community confinement, home detention.</td>
</tr>
<tr>
<td>Criminal history</td>
<td>1</td>
<td>6</td>
<td>The calculated criminal history score for a defendant.</td>
</tr>
<tr>
<td>Any codefendants</td>
<td>0</td>
<td>1</td>
<td>Coded “1” for all cases with at least two defendants.</td>
</tr>
<tr>
<td>Private counsel</td>
<td>0</td>
<td>1</td>
<td>Coded “1” for all cases in which the primary counsel is a private attorney.</td>
</tr>
<tr>
<td>Total counts</td>
<td>1</td>
<td>441</td>
<td>The number of counts at filing, across all charges.</td>
</tr>
<tr>
<td>Number of charges</td>
<td>1</td>
<td>5</td>
<td>The number of unique charges included at case filing.</td>
</tr>
<tr>
<td>Misdemeanor</td>
<td>0</td>
<td>1</td>
<td>Coded “1” for all cases in which at least one charge was a misdemeanor or petty offense.</td>
</tr>
<tr>
<td>Maximum possible incarceration</td>
<td>1</td>
<td>11</td>
<td>Ordinal scale capturing the maximum potential term of incarceration for the most serious offense. Values are as follows: 1 = none; 2 = less than 6 months; 3 = 6 months – 1 year; 4 = 1 year – 1 day – 2 years; 5 = 2 years and 1 day – 3 years and 364 days; 6 = 3 years – 5 years and 364 days; 7 = 5 years – 10 years and 364 days; 8 = 10 years – 15 years and 364 days; 9 = 15 years – 20 years and 364 days; 10 = 20 years – 25 years; 11 = 25 years plus one day or more, including life and death penalty cases.</td>
</tr>
<tr>
<td>Maximum possible fines</td>
<td>0</td>
<td>9</td>
<td>Ordinal scale capturing the maximum potential fine for the most serious offense. Values are as follows: 0 = no fine associated; 1 = $1–100; 2 = $101–500; 3 = $501–1000; 4 = $1001–5000; 5 = $5001–10000; 6 = $10001–20000; 7 = $20001–50000; 8 = $50001–99999; 9 = $100000 or more.</td>
</tr>
</tbody>
</table>

(Continued)
<table>
<thead>
<tr>
<th>Variable</th>
<th>Min</th>
<th>Max</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Offender characteristics</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Male</td>
<td>0</td>
<td>1</td>
<td>Coded “1” for all defendants who are male.</td>
</tr>
<tr>
<td>Black</td>
<td>0</td>
<td>1</td>
<td>Coded “1” for all defendants who are black.</td>
</tr>
<tr>
<td>Other race</td>
<td>0</td>
<td>1</td>
<td>Coded “1” for all defendants who are of a race other than white or black.</td>
</tr>
<tr>
<td>White defendants</td>
<td></td>
<td></td>
<td>The excluded reference category.</td>
</tr>
<tr>
<td>Age</td>
<td>18</td>
<td>88</td>
<td>Defendant’s age at arrest.</td>
</tr>
<tr>
<td>Married</td>
<td>0</td>
<td>1</td>
<td>Coded “1” for all defendants who are married.</td>
</tr>
<tr>
<td>High school grad</td>
<td>0</td>
<td>1</td>
<td>Coded “1” for all defendants whose highest level of education is a General Education Diploma (GED) or high school diploma.</td>
</tr>
<tr>
<td>Any college</td>
<td>0</td>
<td>1</td>
<td>Coded “1” for all defendants whose highest level of education involved attending at least some college.</td>
</tr>
<tr>
<td>Other education</td>
<td>0</td>
<td>1</td>
<td>Coded “1” for all defendants whose highest level of education is a vocational, technical, or military school.</td>
</tr>
<tr>
<td>Less than high school education</td>
<td></td>
<td></td>
<td>The excluded reference category for education variables.</td>
</tr>
<tr>
<td>Pre-sentence detention</td>
<td>0</td>
<td>1</td>
<td>Coded “1” for all defendants who were detained prior to receiving a sentence.</td>
</tr>
<tr>
<td>Any dependents</td>
<td>0</td>
<td>1</td>
<td>Coded “1” for all defendants with at least one dependent.</td>
</tr>
<tr>
<td>Acceptance of responsibility</td>
<td>0</td>
<td>3</td>
<td>Ordinal scale regarding the degree of acceptance of responsibility.</td>
</tr>
<tr>
<td>Fine waiver</td>
<td>0</td>
<td>1</td>
<td>Coded “1” for all cases in which a defendant was deemed unable or likely to become unable to pay restitution or a criminal fine.</td>
</tr>
</tbody>
</table>
Contrary to what might be expected from the “leniency” literature discussed above, white-collar crimes are no more likely, ceteris paribus, to receive a negotiated plea than comparable crimes. However, consistent with prior research, some traits and characteristics traditionally associated with white-collar crimes and offenders affect the likelihood of a plea bargain; in other words, prior arguments that white-collar cases are more likely to resolve favorably for defendants may not be the result of white-collar favoritism on the part of prosecutors, but the result of case features that are more common among white-collar cases. For example, more complex cases (as indicated by the presence of codefendants) are more likely to receive advantageous plea offers; to the extent that white-collar cases are more likely to be complex than comparable crimes, this may explain previous assertions that white-collar cases are at an advantage. There is also evidence that particular demographic factors such as race are significantly related to whether a case receives a plea bargain. Non-white defendants are 10.6–20.6% more likely to receive a negotiated plea agreement. Furthermore, defendants detained prior to trial are more likely to receive concessions in their plea agreements.

Only defendants with technical and vocational training are more likely to receive discounts, compared to defendants with less than a high school degree. In addition, more serious charges are more likely to result in bargains for defendants, with each additional point of fine severity increasing the odds of a plea bargain by 1.6–2.8%. Practically, this means that the offenders at risk of receiving $100,000 or more in criminal fines are approximately 10% more likely to receive a plea bargain than are defendants at risk of less than

<table>
<thead>
<tr>
<th>Table 24.2  Logistic regression predicting any negotiated plea.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Odds ratio</strong></td>
</tr>
<tr>
<td>White-collar</td>
</tr>
<tr>
<td>Any codefendant</td>
</tr>
<tr>
<td>Male</td>
</tr>
<tr>
<td>Age</td>
</tr>
<tr>
<td>Black</td>
</tr>
<tr>
<td>Other race</td>
</tr>
<tr>
<td>Married</td>
</tr>
<tr>
<td>Private counsel</td>
</tr>
<tr>
<td>Criminal history</td>
</tr>
<tr>
<td>High school degree</td>
</tr>
<tr>
<td>Any college</td>
</tr>
</tbody>
</table>
| Other education | 1.344 *
| Pre-sentence detention | 1.149 *** |
| Any dependents | 1.041 |
| Misdemeanor charge | 1.397 *** |
| Total counts | 1.006 * |
| Number of charges | 1.895 *** |
| Maximum possible incarceration | 1.028 *** |
| Maximum possible fine | 1.016 * |

N = 16608

*p < 0.05, two-tailed.
**p < 0.01, two-tailed.
***p < 0.005, two-tailed.
$1000 in fines. Each additional type of charge is associated with nearly a doubling of likelihood of a negotiated plea. Interestingly, private attorneys are much less successful in negotiating discounts during the plea process for their clients.

While these findings are interesting and offer some credence to a notion of white-collar leniency, prosecutorial bargains do not necessarily translate into more lenient treatment at sentencing. To consider this more fully, Table 24.3 reports the result from a zero inflated negative binomial model for sentence length. The left set of numbers are odds ratios that depict the odds that a case is a “certain zero” – these are cases that we expect to receive a sentence of zero months of incarceration with almost certainty. These odds ratios are interpreted the same way as in the previous table. The right set of numbers are “incident risk ratios” (IRRs); similar to odds ratios, these IRRs are interpreted as the percent higher (or lower) sentence a defendant receives, in months. For example, the 0.996 IRR for white-collar status suggests that white-collar cases receive 0.4% (1.00–0.996 = 0.004×100 = 0.4) lower sentences than comparable crimes. White-collar cases are, however, approximately 19% less likely to be a “certain zero,” consistent with status liability.

Table 24.3  Zero-inflated negative binomial regression (ZINB) predicting sentence length.

<table>
<thead>
<tr>
<th></th>
<th>Certain 0s</th>
<th></th>
<th>Sentence length</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>White-collar crime</td>
<td>0.801 ***</td>
<td>0.996</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Plea</td>
<td>0.824</td>
<td>1.051</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Any dropped charges</td>
<td>1.580 ***</td>
<td>0.892 ***</td>
<td>1.276 ***</td>
<td></td>
</tr>
<tr>
<td>Count reduction</td>
<td>0.463 ***</td>
<td></td>
<td>1.115 ***</td>
<td></td>
</tr>
<tr>
<td>Severity reduction</td>
<td>0.767 ***</td>
<td></td>
<td>1.109 ***</td>
<td></td>
</tr>
<tr>
<td>Offense score</td>
<td>0.794 ***</td>
<td></td>
<td>0.753 ***</td>
<td></td>
</tr>
<tr>
<td>Eligible no prison</td>
<td>1.716 ***</td>
<td></td>
<td>1.168 ***</td>
<td></td>
</tr>
<tr>
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<td></td>
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<td>0.620 ***</td>
<td></td>
<td>1.081 ***</td>
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</tr>
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<td>1.138 *</td>
<td>1.081 ***</td>
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<tr>
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<td></td>
<td>0.918 ***</td>
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<tr>
<td>Age</td>
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<td>0.998 ***</td>
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<td>Married</td>
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<td>0.975 *</td>
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<tr>
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<td>1.070 ***</td>
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<td>0.955 ***</td>
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<td>0.950 ***</td>
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<td>1.000</td>
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<td>Fine waiver</td>
<td>0.633 ***</td>
<td></td>
<td>1.056 *</td>
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</tr>
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</table>

N = 16163

*p < 0.05, two-tailed.

**p < 0.01, two-tailed.

***p < 0.005, two-tailed.

Note: Also includes controls for amendment year under which a case was sentenced.
As expected, the structure of the guidelines also influences sentence length. Cases with higher offense severity scores and criminal history scores are less likely to be certain zeroes; each point on these scales is associated with a 20–40% decrease in the odds of being a certain zero, i.e. an increase in the likelihood of incarceration. Furthermore, with regards to sentence length, an additional offense point is associated with a 10.9% longer sentence while one more criminal history point increases sentence length by 16.8%. While this may seem as though criminal history has a larger influence on sentence length, note that the range of possible offense scores is much larger. Finally, offenses that are in a section of the guidelines that structurally allow for offenders to receive a non-prison sentence (“Eligible No Prison” in Table 24.3) are nearly twice as likely to be certain zeroes (avoiding incarceration altogether), and these offenders receive 24% shorter sentences when they are incarcerated.

Recently, sentencing scholars have turned to the ways in which prosecutorial decisions can affect sentencing both through the manipulation of legally relevant characteristics (such as the conditions of final charges) and by acting as a signal to judges about which cases deserve lenient treatment (see, e.g., Baumer 2013; Ulmer 2012). These results offer support to this notion of signaling, but perhaps in unexpected ways. Count and severity reduction for the primary offense are associated with harsher penalties. Only the dropping of entire charges produces more lenient outcomes.

Consistent with prior research (Bontrager et al. 2013), men are less likely to be certain zeroes and tend to receive longer sentences than women. Defendant race does not seem to be associated with receiving an incarceration sentence, though black defendants receive sentences approximately 8% longer than whites, while defendants of other races (predominantly Asian defendants) receive slightly shorter sentences than whites. Married defendants receive slightly shorter sentences, while more educated defendants are more likely to be certain zeroes but may also receive slightly longer sentences than defendants with less than a high school education.

Consistent with early research (Albonetti 1998, 1999), more complex cases are more likely to receive leniency at sentencing, both in the likelihood of being a certain zero and in relatively shorter sentences. There is no effect of private attorneys on either the likelihood of a zero or sentence length. Cases that have more charges, potentially reflecting more widespread criminal activity, are less likely to be certain zeroes and receive 12% longer sentences with each additional charge. Defendants who are detained before sentencing receive much harsher punishment, in both an 85% decreased likelihood of being a certain zero and a more than a 30% increase in sentence length. A defendant's financial status is associated with both the likelihood of being a certain zero and sentence length; poor defendants are much less likely to be a certain zero and receive 5% longer sentences.

Discussion and Conclusion

In this contemporary example of sentencing research in the United States, we revisited findings from the Yale Studies of White Collar Crime that suggested that white-collar cases are particularly challenging to prosecute. Due to the complexity, difficulty of gathering evidence, and the relative rarity of these cases, it seems probable that white-collar cases should be more likely to result in favorable plea agreements. Our goal was to assess, using more recent data and quantitative analysis, whether we would uncover evidence consistent with the Yale results. We compared a sample of white-collar and comparable crimes referred for criminal prosecution to US Attorneys between 2009 and 2011 and followed them through
2013. The results did not conform to the expectation that white-collar cases were more likely to receive discounts during the plea process, compared to other types of financial offenses. Our findings are likely attributable, at least in part, to white-collar cases more commonly involving multiple defendants; defendants with at least one codefendant are nearly 17% more likely to receive negotiated pleas than individual defendants. It is also possible that recent financial crimes (such as the accounting frauds of the early 2000s and irresponsible lending and debt manipulation behind the Great Recession) have affected prosecution patterns for these offenses since the Yale Studies were conducted. We are unable to confirm this explanation in the given sample. A further possibility is that white-collar discounts occur earlier in the process; this study does not capture bargaining before case filing, which Mann (1985) highlights as key to a successful white-collar defense. Thus, our sample is characterized by selection – i.e. comprised of those offenses and offenders that end up in criminal proceedings.

Overall, minority defendants are more likely to receive discounts during the plea process. In general, there is much less known about the predictors of plea outcomes than sentencing outcomes, but this finding is inconsistent with presumptions that minority defendants will fare worse than white defendants. Early studies offered findings consistent with those above (e.g. Albonetti 1990), however contemporary research has not (e.g. Kutateladze et al. 2016). Differences between the present study and other contemporary analysis may relate to the types of crimes examined: Kutateladze et al. (2016) explore outcomes for misdemeanor marijuana charges, behavior which may trigger particularly racialized treatment. It is also possible that there are residual differences in the severity of the underlying behavior; if black defendants commit more serious offenses than white defendants, this residual effect may explain the positive relationship given that more serious cases are more likely to result in plea concessions. Cases with more unique statutes charged in initial filing (as well as more serious offenses) were generally more likely to receive bargains, consistent with notions that prosecutors can more easily offer concessions when there are more options for bargaining (e.g. Kutateladze 2018; Wright and Engen 2006). Surprisingly, private attorneys are not more successful in getting these discounts for their clients, and in fact may be at a disadvantage; this is in contrast to some work that suggests that white-collar crimes are better able to leverage private legal counsel in order to get more lenient treatment (Wheeler and Rothman 1982). It is possible that the quality of counsel that offenders committing these crimes are able to purchase, given their own (often limited) assets (Weisburd et al. 1991), is less than the quality of counsel afforded to white-collar offenders who commit offenses in the course of organizational activity. Alternatively, the enhanced quality of private counsel may be counteracted by benefits afforded to defendants whose publicly appointed defense attorneys have strong workgroup relationships with prosecutors that can be leveraged into advantageous deals for their clients (e.g. Eisenstein and Jacob 1977). Yet a third possibility is that private attorneys are most successful in achieving reductions before case filing (Mann 1985) or through other types of discounts (Galvin 2018).

Turning to sentencing, the results offer greater support for the original findings of the Yale Studies. Rather than observing leniency for white-collar offenders, it seems that white-collar crimes are more likely to be eligible for a prison sentence compared to other financial offenses; however, among eligible offenders, there does not seem to be a difference in sentence length. One reason we may observe this status liability finding at sentencing is because we are observing a set of criminal cases. As discussed above, there are numerous decisions by regulators, investigators, and prosecutors that occur before sentencing; any of these could have resulted in leniency, resulting in a sample of more serious than average
white-collar crimes that are then subject to status liability (Rosoff 1989; Skolnick and Shaw 1994). It is also possible, however, that the type of offenders who commit these eight offenses are not necessarily high-status. Weisburd et al. (1991) referred to these offenses as “crimes of the middle classes”; the most common offenses in this sample (postal and wire fraud, tax fraud, and false claims and statements) are generally not committed by wealthy or powerful individuals (see also Daly 1989; Holtfreter 2013).

It is also worth noting that financially well-off offenders (as indicated by the lack of a fine waiver) and well-educated offenders were more likely to receive lenient treatment at sentencing. This is consistent with the notion of status-leniency and is inconsistent with findings from the original Yale sample (Weisburd et al. 1990; Wheeler et al. 1982), although it is consistent with research using samples containing both white-collar and traditional offenses (Hagan and Bernstein 1979; Hagan and Nagel 1982; Nagel and Hagan 1982). Taken together with the white-collar status variables, what does this tell us about status-leniency? It suggests that sentencing is more nuanced than status “leniency/liability” would predict, at least in modern federal criminal courts. Rather than indicating leniency due to social status, as has been theorized, these characteristics may be seen by judges as lowering the risk of reoffending. Judges then are more likely to show these cases mercy in incarceration decisions (Kramer and Ulmer 2009). Offense and offender characteristics for white-collar cases may indeed exert contradictory influences on judges, as described in earlier qualitative work (Wheeler et al. 1988).

Case complexity, as denoted by the presence of multiple defendants in a case, was associated with increased likelihood of receiving a negotiated plea, consistent with prior work suggesting that more complex white-collar cases were treated more leniently (Albonetti 1994, 1999) as well as theoretical predictions about prosecutors (e.g. Frohmann 1997). If white-collar research fails to control for case complexity, it may be more likely to find evidence of status-leniency due to high complexity of white-collar cases overall. In other words, white-collar cases are treated more leniently because they are more complex but the nature of the offenses (seriousness) predisposes them to harsher treatment.

In sum, this chapter offered an example of white-collar prosecution and sentencing in US Federal courts by providing an updated analysis based on the Yale Studies on White Collar Crime. Criminal sanctions for white-collar crime in the United States largely fall under the auspices of the federal government. In the federal context, sentences are heavily influenced by advisory sentencing guidelines; consequently, US federal prosecutors are uniquely positioned to offer sentence leniency by reducing charges during plea negotiations, known as “plea bargaining.” In our analysis, we explore whether white-collar cases received advantages at prosecution and sentencing compared to other financial crimes. The findings suggest that white-collar cases, overall, do not receive special treatment at prosecution, and are in fact at greater risk of incarceration compared to other offenses. Previous work suggesting leniency in prosecution outcomes may have captured case complexity effects, given that white-collar cases are more likely to be complex. However, it is also important to consider the role of definition before concluding that these white-collar crimes are treated more leniently than other types of offenses. Many of the most common offenses in the Yale sample are not unambiguously tied to the high-status, occupationally related offenses first described in Sutherland (1949). There are many other definitions of white-collar crime that vary substantially in the types of offenses and circumstances of offending included (see Friedrichs, Chapter 2, this volume). Even the original authors of the Yale Studies (Weisburd et al. 1991) note that the offenses included in the Yale definition of white-collar crime represent a continuum of offending, some of which may be more generally accepted by
white-collar crime scholars than others. Thus, it is possible that the effects demonstrated in
this chapter would not be observed if a different definition of white-collar crime were used
(see Galvin 2018; Maddan et al. 2012; Van Slyke and Bales 2012). White-collar scholars have
long debated which behaviors truly merit the label of “white-collar crime” under the
assumption that definition matters; yet, little work problematizes definition. It is important
that future work should explore how definitions of white-collar crime structure both case
and offender characteristics and how these, in turn, interact with criminal justice
decision-making.

Notes

1 The analyses in Weisburd et al. (1991) also consider a small sample of postal forgery and postal
theft as “common” crimes, though the comparisons across white-collar and traditional crimes are
limited.

2 Inter-University Consortium for Political and Social Research (ICPSR) studies used in this anal-
ysis include the following: (i) Executive Office for United States Attorneys (EOUSA) Matters
In – 2009 (30793), 2010 (34335), 2011 (35049), 2012 (35500), and 2013 (36336), (ii) EOUSA
Matters Concluded – 2009 (30790), 2010 (34332), 2011 (35055), 2012 (35498), and 2013 (36333),
(iii) EOUSA Defendants in Criminal Cases In – 2009 (30791), 2010 (34333), 2011 (35056), 2012
(35489), 2013 (36334), and 2014 (36704), (iv) EOUSA Defendants in Criminal Cases Terminated –
2009 (30792), 2010 (34334), 2011 (35048), 2012 (35499), and 2013 (36335), (v) Administrative
(35041), 2012 (35490), and 2013 (36324), (vi) AOUSC Cases Terminated – 2009 (30784), 2010
(34326), 2011 (35043), 2012 (35492), and 2013 (36327), and (vii) United States Sentencing
Commission (USSC) Cases Sentenced – 2009 (30795), 2010 (34337), 2011 (35051), 2012 (35502),
and 2013 (36338).

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Ifeanyi Ezeonu

Introduction

This chapter uses a nascent justice-oriented theoretical heterodoxy conceptualized as market criminology (see Ezeonu 2015, 2018) to interrogate Western corporate offenses in Sub-Saharan Africa, and to contextualize preventable social harms generated by market rationality as criminal. The argument articulated herein is intended to advance our understanding of market political economy as criminogenic and to contribute to a growing body of literature which sees preventable market-generated harms as criminal (see Friedrichs and Friedrichs 2002; Matthews 2003; Rothe et al. 2006; Ezeonu 2008, 2015, 2018; Ezeonu and Koku 2008; Izarali 2013; Rothe and Friedrichs 2015). The chapter uses the political economy of predation in the Nigerian petroleum extraction industry to highlight the arguments of market criminology.

Since Sub-Saharan Africa’s first contact with the West, many of its states or the communities that preceded them have existed as theaters of resource plunder, market-driven genocides, repressions, and – more recently – market-generated destruction of ecosystems. These atrocities were committed mostly (or sometimes aided) by Western capital in search of profit. While merchant capitalists like Belgian King Leopold II, Cecil Rhodes, and George Taubman Goldie represent the worst of these predators in the late nineteenth and early twentieth centuries, corporations like Shell, Chevron, and ExxonMobil have continued these predatory ventures in modern times. From the swamplands of the Niger Delta in Nigeria to the goldfields of South Africa, Western capital and its domestic compradors have continued to expropriate the African resource wealth and to rely on the state repressive apparatus to suppress domestic opposition. The political economy of oil and gas production in the Nigerian petroleum industry best represents this idea of “accumulation by dispossession” in the continent.

Since at least the fifteenth century, what is known today as Nigeria has existed as a commercial theater and estate of Western merchants and transnational corporations. Starting with trade in human commodities (i.e. the slave trade) and the subsequent colonial plunder, this predatory venture has continued with the pernicious extraction of petroleum
resources in its Niger Delta region in contemporary times, albeit aided this time by the country’s domestic compradors. The effects of this predatory political economy manifest in degraded environment, high mortality rate, human rights abuses, and an expansive ecology of poverty for the local population. Following a model identified by Marx (1887) as “primitive accumulation” and reaffirmed by Harvey (2004, 2005) as “accumulation by dispossession,” Western merchants, corporations, and states have relied mostly on brute force and, since independence, on compliant dictators to appropriate the resource wealth of African states. Despite the devastations caused by (and the disabling effects of) the predatory political economy imposed on the local population by market rationality, these predatory events have rarely been contextualized as criminal, nor have they attracted the interrogative interests of criminologists. The major reason for this is because criminology as traditionally constituted in Western thought is designed for the social control of vulnerable populations; and its ontological boundaries are patently established by captors of state power and their intellectual journeymen (see Ezeonu 2015, 2018). While Edwin Sutherland, in the early 1940s, made probably the first bold attempt to expand the conceptual circumference of the discipline (see Sutherland 1940), his analysis is seriously weakened by a theoretical genuflection to the traditional assumption that the criminal law should ultimately define the limits of criminality and thus criminology.

Nevertheless, since Sutherland’s (1940) bold challenge to the conceptual linearity of the criminological imagination, a vortex of radical heterodoxies has emerged to expand the interrogative circumference of the discipline (for instance, see Friedrichs and Friedrichs 2002; Agozino 2003; Hillyard et al. 2004). I have introduced one of these heterodoxies as market criminology, which I conceptualize as “the criminology of preventable market-generated harms and the criminogenic effects of market rationality in variegated forms of capitalism” (Ezeonu 2018, p. i; see also Ezeonu 2015). This theoretical framework contextualizes avoidable market-generated harms in the different mutations of capitalist economy as criminal.

Unlike Sutherland’s concept of white-collar crime, market criminology does not consider a violation of extant laws as a prerequisite for recognizing avoidable market-generated social harms as criminal (see also Friedrichs and Friedrichs 2002). The concept of market criminology is thus both theoretically and praxeologically a more elastic framework for interrogating market-generated crimes than that of white-collar criminality. This new heterodoxy locates preventable market-generated harms at the epicenter of criminological inquiry, incinerates the centrality of laws as the determining parameters for conceiving criminality, and presents the disabling social structure engendered by market rationality as the source and theater of criminal victimization. This chapter uses the theoretical framework to discuss the predatory nature of Western corporate activities in Sub-Saharan Africa, with a specific focus on the petroleum extraction industry in the Niger Delta region of Nigeria.

**Market Criminology: A Prodigal Ontology**

Most of Sub-Saharan Africa has historically been commercial outposts of Western capital since its first contact with Europeans. Many of its people have been brutally massacred in the process, been sold into slavery, and been victims of state-sponsored repression intended to protect the interests of transnational corporations. This has been the predatory nature of market political economy across time and place. Despite more than five centuries of Western
commercial looting of African resource wealth – and the massacres, dispossession, repressions, and expansive ecology of the criminological imagination is yet to be fully extended to accommodate the ravages of market rationality. This is principally explained by the fact that criminology as traditionally calibrated is designed to sustain oppression and not to advance social justice. Like social anthropology and institutional psychiatry, traditional criminological knowledge is often devised and deployed to aid the cause of oppression and social control (see Ezeonu 2018 for the details of this latter argument). While a number of scholars have forced the discourse of corporate abuses and of crimes enabled by market political economy into the criminological body of literature (see Sutherland 1940; Friedrichs and Friedrichs 2002; Agozino 2003; Matthews 2003; Hillyard et al. 2004), a knowledge gap exists in the organic understanding and articulation of market rationality and the variegated forms of political economy it sustains as both criminal and criminogenic. A nascent and prodigal ontology is thus needed to fill this gap.

Establishment criminology has generally treated the powers of the state to criminalize behaviors as indisputable. In this context, criminologists of this bent and criminal justice bureaucrats often exert scholarly and policy efforts on the etiology of, and how to address, those behaviors criminalized by the state or to prevent the omission of those obligations the state demands of its citizens through the criminal law. A consequence of this legalistic definition of crime is that behaviors which are often criminalized are those associated with the poor and the marginalized (Spitzer 1975; Agozino 2003; Ezeonu 2008, 2015, 2018; Ezeonu and Koku 2008). The typical criminal has consequently been the poor person and the non-conformist who poses (or whose behavior is perceived as posing) a threat to the stability of the state. Similarly, the criminal law sets the parameters for both acceptable and criminal behaviors in all political realms. Thus, in many parts of Africa occupied by European merchant capitalists and states, colonial laws were the ultimate tools to regulate the behaviors of natives and to impose obligations on them. Such laws were used to demand free labor from natives for merchant capitalists, to confiscate communal property, and to impose both individual and communal taxes to finance the capitalist predation of the African homelands. Individuals who opposed these laws or failed to abide by them were the ultimate criminals and were given the punishments outlined by those laws (see Aaronovitch and Aaronovitch 1947; Dike 1956; Chambliss 1976). As Africa’s foremost criminologist Biko Agozino observes, the essence of law and order in both colonial and post-colonial Africa has generally been to create and sustain the “political, economic and ideological imperialist hegemony” which ultimately aids the expropriation of the continent’s resource wealth. He notes that in most post-independence African states, this Western project of pillaging African national resources has been aided (or sometimes even promoted) by the domestic compradors that control the apparatuses of the state (Agozino 2003, p. 143). Like in classical European colonialism, these compradors use laws and criminalization extensively to enable and defend the predatory activities of market political economy (see Ezeonu 2018). Agozino (2003, p. 61), thus reminds us that establishment criminology has been “aligned with imperialism instead of being made relevant to the daily struggles of the masses for social justice.”

Certainly, because of the classist nature of criminalization (and of law enforcement), the criminal statistics derived from the police, the criminal and juvenile courts, and the prisons often present crime “as popularly conceived and officially measured” as occurring mostly among lower-class individuals, and as being less common among members of the upper class. Establishment criminologists have thus used such statistics to infer that crime is a major characteristic of lower-class individuals and communities and “is caused by poverty
or by personal and social characteristics believed to be associated statistically with poverty, including feeblemindedness, psychopathic deviations, slum neighborhoods, and ‘deteriorated’ families” (Sutherland 1940, p. 1; emphasis in original; see also Cohen 1955; Miller 1958). Sutherland (1940) challenges this conclusion by arguing that the samples used by establishment criminologists to create criminal statistics often excluded the criminal behaviors of business and professional men. For instance, he reminds us that the robber barons and railway executives of the late nineteenth century as well as the merchant capitalists and business executives of industry of the mid-twentieth century often violated existing laws of their time, but were not generally conceived of as criminals. He notes that the criminality of these business executives,

... has been demonstrated again and again in the investigations of land offices, railways, insurance, munitions, banking, public utilities, stock exchanges, the oil industry, real estate, reorganization committees, receiverships, bankruptcies, and politics. Individual cases of such criminality are reported frequently, and in many periods more important crime news may be found on the financial pages of newspapers than on the front pages. (Sutherland 1940, p. 2)

Sutherland (1940) thus expanded the conceptual elasticity of criminology by discussing the illegal activities of corporations and their agents as vital subjects of criminological inquiry. His concept of white-collar criminality includes the manipulation of financial statements of corporations, insider trading in stock markets, bribery involving corporations and public officials to influence government contracts or the nature of legislations, false advertising, and embezzlement of public funds, among others. While Sutherland’s (1940) concept of white-collar criminality is significant in arching the scope of the discipline more broadly, he continued the mistake of conceding the sole right to define criminality to the state. By nesting his analysis of the criminality of merchant capitalists and business executives solely on their law-violating activities, he genuflected to the ontological boundary put in place by establishment criminology which confines criminality only to the activities prohibited by the state or the international organizations to which a state consents. In this way, his concept of white-collar criminality produces a far less seismic shift in criminological imagination than other heterodoxies which refuse to cede the sole right to define criminality to state authorities. Friedrich and Friedrich’s (2002) notion of the crimes of globalization and my nascent and more expansive school of market criminology (see Ezeonu 2015, 2018) represent these latter alternatives. As Tifft and Sullivan (1980, p. 51) remind us:

[1]t is not the social harms punishable by law which cause the greatest misery in the world. It is the lawful harms, those unpunishable crimes justified and protected by law, the state, the ruling elites, that fill the world with misery, want, strife, conflict, slaughter and destruction.

In the contemporary era, in which a significant section of the world economy is largely moderated by market rationality in its mutable forms, there is an urgent need to extend the scope of criminology to the enduring, far-reaching, and preventable social harms caused by the application of market political economy across the world. The school of market criminology thus arose to bring preventable market-generated harms within the interrogative lens of criminology. This school presents market political economy as both criminal and criminogenic by focusing on its predatory nature and the disabling social structure it creates. For a detailed discussion of the prodigal ideas of market criminology, see Ezeonu (2018).
The school of market criminology developed from the impetus to expand the theoretical domain of the criminological heterodoxy described by Friedrichs and Friedrichs (2002) as crimes of globalization. These scholars had argued that the neoliberal economic policies and practices imposed on most of the developing world by international financial institutions such as the World Bank, World Trade Organization (WTO), and the International Monetary Fund (IMF) cause significant economic harms for vulnerable populations and that some of these harms which are preventable should be conceptualized as crimes even if no extant domestic or international law is violated (Friedrichs and Friedrichs 2002). They see as absurd the limitation of the scope of criminological inquiry to the “ideologically biased” definitions of the state which often “[fail] to address a wide range of objectively identifiable forms of harm” such as the ones promoted by the international financial institutions (Friedrichs and Friedrichs 2002, p. 17). The argument raised by these scholars finds support among a growing body of literature which sees the neglect of social harms in the vortex of criminological literature as constituting one of the greatest flaws of the discipline (see Friedrichs and Friedrichs 2002; Agozino 2003; Hillyard and Tombs 2004; Tombs and Hillyard 2004; Ezeonu 2008, 2015, 2018; Ezeonu and Koku 2008).

By rejecting the dominion of legalism as the defining parameters for crime, and thus criminology, Friedrichs and Friedrichs (2002) have helped to rejuvenate the discipline and to recalibrate its boundaries. However, in recognizing that the forms of activities originally categorized as crimes of globalization share complex ontological boundaries with other forms of globalized harms (such as crimes of the state, state-corporate crimes, and political white-collar crimes), David Friedrichs and Dawn Rothe have since redefined these forms of crime as “crimes of international financial institutions.” This latter category specifically describes avoidable harms resulting from the policies and practices of the international financial institutions. “Crimes of international financial institutions” thus becomes a subcategory of the broader notion of crimes of globalization. In its reconceptualization, they describe crimes of globalization as “demonstrably harmful policies and practices of institutions and entities that are specifically a product of the forces of globalization.” They emphasize that these forms of crime “by their very nature occur within a global context” (Friedrichs 2015, p. 46; Rothe and Friedrichs 2015, pp. 26 and 28).

Despite its insightful expansion of the criminological imagination to accommodate neoliberal political economy as criminogenic and the resultant preventable harms as criminal, the notion of crimes of globalization fails to address modern capitalism as a highly varied economic system shaped by the peculiarities of different localities (see Holmstrom and Smith 2000; Peck and Tickell 2002; Walker 2006; Birch and Mykhnenko 2008; Peck 2013). Similarly, the crimes of international financial institutions address only the harmful effects of the policies and practices put forth by international financial institutions such as those mentioned above. On the other hand, the concept of crimes of globalization (in both its original and its refined formulations) addresses the broader criminal and criminogenic dynamics of the global neoliberal project.

Nevertheless, the notion of market criminology offers a theoretically more elastic framework, which blames the disabling social structure created by variegated forms of market economy for the preventable social harms that must be classified as criminal. This disabling social structure is created through the unleashing of market forces by different actors, both domestic and international. These actors include domestic compradors acting for their own interest or the interest of the domestic economic system (as in the established market economies of the West and modern China) or in collaboration with international capital (as in
Nigeria and most countries of the Global South). These diverse forms of market economy include (but are not limited to):

1. the neoliberal dynamics in most of the established Western economies, whose fiscal policies are mostly determined by domestic political actors;
2. state-husbanded market economies, like the ones in contemporary China and Vietnam;
3. the quasi-capitalist economies of most countries of the Global South, including Nigeria (since independence in 1960) and Chile of the General Pinochet era, where a kleptocratic and predatory domestic comprador class controls the apparatuses of the state. This class pursues its own economic interests, or collaborates with international capital to expropriate the resources of the state.

For market criminology, it does not matter which institution or agency is responsible for the establishment of a capitalist order in a country. Rather, the scholarly focus of this school of criminology is the preventable harms created by the entrenched social architecture of capitalism in its different mutations.

Thus, this school of criminology shares an ontological common ground with the notion of *structural violence* conceptualized by Johan Galtung, a Norwegian sociologist, in 1969. Galtung (1969) conceives of structural violence as the disabling effects of unequal distribution of power and resources in a capitalist economy on the most vulnerable sections of a society. This inequitable structure often denies the most vulnerable sections of the population access to basic needs, including education, medical services, and a fair income. Galtung (1969) conceives of these harms as violence because they have real-life consequences for the vulnerable population concerned (see also Farmer 1996, 1999, 2004; Farmer et al. 2006). Equally, he describes the violence as structural because “it is built into the [social] structure and shows up as unequal power and consequently unequal life chances” (Galtung 1969, p. 171). Galtung (1969, p. 168) sees the traditional conception of violence solely as “somatic incapacitation, or deprivation of health” as reductionist, and instead articulates a broader definition of violence to incorporate all structural manifestations of injustice, especially of the avoidable kind (emphasis in original). Nevertheless, he conceives of social harms as violence only if such harms are “avoidable.” As he puts it, a death from tuberculosis in the eighteenth century when medical technology for its cure was mostly unavailable could not be seen as violence since such death was unavoidable. However, if such death occurs in contemporary time when the medical treatment of the disease is not only available but well-developed, then violence could be said to have taken place, because with a fair and timely access to health care as well as an even mobilization and distribution of medical resources, such death is avoidable (Galtung 1969, p. 169). Farmer (1999, p. 5) further consolidates this argument by maintaining that the prevalence of infectious diseases in many parts of the Global South and among the poorest populations in industrialized countries is simply the “biological reflections of social fault lines.” He demonstrates this by highlighting how an inequitable social structure in Haiti results in differential public health outcomes for the rich and the poor. For poor people, such outcomes become evident in high rates of illnesses such as tuberculosis and HIV/AIDS, lack of access to basic health care, and preventable death (see Farmer 1996, 1999; Farmer et al. 2006). In other works, I have also made similar observations with respect to the association between the implementation of neoliberal economic policies in many Sub-Saharan African states and the intractable problem of the HIV/AIDS pandemic in the continent, especially among poor women (see Ezeonu 2008, 2018; Ezeonu and Koku 2008).
Nevertheless, the argument of market criminology slightly differs from that of structural violence in one fundamental way. While structural violence results from a social structure that manifests in unequal distribution of power and resources, such inequitable social arrangements may be political, economic, religious, cultural, and legal (see Galtung 1969). On the other hand, market criminology focuses on social harms that result from a disabling social structure created by capitalism in its different mutations.

**Historicizing Capitalist Predation in the Niger Delta**

Western merchants, corporations, and states have operated imperiously in Sub-Saharan Africa since at least the fifteenth century. Their relationship with the continent has been defined by resource plunder, forceful occupation, and – following independence – conspiratorial alliances with compliant dictators and state captors to continue the resource pillage of the emergent states. In addition to the political inanity and economic naivety of many African political leaders, this subservient relationship with Western capital defines the myriad of challenges confronting the continent today. For several years now, many desperate African migrants (especially young people facing political and economic challenges in their homelands) have drowned in major accidents in the Mediterranean Sea trying to get into Europe in search of a better future. Many others, especially professionals, are migrating in droves to other parts of the world to improve their economic conditions, and in the process, robbing the continent of highly trained manpower and the concomitant services (particularly medical care). Meanwhile, Western transnational corporations and their domestic collaborators continue to appropriate the enormous resource wealth of the continent, often deploying the repressive state apparatus to deal with domestic opposition. At least in the past decade, corporations from China (aided by its increasingly ambitious home government) have joined the plundering of African resource wealth, albeit on a pretense of helping the continent to consolidate its infrastructural needs.

As studies demonstrate, forceful appropriation of national commonwealths which are often aided by state apparatuses is an enduring process through which capitalism developed and through which it has sustained itself. While Marx (1887/1995) describes this process of forceful accumulation as “primitive accumulation,” Harvey (2003, 2004, 2005) identifies its modern manifestation as “accumulation by dispossession.” In calling attention to the political economy of primitive accumulation, Marx (1887/1995) mocks the common argument (often promoted by the most ardent defenders of capitalist social relations) that the rich earned their wealth through exceptional acts of diligence, intelligence, and frugality while the poverty of the rest of humankind could be explained by their indolence, reckless spending, and unrestrained lifestyle. Marx (1887/1995) likened this anecdote to the theological original sin which blames human suffering on Adam’s inability to refrain from eating the forbidden fruit. According to him, capitalist proselytizers teach that:

… from this [economic] original sin dates the poverty of the great majority that, despite all its labour, has up to now nothing to sell but itself, and the wealth of the few that increases constantly although they have long ceased to work. Such insipid childishness is every day preached to us in the defence of property. (Marx 1887/1995, p. 507)

Marx (1887/1995) demonstrates that far from the above assumption, the original accumulation of capital by the bourgeoisie was accomplished through conquest, enslavement,
murder, robbery, and force. Using the example of England, where the transition from feudalism to capitalism first took root, he explains the variety of ways through which emerging oligarchic farmers, with the help of state apparatuses, forcefully displaced peasant farmers from their lands and properties and appropriated public goods for private use. Marx posits that this process of dispossession, which lasted from the fourteenth to at least the eighteenth century, accounts for the original wealth of the bourgeoisie and the creation of a landless and economically emasculated class which had to depend almost entirely on the market-determined value of their labor for daily survival. Having forcefully displaced peasant farmers from their properties, the English wealthy farmers and their state collaborators secured an absolute control of the agricultural means of production and established the operational structure of the emergent capitalist relations of production, designed to exploit the labor of the displaced peasants. Marx reminds us that the entire process of dispossession and consequent accumulation of capital by the bourgeoisie was aided by brute force of the state. This material dispossession of vulnerable populations for capitalist profit, however, did not stop at the domestic border. Indeed, the greed fostered by the endless quest for profit by the emergent bourgeois class is insatiable. As this emergent economic predator class desired an expansion into foreign non-European markets, they once again called upon state brute force to aid the expansion project (Marx 1887/1995; Ezeonu 2018).

This foray into foreign markets took place in the era of mercantilism, when European states used force to open up non-European markets for exploitation by European merchants. It manifested as a system of economic nationalism, in which European states defined the overseas market interests of its merchant capitalists as essentially the same as the interests of the state and adopted a myriad of regulatory frameworks to protect national merchant capitalists. Mercantilist policies were principally geared toward securing a favorable trade balance with other countries and amassing a sufficient supply of precious metals (particularly gold and silver) as well as raw materials for domestic industrial production. Mercantilism favored massive state investments in industrial production and the overseas marketing of these industrial products, the development of merchant marines, the regulation of domestic and interstate commerce to the benefits of one's own country, and the acquisition and exploitation of overseas colonies for raw materials and cheap labor. It aimed to maximize the export of a state's products while minimizing the importation of foreign goods. The policies were, therefore, designed for the consolidation of state power by economic means and to advance the state's political and existential interests. Promoters of the mercantilist economic model believed that securing an adequate amount of precious metals needed for military and industrial production, maintaining favorable terms of trade, and securing access to raw materials and cheap labor were the best ways to project and protect state power against all other competing powers. Thus, every economic activity was designed to secure the powers of the state against its competitors. In England, as in most other European states, mercantilism encouraged and relied on the selfish commercial inclinations of the emergent bourgeois class to advance state economic interests. The system “encouraged the merchants, shippers, and manufacturers by conferring benefits upon them and by identifying their private interests with the highest needs of the state” (Nettels 1952, p. 106; see also Heckscher 1962; Ezeonu 2018). This explains why many of the earliest expeditions by Western fortune-seekers in the Global South were partly funded by the state. In fact, Adam Smith's *The Wealth of Nations* was written as a pushback against the currents of mercantilism prevalent in eighteenth century mercantilist Europe.

Of course, European predatory interest in the resource wealth of Sub-Saharan Africa had been building since at least the fourteenth century, following a pilgrimage to Mecca.
performed by Mansa Musa, the emperor of Mali and one of the wealthiest men of his generation. Studies document that in his 1324 pilgrimage, he took along so much gold that the global gold price depreciated significantly several years after. He was reportedly accompanied on this pilgrimage by hundreds of slaves, each of whom carried a gold staff weighing at least four pounds (Pakenham 1991; Berczeli and Gutelius 2005). Marx (1887/1995, p. 85) posits that gold was so significant during this period that it represented the “absolutely social form of wealth for everyday use” and that it measured comparatively better than “even the bones of saints.” As Pekenham (1991) documents, the determination to find and expropriate this precious metal was a major driving force behind the earliest European incursion into (and later, colonial seizure of) most African homelands, starting from the fifteenth century. Merchant capitalism also drove the horrific trade in African slaves. The most notorious of these European merchant capitalists included Belgian King Leopold II (who held sway in the region known today as the Democratic Republic of Congo), Cecil Rhodes (who dominated the pillaging of the resource wealth of southern African countries), and George Taubman Goldie (the definitive raider of the resource wealth and labor of what eventually became modern Nigeria). The brutalities of these merchant capitalists and their companies are well-documented. So are accounts of the brutal intervention of their home governments to aid their commercial enterprises (see Dike 1956; Geary 1965; Pearson 1972; Galbraith 1974; Freund 1984; Pakenham 1991; Roberts and Mann 1991). By the late nineteenth century, one of the leading British merchant-explorers, David Livingstone, was calling fervently for more European merchants to join the raid of African resource wealth. In a lecture delivered at Cambridge University on December 5, 1857, he appealed for both European merchants and governments to pay greater attention to the commercial exploitation of the continent. He called on these future raiders to:

… direct [their] attention to Africa … I go back to Africa to try and make an open path for commerce and Christianity; do you carry the work which I have begun. I leave it to you! (quoted in Pakenham 1991, p. xxv; emphasis in original)

Of course, he tranquilized his predatory intentions by resorting to an amoral appeal to spreading Christianity – that hypnotic fantasy of European looting philosophy in foreign lands.

Beginning with a trade in human cargo (slave trade) in the fifteenth century, the Western predation of the resource wealth of the African continent has never abated. As has been demonstrated, the transatlantic slave trade was “constitutive of primitive accumulation, integral to the birth of modern globalization, and living on within the historical legacies of capitalist modernity” (Rupprecht 2007, p. 6; see also Williams 1944; Rodney 1982). This horrific trade in human beings is estimated to have victimized between 20 and 30 million Africans, excluding those who died on board slave ships or in the associated slave raids (Inikori and Engerman 1992, p. 6; Ezeonu and Korieh 2015, p. 3; UNESCO 2015, p. 1; see also Ezeonu 2018). The transatlantic slave trade was largely organized and led by European chartered companies as well as individual merchants. The companies involved included the British Royal African Company, which usually branded its slaves with the mark “DY” to distinguish its human properties from those of other rival companies. The mark “DY” stood for the Duke of York, who was the Chief Executive Officer of the company. A Spanish company, Compañía Gaditana, also participated actively in the horrific trade, and similarly branded the bodies of its own slaves with the letter “d.” A Dutch company, Middleburgische Kamerse
Campagnie, used the letters “CCN” to identify its own African human cargo while those purchased by the German firm Churfarstlich-Afrikanisch-Brandenburgische were marked on their right shoulders with the letters “CABC.” It is instructive to note that these marks were made on the bodies of slaves with hot irons, apparently to make them fairly permanent (Thomas 1997; Beckles 2013).

When this trade in human beings was eventually prohibited following the advent of the Industrial Revolution in Europe which had made it less profitable (Williams 1944; Ezeonu 2018), many of these slave-trading companies and merchants quickly switched to the next commodity sought by the market. For instance, the need for lubricants for the new industries of Europe created a huge demand for palm oil, which was in abundance in West Africa. Palm oil was also a major ingredient for making soaps during this period, which were in high demand in Europe, particularly Britain. Many of these palm oil merchants came from Liverpool, which was formerly the bastion of the British slave trade. They included Captain E. Deane, who used to own the slave ship *Cumberland*; James and William Aspinall, who operated several slave ships; and Jonas Bold, James Penny, and John Tobin, all of whom were formerly big-time slave traders. Nevertheless, one major actor, George Taubman Goldie, succeeded in carving out a huge part of what we know today as Nigeria for commercial plundering. Through his British-chartered National African Company (later renamed the Royal Niger Company), he became the chief plunderer of the Niger Delta resource wealth and gradually extended his influence as well as that of his company into most of the southern hinterlands. He held a commercial monopoly over almost all of southern Nigeria. His company circumvented the indigenous African middlemen in the palm oil trade, and violently suppressed all competition and opposition. When his overbearing commercial control of the palm oil business was challenged by the Nembe people of the Niger Delta region (whose homeland he had forcefully occupied) he requested military help from the British government which sent the Royal Navy to suppress the rebellion, killing several people in the process (Dike 1956; Pearson 1972; Pakenham 1991; Ezeonu 2018). So, as in the gestation period of capitalism in Britain, primitive accumulation in most African states was advanced through collaboration between European merchants and their home states. It was also accomplished through brute force. The current map of Africa reflects the commercial partition of the continent among European predators, a partition that was accomplished at the Berlin Conference of 1884–1885. This conference was called to prevent the predatory commercial interests of competing European firms and states from leading to armed conflicts (Dike 1956; Geary 1965; Freund 1984; Pakenham 1991; Ezeonu 2018). The seizure, partition, and pillaging of these African merchant colonies were in line with Lenin’s (1965, p. 105) thesis that imperialism is simply “the monopoly stage of capitalism.”

The Niger Delta region of Nigeria illustrates the fate of most parts of African under the pillage of Western capital. Following its contact with the West, at least since the fifteenth century, this region of Nigeria has remained a theater of predation, first by European slave raiders, followed by armed traders of palm produce, and finally by a complete occupation (alongside other communities that make up present-day Nigeria) by the British government. Since Nigerian independence, Western governments and corporate actors have continued the resource plunder, albeit with a new Nigerian comprador class (for instance, see Ezeonu 2018).

As studies demonstrate, the commercial incursion of European merchants and charter companies into the African market generated so much tension and conflict among competing corporations and merchants that these firms often had to call upon their home
militaries for support. In the nineteenth century, such tensions existed between the British-chartered Royal Niger Company and the French military-backed firms making incursions into the Niger Delta area of present-day Nigeria (which was controlled by the former); these were eventually resolved diplomatically. Similarly, in 1884, German Chancellor Otto von Bismarck sent a military boat to Cameroon and took it over as a merchant colony by declaring it a German protectorate in a potentially dangerous challenge to the existing British sphere of influence (Dike 1956; Geary 1965; Pakenham 1991; Ezeonu 2018). While territorial boundaries of occupation and expropriation were eventually settled among the European powers in the Berlin Conference of 1884–1885, these conflicts undermined the belief among some scholars that an advanced (monopoly) stage of capitalism would be characterized by “an internationally interlocked and pacifist-minded capitalist class, increasingly uninterested in war or aggressive competition” (Freund 1984, p. 84). In fact, Lenin (1965) had argued that the monopoly stage of capitalism would not bring an end to capitalist competition; instead, such competition among national monopolies would be so ferocious that the corporations concerned would have to call upon the armed support of their respective countries to advance their commercial interests. This resort to national armed support similarly confirms Marx's (1887/1995) contention that the deployment of brute force, especially by the state, is an enduring characteristic of primitive accumulation.

The exploration of petroleum resources in Nigeria started as part of the expropriation of the African resource wealth by the British merchant capitalists and the colonial regime that aided them. For instance, in 1907 the British colonial administration in Nigeria promulgated the Mining Regulation (Oil) Ordinance to benefit British firms interested in exploring for petroleum in Nigeria. This legislation specifically prohibited non-British firms from exploring for petroleum in the country. The only exception to this prohibition was the Nigerian Bitumen Corporation, a subsidiary of a German corporation which was registered in Nigeria. However, the activities of this corporation ended in 1914, following the outbreak of World War I. The same year, the British colonial administration enacted a new legislation – the Nigeria Mineral Oil Ordinance (Colonial Mineral Ordinance No. 17) – which granted the rights to petroleum exploration in Nigeria exclusively to British subjects and companies (see Frynas 2000; Frynas et al. 2000; Obi 2011; Nigerian National Petroleum Corporation 2017; Ezeonu 2018). The immediate beneficiaries of the latest legislation were two British firms, Shell and BP, which in 1938 were jointly granted a monopoly exploration license to explore for petroleum in the entire colonial territory currently known as Nigeria. While oil exploration in colonial Nigeria was disrupted by World War II, it continued in 1947. In 1956, petroleum resources were discovered in large quantities in Oloibiri, in the Niger Delta region. This discovery attracted the commercial interests of other transnational corporations, such as Mobil, Agip, Safrap (now Elf), Tenneco, and Amoseas (now better known as Texaco and Chevron). Following independence, the new Nigerian government extended exploration rights to these other corporations in the 1960s. Other corporations, both foreign and domestic, have since earned exploration rights in the Nigerian petroleum sector, and the Niger Delta region has become the center of petroleum exploration activities in Nigeria. The country has since become a leading oil-producing country in the world, producing an average of 2.0 million barrels of crude oil daily by 1972 (see Nigerian National Petroleum Company 2017). At independence, Shell-BP (as it was known then) remained a dominant player in the industry and controlled the bulk of the prospecting licenses (Frynas et al. 2000; Obi 2011; Ezeonu 2018). Crude oil has become the major foreign exchange earner for Nigeria and a tremendous source of wealth for petroleum-prospecting transnational
corporations operating in the sector (Ezeonu 2018). To maintain these economic advantages, these transnational corporations (in collaboration with the domestic compradors who control the politics and economic policies of the country) have sustained a terrifying regime of repression in the Niger Delta region. As a result of this political economy of predation, the Niger Delta region has witnessed an expansive ecology of poverty as well as arbitrary arrests, detention, and repression of those who protest the devastations caused by crude oil prospecting and production in the region. The kangaroo trial and execution of Ken Saro-Wiwa, a Niger Delta community and environmental activist, is unarguably the best known of this form of this repression.

**Primitive Accumulation in the Petroleum Extraction Industry in the Niger Delta: Extending the Circumference of Criminology to Market Rationality**

On November 10, 1995, Ken Saro-Wiwa – a notable environmental activist and leader of the Ogoni community of the oil-rich Niger Delta area of Nigeria – was executed, alongside eight other Ogoni leaders, on trumped-up charges by the military dictatorship of General Sani Abacha of Nigeria. Ken Saro-Wiwa had become a veritable agitator against the abuses of the transnational corporations involved in petroleum extraction activities in the region, as well as the abuses of the Nigerian comprador class which supports them. Determined to solve the perennial problem which his activities posed to the transnational corporations’ continuing appropriation of the region's petroleum resource wealth, they (in complicity with the Nigerian comprador class) decided to execute him. Like the transnational corporations, the Nigerian domestic compradors have an enormous stake in the country’s petroleum resource wealth (Ezeonu 2018). Shell Petroleum, the country’s largest transnational corporation in the petroleum industry, was accused of complicity in the death of the Ogoni Nine (as the executed leaders are known) and in June 2009, reached a settlement with the families of the executed leaders for compensation totaling US$15.5 million. This settlement was to ward off a legal action instituted by the families in New York City against Shell for its reported role in the execution of the community leaders (Pilkington 2009).

Just like in the Niger Delta, transnational corporations have continued the process of predatory appropriation of national resource wealth in most African states and, since independence, have relied on compliant domestic compradors that control state apparatuses to advance their business objectives. These corporations have also been aided by Western governments and international financial institutions, which (through enforced economic adjustment programs) have opened up African economies to continuing Western exploitation. The complaisant states have used both public policies and state violence to transfer public assets to private hands. In most of the continent, transnational corporations have had to rely on state violence to protect their pillaging of national resource wealth (see Human Rights Watch 1999a,b; Farlam et al. 2015; Ezeonu 2018).

While it is common to regard the process of primitive accumulation generally as a predatory transition from feudalism to capitalism which ended with the maturation of the capitalist political economy, Harvey (2003, 2004, 2005) points to the error of consigning this process of capital accumulation to the pre-capitalist period. He argues that the process of predatory accumulation has continued today in patterns similar to those identified by Karl Marx, and that just like in the early stages of capitalism, the upper class continues to rely on violence,
dispossession, and fraud to accumulate wealth in modern times. He observes that while it would be improper to use the words “primitive” and “original” to describe the modern predatory process of wealth accumulation because of the advanced stage of capitalism, the process is the same. He rather uses a new concept of “accumulation by dispossession” to describe the continuing process of predation and dispossession of wealth that defines modern forms of capitalism. Some of the modern examples of predatory accumulation which he cited include the commodification and privatization of public assets. These include such public utilities as water, telecommunications, and transportation as well as social welfare domains like education, social housing, health care, and pensions. Also included are public institutions such as prisons, tertiary institutions, and research laboratories.

Using the example of private military contractors that work alongside Western military forces in Iraq, Harvey (2005) observes that even the nature of warfare has been reorganized to open up avenues for capital accumulation. He equally notes that market-oriented international legal frameworks, such as the WTO’s Trade-Related Intellectual Property Rights (TRIPS) agreement, were designed to privatize and appropriate proprietary rights of genetic materials from vulnerable populations across the world. In this context, “the pillaging of the world’s stockpile of genetic resources is well under way to the benefit of a few large pharmaceutical companies” (Harvey 2005, p. 160). Another modern form of predatory capital accumulation identified by David Harvey is the use of deregulated financial markets to shield fraudulent activities that promote the economic interests of the upper class at the expense of the rest of the population. This extreme form of deregulation, especially in a neoliberal economy, has encouraged speculation, corporate fraud, Ponzi schemes, the stripping of pension funds, and stock manipulations, all of which have aided a redistribution of wealth from the poor to the wealthiest of the population. At the international level, the triumvirate of the US Treasury, Wall Street, and the IMF use the manipulation of economic crises across the world and the concomitant demand for economic adjustment to appropriate and transfer wealth from poor countries to the rich ones. The neoliberal state also plays a crucial role in the redistribution of wealth and income from the poor to the rich, often through its fiscal policies. Typical examples are the revision of tax codes to benefit returns on investment rather than incomes, the introduction of user fees for many public services, and the provision of tax breaks and subsidies to corporations while stripping welfare protections for the poor (Harvey 2003, 2004, 2005).

Studies show that the predatory process of capital accumulation (which characterized the emergence of classical capitalism and the consolidation of neoliberal political economy) equally manifests in other mutant forms of market economies. For instance, Holmstrom and Smith (2000) attribute this predatory process of accumulation to the emergence and consolidation of what they call “gangster capitalism” in the post-communist economies of Russia, China, and most of the former communist countries of Eastern Europe (see also Walker 2006). According to them, economic restructuring in these countries, especially in Russia and China, involved state officials corruptly privatizing and appropriating public assets under the banner of market reforms. In the early 1990s, Russian market reformers following the advice of Western economists – especially at the Harvard Institute for International Development (HIID) – suddenly subjected the state economy fully to market rationality. The country’s major industries were privatized and quickly sold off (at the cheapest rates) to both state officials and criminal groups. These reformers also abandoned state planning, deregulated prices, and promoted private competition with the remaining (often poorly funded) state-owned
industry. Studies document that this sudden transition to market economy was a complete disaster, and it moved public assets to a few hands.

In both Russia and China, state officials took active part in the looting of public property, often through the manipulation of public policies, influence peddling, kickbacks, and blatant theft of public resources. While foreign capital was involved in this predatory process, the activities of corrupt state officials were so blatant that they provoked some of the major protests in the early years of market economy in China, including the Tiananmen Square protest in 1989. Again, state violence (a historical tool of capital accumulation) was used to quell these protests (Holmstrom and Smith 2000; He 2001; Walker 2006; Ezeonu 2018).

The immediate effects of this transition to a market economy in Russia included a significant fall in industrial productivity and the plummeting of real incomes. Following a significant contraction in economic activities, the state was unable to pay the salaries of millions of state workers, and the rate of unemployment (especially among women) escalated. By the late 1990s, about one third of the Russian population was living in poverty. The infant mortality rate also grew to a level similar to those of many developing countries, and life expectancy fell generally. Meanwhile, the emergent bourgeois class continued to plunder the national resource wealth by selling off to themselves the state commonwealth, including state-owned gold, oil and gas, diamonds, Siberian forests, and in some cases plutonium. Most of this stolen wealth was hidden away in secret Western bank accounts, properties, and investments, or was squandered in ostentatious lifestyles (Holmstrom and Smith 2000).

As in established market economies, the transition to market rationality in Russia and China has created enormous social harms that are preventable. In China, for instance, by 1980 (just two years after the transition started) the economy had created an inequitable social structure in which rural residents faced inequality in health outcomes. This included high infant and child mortality, lower life expectancy, malnutrition, and poor access to health services. It has also been reported that since the transition to a market economy in China, there has been a considerable increase in the number of people suffering from preventable diseases, including active hepatitis B. These infections are mostly common among the poor and rural population, principally because of their limited access to health services (Office of the World Health Organization Representative in China and the Social Development Department of the China State Council Development Research Centre 2005, p. 11).

The process of accumulation by dispossession characterizes the political economy of petroleum extraction in the Niger Delta area of Nigeria. In a 2017 study that I conducted among members of the Niger Delta diaspora community in Ontario, Canada, they identified three preventable social harms produced by the political economy of petroleum extraction in the Niger Delta. First, they pointed to a continuous process of petroleum resource expropriation in their homeland, and the concomitant expansion of the ecology of poverty in the communities. They observed that petroleum extraction activities have destroyed traditional economic activities in their communities (including farming and fishing) and that oil wealth from these communities has been used to fund major infrastructural projects across Nigeria, especially in the major cities of Lagos, Abuja, and Kano. They complained bitterly about the neglect of the Niger Delta region in these infrastructural developments and discussed how oil spills have destroyed the domestic economy. Beyond petroleum extraction activities dominated by foreign staff and Nigerians mostly from outside the region, there are very few opportunities for employment. This has led to an increased level of poverty and has provoked an out-migration of the youthful population, while many of
the young women resort to transactional sex for survival. To some of these respondents, the high rate of poverty in the Niger Delta explains the increasing rate of HIV/AIDS in that region (Ezeonu, 2018; see also, Udoh et al, 2009). As studies show, poor women – in their desperation for economic survival – often negotiate for safe sex from a position of weakness (see Ezeonu 2008, 2015, 2018; Ezeonu and Koku 2008). It is understandable therefore that the rate of HIV/AIDS in this region is among the highest in Nigeria (see UNDP 2006). Krieger (2007) thus enjoins epidemiologists to consider the impact of poverty and structural inequality in understanding and dealing with the causes and distribution of diseases.

Many of my respondents equally bemoaned the high rate of environmental pollution associated with the petroleum extraction industry in the Niger Delta. They accused the domestic comprador class (which holds a big stake in the petroleum industry and controls the apparatuses of the Nigerian state of complicity) of lax regulation of the activities of transnational corporations. The respondents pointed to extensive pollution of lands and water sources in Niger Delta, a fact supported by documented evidence (see Ezemonye et al. 2008; UNEP 2011; Uhegbu et al. 2012). They lamented particularly the health implications of this pollution, including the reduction in life expectancy and the exacerbation of illnesses associated with water and air pollution. One of the respondents who worked in the region as a physician pointed to the health implications of the incessant gas flaring associated with petroleum extraction activities on the health of the population, including increases in cases of asthma and chronic bronchitis. He attributed these health challenges to government’s failure to prohibit gas flaring close to residential areas. As studies demonstrate, petroleum extraction activities in the Niger Delta have been associated with the presence of toxic pollutants (including arsenic and chromium) which pose a great danger to humans (Uhegbu et al. 2012; Ezeonu 2018). Long-term exposure to these pollutants has been associated with a number of serious health challenges, including all forms of cancers, hypertension, retarded neurobehavioral development, and peripheral vascular diseases (Chen et al. 1988; Wu et al. 1989; Chen 2011; Ezeonu 2018).

The effects of these industrial pollution activities, no doubt, provoked some of the most ferocious community challenges to the activities of transnational corporations in the Nigerian petroleum industry, especially the protests led by Ken Saro-Wiwa. This leads to the third harm raised by the respondents: the perennial use of state repressive apparatus to quell community protests against corporate abuses. Two incidents that were particularly mentioned were (i) the state suppression of the Choba community protests in Rivers State in October 1999, and (ii) a similar brutal crushing of the Odi community in Bayelsa State in November of the same year in response to their alleged killing of state security officials during a community campaign for greater access to the oil wealth. In both suppressive actions, many community members were killed and a sizable number of women were reportedly raped by the Nigerian security forces (Ezeonu, 2018). These incidents are well documented (see Human Rights Watch 1999b; Amnesty International 2006; Nwadike 2013). While the Choba and Odi community incidents, as well as the kangaroo trial and execution of Ken Saro-Wiwa and the other Ogoni community leaders, were the more well-known cases, the political economy of petroleum extraction in the Niger Delta has been sustained by a system of state repression along the lines articulated by Marx (1887/1995). It is instructive that members of the domestic comprador class – who (alongside the transnational corporations) plunder the Nigerian oil resources and control public policy on petroleum extraction activities – are mostly serving and retired military officers and some of their civilian allies (see Ezeonu 2018). The social harms described above are preventable outcomes of an inequitable social structure created by market political economy. The ultimate victims of this
political economy are members of the Niger Delta communities whose lives and livelihoods have been destroyed and/or continuously threatened by the pernicious acts of accumulation by dispossession.

Given the arguments articulated above, one may ask the fundamental question: how then do we punish such market-generated crimes? Well, one major drawback of the traditional criminological thinking is the expectation that every criminal offense must attract an individualized penal and institutionalized response. This idea of retribution, which has a long pedigree in criminological imagination, poses a critical challenge to the recalibration of the disciplinary boundaries. Additionally, the genuflection of traditional criminological thinking to the supremacy of the state in defining the limits of crime, and thus criminology, explains why both historical and contemporary atrocities are often perceived as evil but not criminal. For instance, the transatlantic slave trade involving African human cargoes from the fifteenth to nineteenth centuries is often understood in this light. This is because in all of the Western states involved in the odious trade, the buying and selling of Africans was indeed legal commerce and enjoyed both the military and the legal defense of the states (see Thomas 1997; Walvin 2011; Beckles 2013).

However, to address the penal response to market-generated crimes, since they fall outside the strictures of the criminal law, we should look to one of the most hideous crimes of our time – the Holocaust – for direction. Beyond the trial and punishment of the masterminds of this abhorrent crime at the end of World War II, the state of Germany was made to pay reparations to the emergent state of Israel for many years. This model of justice, described by Hillary Beckles as “reparatory justice” (Beckles 2016, p. 12), has since become popular among African and Caribbean states demanding reparations from European states for the atrocities of colonialism and two of the greatest crimes of all time: the transatlantic slave trade and, concomitantly, chattel slavery. Victims of market criminality should benefit from this model of justice. The University of Glasgow in Scotland has recently taken a lead in this regard. In September 2018, the university’s History of Slavery Steering Committee found that “the University received significant financial gifts and support” from former slave owners (Mullen and Newman 2018, p. 3). As part of the official response to this finding, the university announced a program of reparatory justice which, among other things, includes investments in and collaborations with the University of West Indies in research on chronic diseases in the Caribbean. The target area of research includes diabetes, child obesity, and hypertension. The other proposed reparatory justice projects include targeted scholarships and exchange programs for Caribbean students. The estimated cost of the entire program of reparatory projects is £200 million (Beckles 2018; Belam 2018, p. 1). While these programs may not fully repay the financial benefits of the University of Glasgow from transatlantic slavery, nor compensate for human costs to the people of African descent, the programs represent an enviable example of reparatory justice in contemporary time. State, corporate, and community stakeholders in the petroleum industry in the Niger Delta should, therefore, look to the Glasgow model as a template for reparatory justice in the region.

Conclusion

Using a budding theoretical heterodoxy conceptualized as market criminology, this chapter discusses the complicity of transnational corporations and the Nigerian domestic compradors in the corporate expropriation of the country’s petroleum resource wealth. It
Ifeanyi Ezeonu highlights the deleterious effects of the predatory market economy imposed on the local population, and argues that preventable social harms resulting from this market rationality should be contextualized as criminal whether or not extant laws are broken. This argument is in sync with a growing body of literature which conceptualizes preventable social harms as criminal. I suggest that justice for victims of market criminality, like the ones in the Niger Delta region of Nigeria, should follow the imperatives of what has been described by Beckles (2016, p. 12) as “reparatory justice.”

The concept of market criminology differs fundamentally from that of white-collar criminality in two fundamental ways. First, unlike the latter, the arguments of market criminology repudiate the traditional assumption that the criminal law ultimately defines the limits of crime and criminology. Second, in expanding the criminological imagination, the interrogative framework of market criminology goes beyond the activities of “person[s] of respectability and high social status in the course of [their] occupation” (Sutherland 1949, p. 9). Rather, it focuses on the preventable social harms created by market rationality in its different mutations. This new school of criminology is therefore a more expansive theoretical framework than the classical concept of white-collar crimes – one that engages with a myriad of crimes enabled by varied forms of market political economy. Criminologists should thus extend their interrogative lens to such social problems as preventable social harms created by resource extraction industries across the world; the devastations of structural adjustment programs (SAPs) and related neoliberal experiments in the Global South; and the lasting effects of the transatlantic slave trade and colonialism in Africa, Asia, and the Americas. In doing this, we will be making the subject matter of criminology more “relevant to the daily struggles of the masses for social justice” (Agozino 2003, p. 61).

Notes
1 This form of market economy existed also in Russia during its transition from socialism to capitalism in the 1990s. One prominent characteristic of this form of market economy is the involvement of the domestic compradors in both regulatory and state capture, as exemplified in the petroleum extraction industry in Nigeria.
2 While Chinese merchants and corporations are gradually replicating the commercial atrocities perfected by their Western predecessors in Africa, this work is limited to the analysis of the Western corporate abuses.

References


Researching White-Collar Crime: An Australian Perspective

Arie Freiberg

Introduction

Scoping the nature and size of white-collar and corporate crime is a daunting task, as this handbook testifies. Scoping the content and extent of scholarship in these fields in one jurisdiction is only slightly less challenging. While the former is vast, the latter is more constrained given the limited number of scholars capable of and interested in researching these subjects.

This chapter surveys a selection of Australian scholarship in white-collar and corporate crime published between 2000 and 2018 – an arbitrary period selected only because the turn of a century seems to be a traditional marker of epochs. This handbook has classified the four main categories of crime encompassed under the rubric “white-collar crime” as occupational crime, corporate crime, government crime, and state-corporate crime. Australian scholarship touches on many of these areas, some in more depth than others. The following overview is partial in two respects: first it is not comprehensive, and second, it is biased, reflecting this author’s interests. It discusses just a few Australian publications out of hundreds. It excludes such topics as environmental crime, professional and occupational crime and misconduct, intellectual property crime, cyber-enabled crime, money laundering, confiscation of the proceeds of crime, whistleblowing, serious financial crime, fraud in higher education and research, victim support and compensation, unexplained wealth, and corruption, all of which have been the subject of substantial literatures.

Some Background

Australian scholarship is primarily based in universities, though some is conducted in the private sector, government departments, and research institutes (Smith 2017). The Australian Institute of Criminology, established in 1973, has directly undertaken numerous studies of crime and justice in Australia and funded others through the Criminology
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Research Council. An analysis of one its major publication series, *Trends and Issues in Crime and Criminal Justice*, revealed that the topic of “economic and business crime” provided the greatest number of publications while cybercrime/technology publications also featured strongly (Smith 2017, p. 44). Other government organizations that publish reports on white-collar and corporate crime are the Australian Crime Commission and the Australian Criminal Intelligence Commission.

Within universities, there have been a number of externally funded projects that have produced substantial bodies of work. One such project was on tax system integrity in the Centre for Tax System Integrity (CTSI) at the Australian National University, which ran from 1999–2005 in partnership with the Australian Taxation Office (ATO) under the leadership of Valerie Braithwaite. Another was a project on phoenix companies at the University of Melbourne, Victoria from 2014–2017. Publications by law reform bodies, parliamentary inquiries, and civil society organizations have also contributed to an understanding of various aspects of the field such as: the use of civil and administrative penalties (Australian Law Reform Commission 2002); the sentencing of corporate offenders (New South Wales Law Reform Commission 2003); the performance of the Australian securities regulator (Australia, Senate Economic References Committee 2017) and its use of sanctions (Australian Government, The Treasury 2017); and the extent of corporate malfeasance (The Australia Institute: Grudnoff et al. 2016).

Stories of corporate and financial crime and the enthralling tales of fallen business heroes eternally capture the public imagination. In addition to stories in the daily press there has long been a popular literature in Australia reporting on business and personal failures (Sykes 1994, 1996, 1998). However, the serious academic study of white-collar and corporate crime in Australia commenced in the early 1980s with the works of John Braithwaite and Brent Fisse that focused on corporate crime in particular. Fisse’s early work was primarily concerned with corporate liability (Fisse 1983) and the development of new sanctions against corporations such as community service (Fisse 1981), publicity (Fisse and Braithwaite 1983), corporate compliance programs (Fisse 1989), and punitive injunctions (Fisse 1990), which culminated in Fisse and Braithwaite’s book on corporations, crime, and accountability published in 1993 (Fisse and Braithwaite 1993). Extensive studies by John Braithwaite of corporate crime in the pharmaceutical industry (Braithwaite 1984), enforcement of coal mine safety (Braithwaite 1985), and Australian business regulators (Grabosky and Braithwaite 1986) placed corporate malfeasance on the research agenda.

Predominantly, but not exclusively, research tends to follow events: academics will often react to incidents such as corporate scandals or major frauds. Much scholarship takes the form of commentaries or responses to law reform or legislative proposals. For example, major tax frauds in the late 1970s and early 1980s produced studies on how corporate forms were abused (Freiberg 1987; Sutton 1989) and the legislative and institutional responses to it (Freiberg 1988). The perennial problems of tax avoidance and evasion led to the creation of the CTSI. In other cases, scholarship will be proactive and creative, seeing problems before they occur. Never off the agenda have been issues such as welfare fraud, insider trading, consumer fraud, and corporate malfeasance. Some of the issues that have attracted academic attention in Australia have concerned enforcement, sentencing, and sanctions, in particular the choices to be made between civil and criminal penalties. More recently, major white-collar and corporate offending in Australia has taken the form of fraud in the higher education sector, systemic underpayment of workers in the business franchise sector, banking misconduct including widespread fraud, resulting in a Royal Commission into
Misconduct in the Banking, Superannuation and Financial Services Industry, which commenced in late 2017, fraud in relation to workers’ entitlements, money laundering by banks, tax fraud, procurement fraud, and asset misappropriation, all of which will produce new publications in the near future.

A feature of Australian regulatory scholarship in this field has been the close relationship between criminal law, criminological, and regulatory scholarship. Many of the authors who published on corporate and white-collar crime commenced their work in the former fields but saw the emerging discipline of regulation as one that could provide a far broader insight into individual and corporate noncompliance, malfeasance, or criminal behavior than could criminology alone due to the former’s more extensive theoretical and empirical foundations. Ayres and Braithwaite’s seminal book on responsive regulation published in 1992 brought together the two disciplines with the result that much Australian academic analysis of corporate and white-collar crime has been infused with this more general perspective on deviant behavior (e.g. Haines 1997).

### Defining and Explaining White-Collar Crime: An Australian Perspective

Theorizing white-collar crime has not featured in the Australian literature. The relatively few works in this area have generally been descriptive and designed as introductions to the field. Smith’s chapter in the *Cambridge Handbook of Australian Criminology* (2002a) reviewed the history and evolution of financial crime, its incidence and size, regulatory and enforcement mechanisms, the role of professional advisers, and the use of technology to control fraud. Haines’ contribution highlighted the importance of trust and confidence in the business community and the role of government in maintaining that trust. She noted the importance of understanding the relationships between business and governments, governments and citizens, and businesses and the wider community in comprehending corporate crime (Haines 2017).

Such theorizing as does occur tends to draw heavily on scholarship from the United States and the United Kingdom stemming from Sutherland’s classic work (Sutherland 1945, 1949), though Braithwaite has drawn attention to the organizational dimensions of white-collar crime as well as the role of criminogenic corporate cultures (Braithwaite 1995).

Building on an extensive body of work on corporate crime (Tomasic 2002), Tomasic (2005) has argued that

> The haphazard development of writing on white collar and corporate crime may in part be attributed to the failure of criminologists to closely study the intricacies of corporate crime and corporate law and to the problems of gaining access for more detailed studies of corporate boardrooms and corporate structures. The paucity of theoretically driven research in this area may also be related to the somewhat ambiguous nature of white collar and corporate crimes. (Tomasic 2005, p. 253)

Tomasic further suggested that criminological research which focused on the traditional command and control paradigm was inadequate to provide an understanding of corporate crime and that what was required was the application of regulatory theory that embraced civil and administrative responses to corporate crime in addition to the use of the criminal sanction.
The survey that follows concentrates on just a few of the very many forms of corporate and white-collar crime, predominantly those that produced an extensive and coherent body of work, that were written by leading scholars in their fields, or that identified or reflected what may be particularly antipodean problems or responses to these offenses.

**Fraud**

“Fraud” is a broad term that encompasses a wide variety of activities that have been classified as “white-collar crime.” It covers such activities as procurement fraud, check fraud, welfare fraud, insurance fraud, investment fraud, false invoicing, identity-related fraud, and credit card fraud. An extensive report by the Victorian Parliament’s Drugs and Crime Prevention Committee published in 2004 reported on the nature and extent of fraud in Victoria, the risks involved in electronic commerce, prevention policies and practices, and the detection, investigation, and legal responses to fraud (Parliament of Victoria 2004).

A relatively new publication by the Australian Criminal Intelligence Commission surveyed serious financial crime in Australia, under which were included identity crime, illegal phoenix activity, abusive use of trusts, alternative banking services, cybercrime, investment and financial market fraud, revenue and taxation fraud, superannuation fraud, card fraud, and health and welfare fraud (Australian Criminal Intelligence Commission 2017).

The extent of fraud within and against the Australian federal government has been the subject of a series of reports published by the Australian Institute of Criminology, the latest of which showed that between 2012 and 2015 417,480 incidents of suspected fraud were detected worth over $A1.208 billion. Over one-third of Commonwealth entities experienced fraud. Over that time 3699 defendants were prosecuted for fraud (Jorna and Smith 2018). More broadly, the Australian Crime Commission estimated that in 2013–2014 the cost of serious and organized crime in Australia amounted to some $A36 billion (Australian Crime Commission 2014). Organized fraud, including revenue and tax evasion, superannuation (pension) fraud, and card and financial fraud amounted to $A6.3 billion while cybercrime cost $A1.1 billion.

Led by criminologist Russell Smith, the Australian Institute of Criminology has published extensively on various forms of fraud (financial, personal, online, welfare, identity, and consumer), its geographic and gender distribution, offenders and their victims (e.g., older people), risk factors, and preventive measures (Smith 2008).

Smith himself has extensively contributed to the study of fraud, corruption (Graycar and Smith 2011), cybercrime (Smith et al. 2004, 2015), and crime in the professions (Smith 2002b). This large body of work has provided a rich source of material for governments, private enterprise, and academics seeking a better understanding of the nature and extent of white-collar crime in Australia and how it may be combatted.

**Art Crime**

A niche (but fascinating) area of fraud and white-collar crime more generally is that which relates to art fraud and the trafficking of illegal antiquities. Chappell and Polk (2009) examined the problem of art fraud and the obstacles in determining its extent in Australia and internationally. This issue arises due to the difficulties of establishing the authenticity of the works, the reluctance of victims to report the crimes, and the limited nature of the art
market in Australia. They also examine many of the legal hurdles in prosecuting such crimes. One particularly problematic aspect of the art market in Australia relates to fakes and frauds of Indigenous art (Alder et al. 2011). Over recent decades, Indigenous art has become increasingly popular and the value of many art works has increased significantly. Art is an important part of the social and economic life of many Indigenous people. As with art fraud generally, it is difficult to estimate the “dark figure” of fraud and fakes but the authors suggest that some 10% of the Indigenous art that comes onto the market (estimated then at between $A100 million and $A500 million) were cases of “mistaken identity” or false attribution. One of the problems noted was that of proving authenticity and the multiple creators of the works. As with so many areas of white-collar crime, the criminal law provides only one, very limited, response to the illegal behavior.

At the international level, Chappell and Huffer (2013) have attempted to document the illicit antiquities trade in South East Asia, particularly from Vietnam. They suggest that little is known of the Australian antiquities market and even less so about Australia as a destination for illicitly obtained antiquities from this region. In common with much research into white-collar crime, gaining an understanding of both the legal and the illegal markets for the product is the key to implementing effective counter-measures.

Insider Trading

Insider trading is an activity of ancient origin but laws prohibiting it in Australia are of relatively recent origin, dating back to the early 1970s and strengthened in the early 1990s (Bostock 1992). It has been a law difficult to interpret and an offense difficult to prove. There has been extensive debate as to whether it should be prohibited at all (Kendall 2008).

In 2014, Lei and Ramsay published the results of an empirical study of the enforcement of Australian insider trading laws since 1973 (Lei and Ramsay 2014). They found a total of 79 cases between 1973 and 2013, of which 92% were criminal proceedings. Their study examined such matters as the alleged profit made, details of the offender, the company, the outcome of the matter, and the time taken to complete the case. It found that the regulator was bringing more cases to court, was having greater success, and was reducing the time to complete cases.

Bromberg et al. (2017) conducted a comprehensive comparative study of insider trading enforcement, examining sanctions imposed in Australia, Ontario, Canada, Hong Kong, Singapore, the United Kingdom, and the United States between 2009 and 2015. The study examined the use of custodial sentences, banning orders, and pecuniary sanctions imposed for the offense. Like other jurisdictions, Australian courts can impose both criminal and civil penalties, the latter only being available from 2001. Although there is a belief that insider trading is prevalent, the study found that over that period there was a relatively small number of actions taken against offenders: 30 in Australia in relation to 21 insider trading events, compared to 20 in Hong Kong, 24 in Ontario, 20 in Singapore, 53 in the United Kingdom, and 682 in the United States (Bromberg et al. 2017, p. 87). Custodial sentences were imposed in 19 of the Australian cases (though more than half were suspended), pecuniary penalties in 14, corrective and restorative pecuniary sanctions in 11 cases, and bans in three cases. They concluded that even in jurisdictions with similar laws, different sanctions are used to enforce them, which could reflect different enforcement priorities, budgets, regulators’ strategies, and prosecution policies and practices.
Innovative methods of increasing enforcement by increasing the flow of information about collusion and insider trading were the subject of an article by Chapman and Denniss, who argued that parties engaged in these crimes should be offered financial incentives to provide evidence against their co-conspirators (Chapman and Denniss 2005). Chapman, the creator of the Australian higher education contribution scheme (HECS), based on an income-contingent loan arrangement as means of funding higher education, extended this concept by suggesting that revenue-contingent payment mechanisms be used to extract both the incentive payments and the pecuniary penalties from the people and firms convicted of these offenses. Somewhat tongue in cheek, he suggested that perhaps the scheme be known as the Repayment of Gains Unlawfully Earned (ROGUE) scheme.

The comparative use and advantages of civil and criminal penalties is a consistent theme in Australian white-collar crime scholarship. Writing soon after the introduction of civil penalties for insider trading offenses, Rubenstein argued that they should be able to assist in overcoming some of the obstacles and the difficulties that had arisen from the sole reliance on the criminal law, particularly some of the evidentiary problems (Rubenstein 2002). In the event, as documented by Lei and Ramsay (2014) and Bromberg et al. (2017), more criminal than civil prosecutions have been commenced. Nonetheless, Hanrahan has argued that there are some situations where civil penalties may be more appropriate, such as where there is an absence of a direct victim or where there may not have been a selfish motive for committing the offense but where it may have been motivated, for example, by corporate success (Hanrahan 2017).

Taxation Crime

Tax evasion and tax avoidance have been on the white-collar crime agenda since the 1970s when what John Braithwaite has termed “aggressive tax planning schemes” started in earnest (Braithwaite 2005, p. 37). In that decade asset-stripping schemes, which became colloquially known as “bottom of the harbour” schemes, due to the fact that many company records were alleged to have been dumped at the bottom of Sydney Harbour, were being extensively used for the purposes of tax avoidance (Freiberg 1987, 1988). Responses to these schemes, which severely affected Australia’s revenue base, included Royal Commissions, the establishment of new federal law enforcement agencies, and an overhaul of tax laws. The 1990s and 2000s saw a resurgence in aggressive tax planning schemes of various forms which produced massive increases in claimed deductions (Braithwaite 2005, p. 39) and a series of responses by the ATO to block their use.

In 1999, the CTSI was established as a partnership between the ATO and the Australian National University under the leadership of Valerie Braithwaite. It concluded its work in 2005, though many publications were produced following its closure. As with the work of the Australian Institute of Criminology on fraud and related offenses, the CTSI’s body of work is too extensive to discuss in detail so only some of its major publications can be noted here, although a summary of its work to 2002 can be found in Valerie Braithwaite’s edited collection, Taxing Democracy (2002). Central to its work was an understanding of the relationship between regulator and regulatee. Valerie Braithwaite developed a theory of tax defiance based on the concept of motivational posturing, which can be described as “signals sent to indicate how favourably an authority is viewed and readiness to defer to an authority’s demands” (Braithwaite et al. 2007; Braithwaite 2009a). The work of the Centre was very much focused on the importance of procedural justice in the tax system (and elsewhere;
Murphy 2003, 2005), the need to be responsive to the public’s views on raising and spending taxes, and the need for dialogue with taxpayers (Braithwaite 2009b). In her review of tax evasion, she concluded that the phenomenon must be understood holistically. She argued that people link different forms of taxation to each other and to the quality of governance, that tax evasion varies across contexts and time depending on the opportunity to evade taxes and the enforcement process in place and the incidence of tax and the success of evasion strategies. She argued that to create an effective tax system it is necessary to integrate three spheres of tax research:

- the optimal design of the tax system, the deliberations that enable taxpayers to voluntarily accept taxpaying … and the role played by others beyond the tax authority and the taxpayer (accountants, tax advisors, financial planners, work colleagues and family). (Braithwaite 2009a, pp. 382–383)

The close relationship between criminal law and regulatory scholarship in Australia is also evidenced in Valerie Braithwaite’s work drawing together Ian Ayres and John Braithwaite’s work on responsive regulation (1992) and tax compliance in which she argues the latter’s work on compliance models and the use of the regulatory pyramid by the ATO has been far more powerful and effective than traditional command and control systems (Braithwaite 2007). John Braithwaite’s comprehensive review of competition policy, globalization, and national regulatory policies examined aggressive tax planning on a global scale and the means by which it can be controlled and perhaps be reversed by changing markets in vice to markets in virtue (2005).

**Corporate Crime**

Determining the extent of corporate crime, or more generally, “corporate malfeasance,” a term that connotes wrongdoing rather than just breaches of the criminal law, has always been problematic given the range of corporate activities and offenses and the difficulties of detecting, prosecuting, and convicting malfeasors. However, there appears to be a trend toward increased empiricism in enforcement reporting by financial regulators that emphasizes the greater use of numerical indicators for the purposes of accountability and for providing a means of assessing the quality and effectiveness of regulators’ enforcement activities (Hedges et al. 2017).

A report by the Australia Institute, an independent public policy organization, attempted to estimate the extent of corporate wrongdoing by looking at data published by some of the country’s major regulators, namely the Australian Competition and Consumer Commission (ACCC), the Australian Securities and Investments Commission (ASIC), the ATO, the Fair Work Ombudsman (FWO), and the Australian Bureau of Statistics (ABS) (Grudnoff et al. 2016). The data are limited by date as well as by the fact that many actions taken by corporate regulators are not formally recorded or are settled in other ways than through enforcement action. The ACCC, which is responsible for promoting competition and protecting consumers, had taken action against 669 companies over 10 years, 167 for competition issues and 489 in relation to consumer protection.ASIC, which is a corporate regulator, concluded 3115 cases against corporations over a period of four and a half years, of which 67% were criminal matters in relation to offenses such as insider trading, market manipulation, actions against directors, dishonest conduct, theft and fraud, and licensing offenses.
A breakdown of enforcement outcomes by ASIC between July 2011 and June 2016 found different enforcement methods between various regulatory areas such as market integrity, small business insider trading, and market manipulation and continuous disclosure obligations (Ramsay and Webster 2017).

The ATO prosecutes around 300 cases per year, but recovers billions of dollars in underpayments of the goods and services taxes, pay-as-you-go taxes, and others. The FWO, which recovers payments for employees and takes enforcement action, recovered over $250 million over nine years from 2005–2006 to 2014–2015 for over 174,000 employees. It finalized some 217,000 complaints from employees and took enforcement action in 1051 cases for serious, willful, and repeated breaches of the law. The ABS reported that an average of some 5000 criminal cases per year are brought against organizations or corporations, of which around 80% result in a conviction. The report concluded that a large number of companies are involved in corporate malfeasance, with particular problems in the building and construction industry, particularly in relation to activities such as: trading while insolvent, failing to act with care and diligence, failing to act in good faith, and/or using a position for an improper purpose.

Phoenix Companies

The identification of “particular problems” in the building and construction of companies highlights one aspect of corporate malfeasance known as “phoenixing,” which involves:

… the closing down of one failed company and the transfer of its business, but not its debts, to another company. This is the consequence of the fact that the failed company, as a separate legal entity, is solely responsible for the payment of those debts. Its controllers are free to start another company and to buy from the failed company assets that are useful to the new company. In some instances, the failure of the first company is either brought about deliberately or used as an opportunity to improperly benefit the new company through the transfer of assets at an undervalue. This breaches directors’ duties or other fraud related laws … (Anderson 2016, p. 257)

A major project, funded by the Australian Research Council and conducted by chief investigators Helen Anderson, Ann O’Connell, Ian Ramsay, and Michelle Welsh, has produced scores of publications and some important law reform.4

There is no single offense of “phoenix” activity. The authors identified five forms of phoenix activities: legal (essentially a legitimate business rescue), problematic (where there appears to be no intention to defraud creditors or avoid other debts but indicates poor business practice), illegal type 1 (where a company is set up with good intentions but where an intention to engage in illegal behavior is formed later), illegal type 2 (where a company is established to phoenix deliberately), and complex illegal (which is type 2 plus other forms of illegality such as using false invoices, false identities, fictitious transactions, money laundering and visa breaches, and misuse of migrant labor) (Anderson et al. 2014).

It has proved to be very difficult, if not impossible, to determine the incidence and cost of illegal phoenix activity. Estimates of the number of companies involved are notoriously unreliable due to the lack of data regarding an activity that is not illegal per se, the difficulties of obtaining information about enforcement actions by various regulatory authorities, and the paucity of information about the companies used for such activities (Anderson
et al. 2016, pp. 107–108). It has been estimated that such activities cost employees between around $A191 million and $655 million in lost entitlements annually, and losses to business amounted to between $A1.7 billion and $3.1 billion annually (PricewaterhouseCoopers and Fair Work Ombudsman 2012; Anderson 2016, p. 258). Such activities also adversely affect competition in that phoenix companies are able to tender for jobs at artificially low prices because they do not comply with tax and other obligations.

Responses to phoenix companies can be criminal, civil, or administrative. The first can be for offenses against corporate law such as breaches of directors’ duties, agreements to avoid employee entitlements, or trading while insolvent, and many of such provisions also carry civil penalties. Companies can be placed under administration or liquidated, and directors may be disqualified and banned from acting in such positions as well as being made personally responsible for a company’s debts. One of the major recommendations of this research group was the introduction of a Director Identity Number (an idea drawn from earlier law reform proposals) together with increased identity checks for directors at the time of incorporation (Anderson et al. 2017), and in September 2017 the Australian government announced that members of boards of directors will have to obtain a unique identification number.

The legal and practical complexities of identifying, quantifying, and responding to phoenix activity is emblematic of many of the problems involved in understanding corporate and white-collar crime generally. Criminalizing behavior and enforcing as such is only one aspect of the problem; however, as the phoenix studies show, the criminal law is only one response, and possibly a very limited one at that. The authors of these studies argue that to respond effectively to such harmful behavior, however legally defined, it is necessary to utilize a wider range of measures including: limiting directors’ activities, applying disqualification and banning orders, imposing direct taxation liability on directors, using a range of regulatory agencies, making more use of liquidators and insolvency practitioners (Keenan 2013), and enabling better identification of directors through unique identification numbers (Anderson et al. 2017).

Cartels

Another area of legal ambiguity that has attracted the attention of Australian scholars is that which relates to cartel behavior. Cartel conduct has long been recognized as an extremely harmful form of anti-competitive behavior and made illegal under general antitrust or trade practices law. In 2009, after extensive debate, cartel conduct was criminalized in Australia in line with changes in jurisdictions overseas. The criminalization of cartels was the subject of an Australian Research Council-funded project at the University of Melbourne involving Caron Beaton-Wells, Fiona Haines, Christine Parker, and David Round between 2009 and 2011. The project produced a significant number of publications, including two major books (Beaton-Wells and Ezrachi 2011; Beaton-Wells and Fisse 2011).

Of major interest to scholars was the issue of the ambiguities in regulating cartel conduct and the challenges for the criminal law in attempting to resolve such ambiguities (Beaton-Wells and Haines 2009). Beaton-Wells and Haines argue that the ambiguities in cartel behavior are economic, moral, and legal, as they are in other areas of corporate crime, owing to the fact that these ambiguities do not spring from some sense of moral outrage which may attach to “true” crimes (Parker 2012). The economic argument centers on the appropriate role of competition in an economy and the basic rationale for competition law.
The moral argument questions whether moral opprobrium attaches to these forms of economic conduct or whether they are “morally neutral,” while the legal argument focuses on the difficulties of formulating a criminal offense that enables effective enforcement.

Analyses of the process of criminalization were plentiful prior to the introduction of the laws criminalizing cartel conduct (Beaton-Wells 2007, 2008; Fisse 2007; Beaton-Wells and Fisse 2008; Beaton-Wells and Parker 2013), and following their introduction there were a number of studies which examined the effect of these laws. Parker examined how the laws were perceived by businesses who had faced enforcement action for such conduct and found that they showed the same degree of ambivalence toward it as the broader community (Parker 2012). Parker also questioned the assumptions underlying the deterrence rationale of the laws and from the same survey of 25 cartelists concluded it was not their knowledge of the law that was important but their relationship with, or distance from, the law. She concluded that it is simplistic to focus on the increased sanctions as being deterrents and that what is necessary is to obtain an understanding of how the law interacts with people’s own experience of it (Parker 2013). Beaton-Wells has explored the relationship between criminal sanctions and leniency policies, that is, those that provide immunity or amnesties for those who cooperate with law enforcement authorities, and concluded that the latter approach undermines the normative function and force of the criminal law (Beaton-Wells 2017). Another issue that has emerged is the use of private, as opposed to public, enforcement of cartel laws, a course of action that is permitted under Australian law. Gilsenen has noted that there have been no new cartel class actions since 2007 and that because such actions are expensive, complex, slow, and difficult to conclude, they are unlikely to be employed as an enforcement tool (Gilsenan 2016).

**Sentencing and Sanctions**

Sentencing, its processes, purposes, and effects, and the sanctions that are available to the courts, are all matters of pivotal concern to the criminal justice system and scholars of white-collar and corporate crime. Public perceptions of sentencing are that it is endemically lenient and, following major fraud events, failures of corporate governance, or corporate collapses, there are calls for more severe sentences, including more sentences of imprisonment. Freiberg has attempted to explain some of the difficulties faced by the courts in sentencing white-collar criminals by highlighting the paradoxes faced by judges, including the apparent disconnect between the serious crimes committed and the types of people who commit them, the distinctions between property crimes and crimes of violence, the competing purposes of sentencing, the role of plea negotiations, and the use of suspended sentences of imprisonment as symbolic punishments (Freiberg 2000). The jurisprudential conflict regarding the appropriate role of “good character” in sentencing white-collar offenders has been noted and suggestions have been made for more coherent guidance in the form of guidelines (Rubinstein 2006).

The general aims of sentencing apply to all offenses, including white-collar offenses, namely imposition of just punishment, deterrence, both specific and general, rehabilitation, denunciation, and community protection. However, deterrence is often identified as a major purpose of sentencing in such cases, particularly in relation to civil offenses, although its effectiveness has been questioned in both the general criminological literature and specifically in relation to white-collar crime where it is assumed that rational risk-taking individuals are more likely than substance-abusing offenders to weigh up the costs and benefits
of committing often profit-motivated crimes. However, there is little Australian literature specifically on deterrence of white-collar crime.

In a series of articles, Bagaric and colleagues have questioned whether deterrence should play such a significant role in sentencing (Bagaric et al. 2011). Bagaric has argued variously that sentencing should be reformed to provide a significant and predetermined discount for restitution, that there should be greater discounts for good character, and that the collateral consequences of conviction such as loss of employment should be given greater weight. Offenses against large corporations, he suggests, should be treated less seriously than offenses against individuals (Bagaric and Alexander 2013). Bagaric has also argued that there should be far less use of imprisonment for white-collar offenders on the grounds that imprisonment should be reserved for violent offenders, is too expensive, is not effective as a deterrent, and, as in the case of insider trading, imprisonment is applied to non-serious offenses that do not affect financial markets (Bagaric et al. 2016; Bagaric 2017). He has also argued that other sanctions such as depriving an offender of the right to work should be expanded and that a new sanction of canceling education qualifications should be created (Bagaric and Du Plessis 2003). To date, none of these recommendations have been adopted.

While there have been some studies of sentencing factors and outcomes in relation to specific offenses such as scamming (Bartels 2012) and insider trading (Overland 2008; Wang 2017) and studies comparing the differential prosecution and sentencing practices between tax evasion and welfare fraud (Marriott 2013), the sentencing literature is sparse. The New South Wales Law Reform Commission published an extensive report on the sentencing of corporate offenders recommending a range of new sanctions such as orders for incapacitation, correction orders, community service orders, and publicity orders for that jurisdiction, none of which have been implemented (New South Wales Law Reform Commission 2003). Studies of newer and emerging sanctions such as enforceable undertakings6 (Parker 2004; Nehme and Adams 2007; Johnstone and King 2008; Nehme 2008a, b; Hardy and Howe 2013; Bird et al. 2016) and deferred prosecution agreements (Bronitt 2017) illustrate the overlap between the criminological and regulatory literature, an overlap that is best illustrated by the extensive and influential body of work produced by Parker and Norwegian scholar Lehmann Nielsen on why businesses comply with the law. This approach does not focus on the role of enforcement and sanctions in obtaining compliance but such factors as reputation or social approbation, shame, social norms, loss of custom, the legitimacy of the law, the degree of trust between the regulator and the regulated, procedural fairness, and capacity to comply among other factors (Parker and Lehmann Nielsen 2011).

Criminal vs Civil Sanctions

The ambiguity that lies at the heart of debates about the nature of white-collar and corporate offense – whether they are “true crimes” or some form of hybrid offending or just some form of malfeasance that should be dealt with by civil or administrative remedies – is reflected in the substantial literature that has developed around the use of civil penalties in Australian law. Civil penalties are sanctions imposed by courts in non-criminal proceedings taken by a government agency and have been available in Australia since the mid-1970s in relation to competition and consumer laws, corporate regulation, and in many areas of commercial and social activity. In many instances they are available as an alternative
to criminal sanctions. They have the advantage of fewer procedural barriers than criminal actions but do not necessarily carry the same social stigma as a criminal prosecution and conviction (Freiberg 2017, pp. 417–425; Hanrahan 2017, p. 64). Administrative penalties, such as infringement or penalty notices, are also available in some jurisdictions as alternatives to both criminal and civil penalties in relation to corporate offending (Welsh 2007). Much Australian scholarship is concerned with the exercise of regulators’ discretion as to which enforcement method to employ.

At a fundamental level, there has been some debate as to whether the enforcement of some aspects of corporate law, such as directors’ duties, are strictly private law matters between shareholders and directors or whether there is a wider public interest in such conduct. The response in Australia has come down firmly in favor of the latter view (Welsh 2014).

Due to the difficulties of using the criminal process, Comino has argued strongly in favor of the use of civil penalties in the corporate arena in the belief that the increased use of civil penalties would make ASIC a more effective regulator by providing it with a better regulatory model of graduated sanctions and therefore allowing it to become a more responsive regulator in Ayres and Braithwaite’s terms (Comino 2009). However, she notes that the courts’ decisions to treat civil penalties procedures as “quasi-criminal,” together with inadequate penalties and sentences, have diminished their effectiveness as deterrents (Comino 2014). Welsh has also argued that there is a gap between theory and practice in the application of responsive regulation theory to corporate offending, evidenced by their lack of use compared to criminal sanctions. This, she argues, is due to political and social pressures on the regulator to pursue criminal proceedings against corporate offenders (Welsh 2009a, b). In contrast, Valerie Braithwaite has argued that criminal prosecution should be an important part of the sanctioning tool kit but that its feasibility is dependent upon context and that when used, it is important to make the necessary resources available to ensure its effectiveness (Braithwaite 2010, p. 520).

Both Comino and Welsh consider that deterrent effectiveness is a more important consideration than seeking criminal convictions with their attendant moral opprobrium and stigma, an argument that goes to heart of the debate about the nature of white-collar and corporate malfeasance and the role of the criminal law. The scholarship regarding the use of civil penalties revolves around the competing considerations of speed and efficiency on the one hand (although the empirical evidence is that enforcement actions by ASIC in relation to breaches of directors’ duties are no faster or more successful than criminal proceedings; Hedges and Ramsay 2016), and on the other hand, the affective and symbolic dimensions of the use of the criminal law in this context and what criminal enforcement says about the seriousness with which corporate and white-collar harm is regarded.

Finally, on the matter of the adequacy of civil and criminal penalties generally, it has been argued that both statutory maximum penalties and sentences imposed by the courts have been inadequate for the purposes of both punishment and deterrence (Bird and Gilligan 2016). A report by the Australian Senate’s Economic References Committee recommended that the corporations legislation should be amended to increase the current level of civil penalties, both for individuals and for bodies corporate, and that in so doing it should have regard to non-criminal penalty settings for similar offenses in other jurisdictions. It recommended that civil penalties in respect of white-collar offenses be set as a multiple of the benefit gained or loss avoided and that disgorgement powers be introduced for ASIC in relation to non-criminal matters (Australian Senate 2017). In a similar vein, the Organisation
for Economic Co-operation and Development (OECD), after reviewing competition law sanctions in Australia, the European Union, Germany, Japan, Korea, the United Kingdom, and the United States, concluded that fines in Australia appeared to be at the lower end of imposed penalties and recommended that Australian authorities should take into account international practices in the determination of pecuniary penalties. They recommended that there should be a link between the amount of the penalty and the economic impact of the sanctioned company’s conduct and the seriousness of the infringement, and that the courts develop and adopt a structured method for the calculation of the amount of pecuniary penalties (OECD 2018).

Conclusion

Compared to jurisdictions such as the United States and the United Kingdom, Australia has a relatively small scholarly community working in the area of corporate and white-collar crime. Sustained work on areas such as fraud, identity, and cybercrime is undertaken by government-funded institutions such as the Australian Institute of Criminology and recently established investigative bodies such as the Australian Crime Commission and the Australian Criminal Intelligence Commission. Other work reported here has been supported by larger competitive research grants, under which much research is individually initiated by university-based researchers.

What may be distinctive about Australian scholarship is its contribution to the relationship between criminological and regulatory theory. The work in this field of researchers such as John Braithwaite, Valerie Braithwaite, and Christine Parker (to name but a few) has received international recognition. The ambiguous nature of individual and corporate malfeasance is reflected in the differential use of criminal, civil, and administrative responses to such conduct and the debates surrounding their appropriate use. The extensive Australian scholarship on the varieties of enforcement exposes the political and social forces at work when new offenses are created and sanctions developed, applied, and evaluated for their effectiveness. The diversity of views reflected in this brief provides evidence of a robust and critical scholarly culture and a willingness to engage in important public policy debates.

Some of the issues that require further research relate to advances in technology, law and theory, cyber-related white-collar crime, and cross-border crime. Environmental crime, biosecurity climate change, ecocide, and state-corporate crime are areas in need of further exploration, although significant contributions to this literature have already been made (White 2012, 2013, 2017). The globalization of crime means that much work remains to be done on money laundering, corruption, and international crime networks, both physical and electronic. Finally, in Australia, following the publication of the report of the Royal Commission into Misconduct in the Banking, Superannuation, and Financial Services Industry (2019), scholars are able to feast on the revelations of extensive misconduct by some of this country’s major, and decreasingly respected, financial institutions. As is always the case, there are too many crimes and not enough criminologists.

Acknowledgements

My thanks to Russell Smith for comments on an earlier draft of this chapter.
Notes

2. Due to the very large number of studies produced by the Institute, it is not possible to reference each study individually. The studies can be found on the Institute’s website under various of its publication series, including its Trends and Issues in Crime and Criminal Justice, Crime Facts, Crime Reduction Matters, and Research and Public Policy series.
3. More than one penalty can be imposed on a defendant.
6. An enforceable undertaking is a promise enforceable in a court that may be an alternative to more formal legal proceedings for a contravention of an Act.

References


Review of Comparative Studies on White-Collar and Corporate Crime

Tomomi Kawasaki

Introduction

Comparative criminological research across countries or regions allows “for a broader vision about social relations than is possible with cross-sectional research limited to one location” (Bachman and Schutt 2008, p. 223). Dane Archer and Rosemary Gartner, who undertook one of the largest comparative research projects in criminology, succinctly pointed out the need for such research, stating “the need for cross-national comparisons seems particularly acute for research on crime and violence since national differences on these phenomena are of a remarkable magnitude” (Archer and Gartner 1984, p. 4). Comparative analyses are increasingly important in the globalizing world (Friedrichs 2010, p. 43; Pakes 2010, pp. 17–19) and are objects of soaring interest (Schneider 2001, p. 359). Therefore, international organizations, such as the United Nations and Council of Europe, as well as national governments often sponsor cross-cultural studies (Brodeur 2007, pp. 49–50). Consequently, interest has emerged in comparing and contrasting problems regarding crime across countries. However, despite these advancements, it has been pointed out that comparative studies on aspects of crime are relatively uncommon (Farrington 2001, p. 307).

This situation applies to comparative research on white-collar and corporate crime. At least quantitatively it is insufficient, although several remarkable studies have been published. Certainly, those studies are excellent, but much more research of this type is needed – this approach reveals important insights about white-collar and corporate crime. This chapter first reviews the literature on comparative studies of white-collar and corporate crime published to date in English then discusses the reasons that the literature is sparse, and finally clarifies its significance.
Comparative Research on White-Collar and Corporate Crime

Domestic Studies on White-Collar and Corporate Crime

US criminologists invented the concepts of “white-collar crime” (Sutherland 1949) and “corporate crime” (Clinard and Yeager 1980) and research in this domain is more developed and enthusiastically pursued in the United States than anywhere else in the world. Thus, a large and broad criminological literature on American white-collar and corporate crime has developed over the past century (Braithwaite 1992; Coleman 1992; Geis 1992, 2016; Vaughan 1992; Wheeler 1992; Albanese 1995; Pontell 2016). Other countries and regions have more recently focused on research on this type of crime, which also provides useful and relevant information. This chapter begins with an overview of these studies in countries other than the United States. Although these studies are not comparative, they sometimes are treated as parts of comparative studies in criminology and have provided basic materials for comparative studies.2

Beginning in Europe, some examples of national studies on white-collar and corporate crime highlight researchers’ current foci. Levi (1993) described and analyzed key characteristics of white-collar crime, particularly fraud, in the United Kingdom and suggested using the US practice of plea bargaining for fraud offenders. Forti and Visconti (2007) focused on criminal corruption in Italy and discussed an Italian political corruption scandal (labeled Tangentopoli) in the 1990s in detail to demonstrate that Beccaria clearly understood that harm could be conceived apart from offenders’ social status. Boers et al. (2015) surveyed economic crime involving privatization of public corporations in former East Germany after German reunification and presented empirical findings on the structural conditions of each type of economic crime, penal control by law enforcement agencies, and a corporate compliance unit. Inzelt (2015) focused on white-collar crime in Hungary, particularly types of corruption that occurred during the country’s political and economic transitions, arguing that the other former socialist countries might learn from Hungary’s experiences to avoid similar outcomes. Engdahl and Larsson (2015) examined a general trend during recent decades toward what they describe as “decentring” the policing of economic and white-collar crime in Sweden. They discussed some possible causes and consequences of this tendency.3

In Asian countries, relevant research has increased in recent years. In 2006, Yu (2006) explained the causes of corruption in China by using several criminological theories and suggested that the increasing number of problems is an unintended consequence of reform policies. Yokoyama (2007) reviewed some serious environmental criminal cases in Japan and reactions by law enforcement agencies and others to reveal the limitations of law enforcement for those crimes in the country. Zhang and Zhao (2007) described trends in Chinese corporate crime, including criminal and non-criminal punishments of corporate crimes, which could be understood as important to deterring corporate crime in China. Kawasaki (2010) focused on two types of financial crime in Japan, big investment fraud and “Yakuza money” crimes, concluding that comprehensive legislation covering all types of investment fraud is needed to restrain the growth of white-collar crime in Japan. Liu (2010) analyzed intellectual property crimes and the law enforcement system in China to point out that rapid criminalization of internet protocol infringements is a serious problem in China’s criminal justice system. Schopf (2015) reviewed the causes of corruption in the literature on South Korea using type of causality of corruption as the organizing principle and concluded that Korean democratic institutions helped to deter acts of extortive corruption by reducing
the credible threat of asset expropriation. Kalinowski (2016) investigated the fight against corruption in South Korea since the beginning of democratization in 1987. He argued that, overall, the country has successfully controlled corruption, but problems remained that are mostly explained by the legacy of authoritarian rule and the undermining of state autonomy through the concentration of economic powers. Pontell et al. (2017) presented a case study of China’s high-speed railway and the Wenzhou train crash relative to the criminological literature on white-collar and corporate crime to reveal corruption’s major role in the disaster and offered suggestions for future research on reform and compliance.4

White-collar and corporate crime has also been investigated in Australia as well as in African countries. For example, Grabosky and Sutton (1989) presented 14 studies on corporate crime or harm in Australia, which demonstrated the ways that Australian industries were engaging in harmful behaviors and illustrated the companies’ responses to incidents of criminal or questionable corporate behaviors. Frahm (2017) analyzed relationships between democratization and corruption in three African states (Ghana, Nigeria, and South Sudan) to contribute to the discourse on the problem. Genger (2018) examined corruption in Nigeria in the context of African restorative justice as a viable way to control corruption, arguing that, through African restorative justice, Nigeria might reduce its corruption by attacking it at its roots of moral depravity and aversion to social responsibility.

In sum, a large variety of research on white-collar and corporate crime has developed outside the United States. These studies have been conducted from various perspectives with various methodologies. They reveal valuable conclusions that might serve as a foundation for comparative analyses.

Comparative Studies of Several Countries and Regions on White-Collar and Corporate Crime

Published comparative research of several countries and regions on white-collar and corporate crime is less common than national studies. However, several studies stand out.

The first group are comparative studies of perceptions of white-collar and corporate crime. Early work by Grabosky et al. (1987) focused on community reactions to white-collar crime in the United States and Australia and argued that the conventional wisdom that communities tolerate white-collar crime should be jettisoned. Similarly, Lynch et al. (1989) examined cross-cultural perceptions of the 1984 Union Carbide disaster in Bhopal, India, in which thousands of people were killed or injured, by comparing media reports published in Indian periodicals to those in US periodicals and aiming to ascertain whether the media were more likely to treat it as a so-called crime versus an accident. The results found little evidence of cross-cultural agreement on the definition of the disaster. Hamilton and Sanders (1996) analyzed survey data to compare citizens’ opinions of corporate wrongdoing in the United States, Russia, and Japan and highlighted some accountability issues in corporate organizational settings across cultures. Sever and Roth (2012) examined public perceptions of white-collar crime in Turkey, compared them to contemporary findings from the United States, and concluded that Americans were more likely than Turks to define white-collar crime as a serious offense, although Turks considered white-collar crime to be almost as serious as other types of crime. Many of these studies emphasized commonality rather than differences in perceptions of white-collar crime. It can be said that the seriousness of white-collar crime is still not sufficiently recognized in many countries.
After the turn of the century, comparative case studies establishing the similarity of white-collar crime in different countries were published one after another. Pontell et al. (2001) compared the US Savings and Loan crisis of the 1980s and 1990s to Japan’s banking crisis of the 1990s and found evidence of insider abuse and politically collusive practices in both instances. Zimring and Johnson (2007) pointed out the significance of comparative criminological research and comparatively explored the topic of corruption as a pervasively important and distinctive behavioral phenomenon that is crucially important to developing and developed countries. Kellens et al. (2007) compared the Enron catastrophe in the United States, the Lernout & Hauspie Speech Products financial scandal in Belgium, and Italy’s Parmalat scandal with respect to victimization and pointed out their similarities. Pontell (2007) also compared white-collar crime in the United States to that in Japan, concluding that the different legal and cultural contexts of the law in action largely explained the official non-recognition of white-collar and corporate crime in both countries.

The second group are comparative studies of causes or theory-testing of white-collar and corporate crime. Quah (1999) identified the major causes of corruption in Asian countries (Mongolia, India, the Philippines, Singapore, and Hong Kong), compared the governments’ approaches to corruption problems, and drew conclusions (or lessons to be learned) that: (i) commitment of the political leadership is crucial, (ii) a comprehensive strategy is more effective, (iii) the anti-corruption agency must itself be incorruptible, (iv) the anti-corruption agency must be removed from police control, (v) there should be a focus on reducing opportunities for corruption in vulnerable agencies, and (vi) one can reduce corruption by raising salaries if a country can afford to do so. Most recently, Gottschalk (2016) applied convenience theory to specific financial criminal cases in Norway and the United States and introduced a stage-of-growth model of corporate social responsibility to the detection and prevention of white-collar crime.

The third group are comparative papers on the legal or enforcement reaction of white-collar and corporate crime. Kawasaki (2007) compared three types of white-collar criminal cases, the legal reactions to them in the United States and Japan, and suggested ways that Japan might deal with its white-collar crime. Huynh (2010) compared the US criminal justice system to that of the United Kingdom regarding the approach to white-collar crime and found similarities and differences in the ways such crime was handled, particularly regarding the means used to deter it. Lord (2014) analyzed two anti-corruption enforcement systems (United Kingdom and Germany) to obtain empirical evidence on policy responses at the operational level. He found that, regardless of the type of the enforcement system implemented (centralized or decentralized, use of corporate criminal liability or not, among other dimensions), enforcement faced significant structural, legal, procedural, evidentiary, and financial obstacles, even when there was a strong desire to enforce the law; he therefore concluded that criminal law enforcement in those countries was implausible. Lawrence (2016), using secondary data, examined factors needed to achieve effective management and control of white-collar crime in Nigeria and other countries in the Global South. With the example of Nigeria, he identified: (i) the presence of corrupt individuals in the corridors of power; (ii) defective/imbalanced political and social structures; and (iii) lacking legal justice, social justice, and international collaboration as “missing links” that need to be resolved for effective prevention of corruption.

The literature on white-collar and corporate crime suggests that comparative studies on criminal justice and sanctions on white-collar and corporate criminals have been more active than research on the theories behind or explanations of white-collar and corporate crime. Comparative studies on corporate criminal liability – including criminal sanctions
Against corporations, criminal controls on certain types of white-collar crime (such as insider trading and money laundering), and law enforcement responses to white-collar and corporate crimes—have accumulated more than other areas of investigation.

Regarding corporate criminal liability, the legal principles or requirements to impose criminal liability commensurate with the seriousness of corporate crime have been discussed (Stessens 1994; de Maglie 2005; Diskant 2008; Dubber 2013). In addition, just and effective legal sanctions against corporations also have been explored in those studies. Regarding insider trading, mainly the scope of criminal regulation has been examined (Shen 2008; Bewaji 2012; Montagano 2012), and the measures of effective criminal regulation have frequently been discussed in cases of money laundering (Polk and Weston 1990; Levi and Reuter 2006; Nelson 2007; Ozurumba and Ozurumba 2016). In the area of law enforcement, effective law enforcement systems with respect to the characteristics of white-collar criminals and corporations, including deferred prosecution agreements and non-prosecution agreements, have been investigated in the United States and United Kingdom (Gobert and Punch 2003; Huynh 2010; Sprenger 2015).

The overall body of comparative literature identifies corruption as a serious problem around the world and as the most common criminological research topic. Further, comparisons to the United States, which many of the studies employed, dominated the field. In addition, large regional and national differences were obvious.

Contrary to inquiries about the causes or theories of white-collar and corporate crime (in which differences in culture and custom can be barriers to progress), comparative research on criminal justice and sanctions on white-collar and corporate crime might help us to understand the contexts in which countries successfully import ideas and can situate national policies and practices in cross-national contexts to clarify national patterns of crime and punishment (Tonry 2015, pp. 506–507). In addition, it is popular among criminologists and government officials to refer to other countries’ experiences when they consider problems and reforms of their systems or when they want to introduce a new approach or mechanism.

Reasons for the Lack of Comparative Studies on White-collar and Corporate Crime

There are several reasons for the lack of comparative research on white-collar and corporate crime. First, it has often been pointed out that fundamental problems prevent successful studies. Many criminologists have voiced concern about the vagueness of terms (Shapiro 1990; Geis 1992; Friedrichs 2002; Payne 2017, pp. 24–32), the complex and indefinite nature of the activities (Coleman 2005, pp. 2–8; Simon 2008, pp. 1–45), and a lack of data (Benson et al. 2016). Those problems are also true for comparative research. Second, there are various difficulties in the research methods used to compare trends across countries—such as interpreting the social and linguistic nuances of both familiar and foreign cultures, which (if too difficult) can obstruct sophisticated cross-cultural research (Pontell 2007, pp. 111–112). For example, what is defined as crime differs across countries. In particular, white-collar crime statutorily ranges in definition from a grievous punitive act to a simple regulatory violation. For example, mail and wire fraud are defined in the United States as federal felonies, but they are not crimes in Japan, whereas “acquisition of own shares by a stock company” is a crime in Japan, but it is not a crime in the United States. Third, many countries have not reached the point in their data quality where their white-collar and
corporate crime can be comparatively analyzed relative to those of other countries. Their criminology is not as advanced as that of the United States, and research on white-collar and corporate crime, which is just one (albeit significant) aspect of criminology, is limited. Criminologists in those countries should study white-collar crime at the national level before attempting comparative studies.7

The Future of Comparative Studies on White-Collar and Corporate Crime

Comparative research is essential for understanding white-collar crime in the context of globalization for at least three reasons. First, comparative study is essential to understand the truth of today’s white-collar crime that occurs in an increasingly globalized world. Of course, comparative research on white-collar and corporate crime is not novel. But globalization that dominates the world economy makes white-collar and corporate crime globalized at the same time. Now, white-collar and corporate crime is not a phenomenon restricted to inside a country’s borders; the impacts are diffused beyond that country (Grabosky 2009; see also van Wingerde and Lord, Chapter 29, this volume). Business activities increasingly cross fluid national borders, and it is no longer possible to accurately explain white-collar and corporate crime solely through domestic research. On the other hand, because most laws and regulations dealing with white-collar and corporate crime are specific to single jurisdictions, international and comparative studies must make use of national-level investigations.

Second, comparative studies are indispensable to developing theories of white-collar and corporate crime. Many criminologists are discussing whether white-collar and corporate crime might be explained by a general theory or a specific theory (Coleman 1987, 1992; Hirschi and Gottfredson 1987; Gottfredson and Hirschi 1990; Braithwaite 1992; Geis 2007, pp. 158–171; Benson and Simpson 2018). This controversy has focused on white-collar and corporate crime in the United States, which is the reason that studies on white-collar crime in other countries have often aimed to ascertain whether those theories apply to them. Neither a general nor a specific theory will be sufficient unless it explains white-collar crime in countries other than the United States. This is the time for a true white-collar crime theory to be developed to universally explain this type of crime, but a comprehensive white-collar crime theory can be valid only when it explains white-collar crime beyond the United States.

Third, the results of comparative research on corporate crime help organizations to develop effective programs to prevent crime. As globalization progresses, internationalization of corporate activities is increasing. As corporate social influences increase due to the internationalization of corporate activities, the costs and damages caused by corporate crime will become increasingly serious. Therefore, corporate demands for compliance programs are increasing (Clough and Mulhern 2002, pp. 148–158; Simpson 2002, pp. 98–115; Laufer 2006, pp. 99–129). In their compliance programs, corporations must take into account provisions in criminal law and the nature and causes of corporate crimes in each country (Biegelman and Bartow 2006; Biegelman 2008; Spedding 2009). When corporate crime differs across countries, corporations will need to accommodate those differences and adjust their programs accordingly. The results of comparative research on corporate crime can lead to the development of compliance programs that might prevent these crimes.
Conclusion

With few exceptions, comparative research on white-collar and corporate crime has been conducted in countries other than the United States by comparing cases, theories, or sanctions within a country or by contrasting that country to the United States. This is reasonable given the large interregional differences in the development of research on white-collar and corporate crime. However, this limited and unbalanced literature is not desirable because rigorous multidimensional and comparative studies are needed to improve our understanding of white-collar and corporate crime. Indeed, in the economic and legal fields, the era in which America’s system reigned as a global standard has come to an end and the era of diversity is coming. From now on, differences in each country are the key to comparative research. In the future, not only will each country learn from the United States, but the United States will also need to learn from all over the world. Perhaps, from such research, the effective measures to fight white-collar and corporate crime that we have been seeking may come to light.

Notes

1 Many comparative studies of white-collar and corporate crime were written in languages other than English. However, those papers were not reviewed for this chapter because they are difficult to find and would require translation services to read.
2 On the other hand, some studies did not discriminate between white-collar crime in the United States and that of other Western countries, such as Braithwaite (1992, 1995), Croall (1992, 2001), and Fisse and Braithwaite (1993). It is possible to see that research on white-collar crime in those studies took a “borderless” perspective.
4 For additional examples of white-collar/corporate crime research in Asian countries, see also Matsuzawa and Konishi (2007), Ghazi-Tehrani et al. (2013).
6 Japanese Companies Act Section 963(5)(i).
7 In addition to those reasons, it might be beyond the abilities of non-English-speaking researchers to write in English, even when the research results are valuable. This certainly is not a problem limited to criminology, and there are several important studies among the monographs written in Japanese (e.g. Yoshioka 2000; Nitta 2001; Hogetsu 2006).

References


Section VI
Emerging White-Collar Crime Issues
Technology’s Influence on White-Collar Offending, Reporting, and Investigation

Thomas J. Holt and Jay P. Kennedy

The development of the mainframe computer revolutionized business and industry in the 1950s and 1960s. The subsequent emergence of the home personal computer, or PC, and telephone modem in the late 1970s facilitated a change in how individuals could manage their finances and engage in business (Brenner 2008; Wall 2007). These developments were, however, dwarfed in comparison to the global shift caused by the internet, particularly Computer-Mediated Communications (CMCs) methods like email and instant messaging, during the mid-to-late 1990s. Individuals could easily begin to shop, engage in financial transactions around the world, and even manage stock portfolios from any location in near real time.

As a consequence, the ways that individuals engage in commerce and connect with businesses, governments, and one another is now heavily dependent on computers and technology. In fact, 60% of US consumers purchase goods online at least once per fiscal quarter (Anderson et al. 2010) on the basis that they can save money and actively engage in price comparisons between retailers more efficiently online (Wilson 2011). Consumers also place a great deal of their personal information in the hands of online retailers to manage their financial data and complete transactions through single clicks. For instance, Amazon, PayPal, and the iTunes store retain consumer credit or debit card information to minimize processing time and make purchases more convenient.

The unparalleled changes brought about by technologies that connect consumers, businesses, and governments the world over have also created a host of opportunities for groups and individuals to engage in novel and evolving forms of crime and deviance, both on- and offline. In particular, computers and the internet help to facilitate a wide range of white-collar crimes, such as computer hacking and digital piracy (Furnell 2002; Higgins 2005). At the same time, traditional forms of street crime have begun to use methods found in white-collar crimes, such as the use of cell phones, email, and e-commerce websites designed to connect sex workers and their clients (Holt and Blevins 2007; Milrod and Weitzer 2012; Sharpe and Earle 2003).
In light of these changes, it is vital that researchers begin to understand the ways that formal organizations, informal groups, and individuals use technology to engage in white-collar offenses. This chapter will begin with a discussion of the terminologies used to discuss technology-enabled offenses, and their evolution in tandem with the adoption of computers and the internet over the past three decades. Following this, Wall’s (2001) typology of cybercrime is used to highlight how certain cybercrimes form a unique type of occupational offending. Then, the chapter elaborates on the ways in which technologies figure into other types of white-collar crime, including corporate crimes and state-sponsored white-collar crimes. Finally, the chapter concludes with a discussion of potential crime prevention strategies, emerging concerns, and challenges to research in areas where white-collar crime and cybercrime overlap.

**Defining Cybercrime**

The emergence of technology and its use in the facilitation of crime has led to a new lexicon to define these activities. In the 1980s through the mid-1990s, the term “computer crime” was used by both researchers and the popular media as a means to describe activities where an individual used special knowledge of computers in order to offend (Furnell 2002). During this time, computers required some specialized knowledge in order to be used effectively, and were not commonly connected to other systems. As a result, most computer crimes involved instances of computer-based fraud and theft performed by individuals in corporate settings who guessed individual passwords or illegally accessed sensitive information they did not have permission to use (Furnell 2002; Wall 2001). In fact, the first cybercrime-focused legislation in the United States at both the state and the federal level was designed to prosecute computer-based offenses that involved illicit access and trafficking in passwords (Hollinger and Lanza-Kaduce 1988).

The development and popularity of personal computers and the ability to connect to other computer systems via modems in the mid-1980s increased outsiders’ ability to gain access to systems regardless of where they may reside (Furnell 2002). Concerns over the potential for external attacks against industry targets increased with the advent of the World Wide Web, easy-to-use computer operating systems, and large-scale internet service providers (ISPs) in the 1990s (Brenner 2008; Wall 2001). At the same time, the popularity of these technologies led to the popularization of various forms of online communications medium, including email, chatrooms, and Internet Relay Chat (IRC) channels. Specialized online communities began to develop around various interests, including sexual discussions and the exchange of pornographic content that had been scanned from paper to digital formats (Quinn and Forsyth 2005). Fraudsters also began to use email and other forms of CMC as a means to contact a global population of prospective victims with ease (James 2005; King and Thomas 2009; Wall 2004).

These observed technological changes, coupled with the growth of the internet during the mid-1990s, led to the development of the term “cybercrime,” referencing acts “in which the perpetrator uses special knowledge of cyberspace” (Furnell 2002, p. 21; Wall 2001). For instance, sending threatening or harassing instant messages to an individual constitutes a form of cybercrime, as the sender is utilizing the internet as a venue for harmful activity. Similarly, computer hacks that would have otherwise required insider access to complete could be enabled through internet connectivity in order to remotely connect with
computers around the world (Taylor 1999). Thus, cybercrime threats from external attackers became real and substantial during this time (Brenner 2008).

It is important to restate that the terms computer crime and cybercrime were used synonymously throughout the late 1990s and early 2000s. The phrase cybercrime, however, became more prevalent during the mid-2000s as most every computer and mobile device could go online through the use of wireless internet connections (Brenner 2008). As of today, there are likely few pure computer crimes that exist because of the near-ubiquitous use of the internet as a means to transmit, access, or share data (Wall 2007). The term cybercrime will be used throughout this chapter to refer to the various offenses either that occur because of the ability to access the internet, or that stem from the use of technology to facilitate the act.

**Cybercrime: A Unique Form of Occupational Offending**

Clinard and Quinney (1973), Braithwaite (1985), and Friedrichs (2002) argue that the term “occupational crime” refers to activities committed within the course of one’s occupation that ultimately lead to some form of personal gain. As such, cybercrimes would only be considered occupational offending in situations where the crimes committed benefited the individual. For instance, Higgins (2005) has previously argued digital piracy, or illegal file sharing to access software and media, may constitute a form of occupational crime due to its direct benefit to the downloader and impact on corporate intellectual property owners.

Our perspective, however, is that cybercrimes can be viewed as a form of occupational offending when the activities undertaken form the core of a person’s vocation. In other words, cybercrimes are (in many cases) “normal” activities undertaken by individuals and organizations throughout the normal course of employment and business. Occupational cybercriminals use their occupation, and the knowledge and skills developed therein, to victimize others. This victimization may benefit the employee directly through forms of fraud and theft (Cappelli et al. 2009; Dhillon and Moores 2001; Shaw et al. 1998) and might also impact co-workers/the larger organization through forms of counterproductive work behavior (Robinson and Bennett 1995) such as political deviance, sabotage, or workplace harassment.

Because there are many different ways in which cybercrimes can be categorized in terms of their status as occupational offenses, it is useful to examine cybercrime typologies (e.g. Pittaro 2007; Rogers 2000) as a way to better understand distinctions among these acts. One of the most well-referenced and constructed cybercrime frameworks created to date is Wall’s (2001) four category typology that identifies the wide range of technology-based crimes. However, before beginning an examination of the various types of cybercrime, it is important to recognize that not all cybercrimes constitute white-collar crimes, despite the fact that many of these offenses occur within businesses and organizations.

We use Wall’s (2001) typology because it comports with Edelhertz’s (1970) well-accepted conceptualization of white-collar crimes. Specifically, cybercrimes can be considered white-collar crimes when they are non-physical in nature and are committed through the use of concealment or guile (see Higgins 2005). Yet, as will be discussed later, the non-physical nature of certain cybercrimes does not mean that physical harms do not result as ancillary consequences. Additionally, many of the cybercrimes discussed here can be considered mercenary crimes (MacDougall 1933), a term that was used to describe financially focused white-collar offenses before the term “white-collar crime” was coined by Sutherland (1949).
Cyber-trespass

The first category of Wall’s (2001) cybercrime typology is cyber-trespass, recognizing the crossing of invisible though established boundaries of ownership online. Acts of cyber-trespass are commonly attributed to computer hackers, as they utilize sophisticated knowledge of computer technology to gain access to systems they may or may not own (Furnell 2002; Jordan and Taylor 1998). In particular, hacking techniques may be used to engage in espionage to acquire intellectual property and sensitive information to gain economic advantage over others (e.g. Nasheri 2005).

Hacking is not, however, used solely for malicious activities. Individuals can utilize hacking techniques for the ethical protection of computer networks and systems (see Holt 2007; Schell et al. 2002). In fact, the term “hacker” was originally used in the 1950s and 1960s as a sign of respect for skilled programmers who could make computers operate more efficiently (Holt 2007; Jordan and Taylor 1998; Levy 1984). This implies that the knowledge and skills needed to engage in computer hacking are similar to, if not the same as, the skills needed to perform legitimate occupational work, as observed in the broader white-collar crime literature.

Yet, the general public – and even local law enforcement – tend to associate hacking solely with criminal activities, such as large-scale data breaches and attacks against government and industry networks (Furnell 2002; Schell et al. 2002). This perception is reinforced by the actions of criminal hackers involved in the creation of malicious software programs, or malware, that can be used to simplify and automate computer compromises and attacks (Furnell 2002; Symantec Corporation 2013). Malware takes a range of forms, including computer viruses, worms, and Trojan horse programs, that can be used to alter critical system functions, add or delete files, and spread to other systems. A malware infection can cause substantial harm to email, network operations, computer software and hardware, and ultimately might result in identity theft and fraud (Bossler and Holt 2009; Ngo and Paternoster 2011). There are millions of variants of malicious software circulating online, with new code identified on a daily basis (Symantec Corporation 2013). Thus, malware infections are a serious threat to internet users around the globe that cannot be easily mitigated.

Cyber-deception/Theft

Cyber-deception/theft includes a range of criminal acquisitions of data or materials online (Wall 2001). Individuals around the world increasingly depend on the internet and CMCs both to engage in financial transactions and to exchange sensitive information, such as sending state and federal tax returns (James 2005). Hackers can acquire this information in a variety of ways, enabling multiple forms of fraud and identity theft. For instance, customer payment information is transferred between companies at various points in financial transactions to enable immediate payments for goods and services by retailers like Amazon, iTunes, and Target (Peretti 2009). Mass breaches of the financial systems used by these retailers are increasingly common, as evidenced by the compromise of the US retail giants Target and Neiman Marcus in late 2013. More than 40 million credit and debit card accounts were thought to have been lost through these two institutions, with prospective losses for consumers estimated to be in the millions (Higgins 2014).
The quantity of information acquired by hackers through breaches has increased over the past few decades, growing from small-scale electronic theft in the 1980s and 1990s to millions of records in the past decade (Dhillon 1999; Ponemon Institute 2013). In instances where millions of records are stolen, there is more information than any one person can use in a reasonable period of time. As a result, a black market for stolen data has emerged enabling cybercriminals to sell and buy information (Franklin et al. 2007; Holt and Lampke 2010; Motoyama et al. 2011). Operating through forums and IRC, actors sell credit card and debit card account details, eBay and PayPal accounts, and supporting customer information obtained from victims around the world (Franklin et al. 2007; Holt and Lampke 2010; Holt and Smirnova 2014). In addition, individuals offer their services to obtain funds from stolen accounts through various money-laundering techniques involving online purchases or real-world money transfers (Franklin et al. 2007; Holt and Lampke 2010; Holt and Smirnova 2014). All of these services enable individuals to engage in high-tech credit card fraud and identity theft whether or not the actor originally engaged in an act of trespass to acquire the data (Franklin et al. 2007; Holt and Lampke 2010; Motoyama et al. 2011). These crimes result in substantial reported losses to financial institutions and consumers alike.

The utility of the internet and CMCs to connect individuals also enables various forms of fraud that are otherwise common in the real world, such as stock scams, auction fraud, and work-at-home schemes (Grabosky and Smith 2001; Newman and Clarke 2003). One of the oldest and most prevalent forms of internet fraud perpetrated involves advance fee email schemes (Internet Crime Complaint Center 2009; Holt and Graves 2007; Wall 2004). The senders of these messages claim to reside in a foreign nation, and may pose as deposed royalty, government employees, or attorneys (Holt and Graves 2007; King and Thomas 2009). They seek assistance to transfer a large amount of money out of a secret account and into a safe bank in the United States, and want to use the recipient’s account as a transition point. In turn, the sender will share a portion of the total sum with the person who helps them (Holt and Graves 2007). It is unknown how many individuals receive these messages or respond to the sender, though there is limited evidence that victims lose thousands of dollars on average every year (Holt and Graves 2007; Internet Crime Complaint Center 2013).

Over the past two decades, the internet has become an ideal medium for small investors to trade stocks. The information-gathering and analytical capabilities afforded by technology allow investors to micro-manage their accounts without the need to engage brokers and firms – who have their own conceptions of good or sound investments (Tillman and Indergaard 2007). Instead, consumers can use firms that allow the individual to buy and sell stocks based on their own hunches and information. To that end, scammers have begun to leverage email as a means to advertise stocks with generally low value to the larger public (Tillman and Indergaard 2007). Often, this is performed through the use of spam emails called pump and dump messages. The text of the message indicates that a small company with a low stock price is on the cusp of becoming a hot commodity due to the development of a product or idea with substantive growth potential. These companies may not be traded in larger markets such as the New York Stock Exchange (NYSE) because of the lack of publicly available information on the product, but are rather sold in smaller “over-the-counter” markets (Tillman and Indergaard 2007). This makes it difficult for investors to determine the validity of claims or actively research a product. Some may take the advice that they see and, because of its generally low price, invest in the hopes of turning a profit.
The scammers, however, are attempting to artificially “pump up” the price by enticing individuals to purchase the stock. This concurrently increases the stock price within the larger market, inspiring further investor confidence which may further increase its value. The individuals behind the scheme will then “dump,” or sell, their shares when they feel it has reached a critical mass. By selling, the stock price will begin to drop, causing remaining shareholders to lose substantially as the price declines (Tillman and Indergaard 2007). Thus, these schemes are worthwhile only to those insiders who can pump the stocks and dump them at the artificially inflated rate. In fact, Frieder and Zittrain (2007) suggest that spammers can generate a 4% rate of return on their initial investment, while victims lose at least 5% within a two-day period.

Perhaps the most common form of cyber-theft occurring around the world involves digital piracy, or the illegal copying of digital media, including computer software, sound recordings, and video recordings, without the explicit permission of the copyright holder (Gopal et al. 2004; Higgins 2005). Pirated materials are shared and distributed through various file-sharing services and websites, and virtually every form of digital content has been pirated. In fact, illegal file-sharing of sound recordings has been thought to account for more than four times the number of official sales worldwide (Holt 2016). In addition, software piracy appears to be commonplace in all nations around the world, with the greatest proportion reported in Asia and Africa (Business Software Alliance 2012). Though piracy is one of the most common forms of cybercrime, it has serious ramifications for intellectual property holders and industry due to losses of direct sales and taxes to governments (Siwek 2007). As a consequence, piracy poses a serious threat to business and industry around the world.

Cyber-porn and Obscenity

The third category within Wall’s (2001) typology comprises cyber-porn/obscenity, which includes the various forms of sexual expression and materials available online. Though this is not a form of cybercrime that may directly be associated with white-collar offending, it is necessary to recognize two important points. First, pornography websites and pornographic spam are effective means of spreading computer viruses and other malicious software. As such, cybercriminals often utilize these websites to infect users’ computers, steal data and financial information, or otherwise engage in deviant activity. Second, the internet reduces barriers to entry that prevent the dissemination of undesirable pornographic content, such as age restrictions for US consumers, as well as country-based controls on the types of materials that can be disseminated to consumers (DiMarco 2003; Wall 2001). As a consequence, technology has made it difficult to regulate and restrict access to pornographic content generally (Brenner 2011).

It must also be noted that online pornography has facilitated the illicit sex trade’s move to online platforms, creating unique dynamics that affect both the clients and the sex workers (see Holt and Blevins 2007; Hughes 2003; Sharpe and Earle 2003; Soothill and Sanders 2005). Accordingly, within this industry there is likely a great deal of overlap among white-collar cybercrimes (e.g. phishing scams, data theft, malicious software attacks) and interpersonal crimes (e.g. sexual exploitation). For example, a wide range of websites allow clients to review the services of sex workers, including the clients’ motivations for soliciting and their experiences being with streetwalking
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prostitutes, escorts, and massage parlor workers (Holt and Blevins 2007; Holt et al. 2008; Hughes 2003; Sharpe and Earle 2003). In fact, the ability to share information enables clients to more easily avoid law enforcement detection and search for sex in areas they have minimal familiarity with in the real world (Holt et al. 2008). At the same time, some sex workers now utilize online vetting services and email to screen clients in advance of physical meetings to reduce their risk of harm (Cunningham and Kendall 2010). A small proportion of sex workers have also used technology to transition from street prostitution to escort work, which increases their profit margins (Cunningham and Kendall 2010).

Cyber-violence

The fourth and final category in Wall’s (2001) typology of cybercrime includes acts of cyber-violence. While Edelhertz’s conceptualization of white-collar crime specifically discusses the non-physical nature of these offenses, it is essential to discuss this category of cybercrime as a means of highlighting another important way that white-collar crimes have the potential to indirectly create physical harms.

The internet and computer technology provide a range of opportunities for individuals to spread emotionally damaging or injurious messages, or even incite individuals to violence in the real world (Wall 2001). In the past decade, there has been substantial media and academic attention on the use of CMC and mobile phones to harass or bully others (Marcum 2013; Tokunaga 2010). The popularity of social networking websites like Facebook and Twitter allows individuals to post embarrassing or hurtful messages via text and video that can be viewed by anyone (see Hinduja and Patchin 2009). Estimates suggest there has been an increase in the proportion of youth populations experiencing some form of cyberbullying and harassment over the past decade, due in part to their substantial use of CMC (Jones et al. 2012). Victims also appear to report physical or emotional stress as a consequence of their experience, including school truancy, depression, and suicidal ideation (see Hinduja and Patchin 2009; Tokunaga 2010). These issues have become a concern to corporations and industry due to the potential for employees to bullied or harassed by co-workers, which may not be reported to management (e.g. Keashly 2018). As a consequence, the use of cyberbullying and harassment may create a hostile working environment that affects employee morale (Keashly 2018).

In addition, extremist groups and nation-states alike have begun to use hacking techniques to engage in attacks against governments and private industry targets around the world (Andress and Winterfeld 2011). For instance, the activist group Anonymous has engaged in coordinated cyberattacks against various governments and corporations around the world to express their anger about corruption and unjust laws that restrict freedom of speech (Correll 2010). In addition, members of the group Izz ad-Din al-Qassam Cyber Fighters engaged in a series of Denial of Service attacks against major banks in the United States in 2012 (Gonsalves 2013). The attacks affected the websites of U.S. Bankcorp, JP Morgan Chase and Co, Bank of America, PNC Financial Services Group, and SunTrust, keeping customers from accessing their account details for minutes to hours at a time (Gonsalves 2013). These examples demonstrate the substantial risks that acts of cyber-violence pose to individuals, industry, and governments around the world.
Corporate and State-Sponsored Cybercrime

The first two of Wall’s (2001) cybercrime categories, cyber-trespass and cyber-theft, are not only found in cases of occupational offending, but also feature prominently in cases of corporate and state-sponsored cybercrime. For example, the United States Computer Emergency Readiness Team (2018) recently announced that the Russian government actively supported cyberattacks intended to gather data and information from American organizations operating in multiple industries, including energy, nuclear, and critical manufacturing. Germany’s foreign ministry has also been the target of high-level cyberattacks aimed at gathering sensitive national-level information, and German officials believe the attacks originate from within Russia and have the approval of the Russian government (Severin and Shalal 2018).

In 2016, Shinkman, writing for U.S. News and World Report, stated that the United States was “not fully prepared to match” the cyber warfare capabilities of countries like Russia, China, Iran, and North Korea. Shinkman cited the theft of sensitive documents from the defense industry that allowed the Chinese to create a “copycat” version of the F-35 fighter jet, attacks on financial institutions, and the targeting of critical infrastructure tied to the US electrical grid as examples of state-sponsored cyberattacks that targeted the United States. Shinkman went on to describe how cyberattacks are an emerging battlefield whereon virtual battles play out on a regular basis as countries attack governmental, civilian, and military targets. Apparently, the United States still does not have a solid plan for its cyber warfare doctrine (Andress and Winterfeld 2011; Starks 2018), but the fact that lawmakers, the Department of Defense, and military contractors are actively involved in these discussions underscores the permanence of state-sponsored acts that, when perpetrated by any other entity, would be considered a crime.

While state-sponsored cyberattacks form the core of the emerging battlefields of cyber warfare, corporations are increasingly engaging in many forms of cyber warfare themselves (Andress and Winterfeld 2011; Knapp and Boulton 2006). The digitization of sensitive corporate information makes corporate espionage and other cybercrimes potentially lucrative endeavors that can quickly erode a firm’s competitive advantages. Cyber activities that seek to gain information directly from other firms, as well as those that exploit employees as a way to extract knowledge and information, occur on a global scale and oftentimes do not have a clear overlap with governmental interests (Bressler and Bressler 2014).

Technological advancements, such as the internet, 3-D printing, the digitization of information, and cloud-based data storage have changed the ways in which traditional corporate crimes are committed, as well as opened up new types of corporate offending. Within today’s business environment the value of information and data cannot be understated, and a firm’s competitive advantages are oftentimes directly tied to their ability to create and protect sensitive data and information. One of the most technology-influenced forms of corporate crime that occurs today is the theft of trade secrets, a practice that has occurred since the beginning of organized commerce and trade (Fetterley 1970), yet, one that has taken on new form with technological advancement.

According to the World Intellectual Property Organization (2018), trade secrets are:

Broadly speaking, any confidential business information which provides an enterprise a competitive edge may be considered a trade secret. Trade secrets encompass manufacturing or industrial secrets and commercial secrets. The unauthorized use of such information by persons other than the holder is regarded as an unfair practice and a violation of the trade secret.
Almeling (2012) discusses several factors behind the growing importance of trade secrets, and therefore their growing value to competitor firms in today's technological age. In particular, the rise of digital technologies, a mobile workforce, and the increasing value of intellectual property make it easier to obtain data and information from competitor firms. The theft of digital information does not deprive the victim firm of the information in the way that a physical theft of information would (Piquero 2005). The mobile workforce and “gig economy” have changed employees’ perceptions of what it means to be loyal and committed to an employer, largely because there is a sort of de-investment in the worker by the firm (Friedman 2014). It is not necessary here to review the growing value of data and information, as increases in the theft and misappropriation of data and information highlight its importance and worth.

Differentiating Insider and External Attackers

Insider Attackers

Given that cyberattacks performed by insiders and external actors pose a substantial risk to industries and government targets, it is vital that we understand the nature of the individuals who engage in such activities. Research involving case studies of insider attacks suggest that they may operate within secure environments as trusted system administrators or security professionals (Cappelli et al. 2009; Dhillon and Moores 2001; Shaw et al. 1998). The actions employees take to misuse or misappropriate resources may go unnoticed, particularly by individuals with root administrative privileges (Cappelli et al. 2009; Dhillon and Moores 2001). Insiders may surreptitiously steal information or place backdoors in programs that can be accessed to cause damage in case they are fired or mistreated (see Cappelli et al. 2009; Shaw et al. 1998). The attacks individuals engage in may also be relatively simple in nature and exploit known flaws in internal systems, though some sophisticated intrusions have been documented (see Cappelli et al. 2009).

The behavior of insider attackers may be driven in part by their ethical perspectives and attitudes. Specifically, insiders tend to be loners who are dependent on or addicted to computers and online communications (see Shaw et al. 1998). They may also have flexible ethical outlooks, wherein they view any piece of data or file that has not been properly secured as a potential target for attack (see Shaw et al. 1998). Finally, insiders may operate along a continuum of technical sophistication since insider attacks have been both simple and complex, depending on the types of services that have been exploited across industries (Cappelli et al. 2009). Addressing the risks posed by insiders presents a series of challenges to firms, including the struggle to protect intangible property, as well as the problem of increasing internal controls that may restrict productivity (Kennedy 2017). Particularly in small and medium enterprises, which tend to depend heavily upon intellectual property (Kennedy 2016a), business owners tend to be less reactive to intellectual property theft and cyber violations due to the fact that they perceive the criminal justice system is unresponsive to these issues (Kennedy 2016b).

External Attackers

External attackers also report a range of motivations and skills, but are not limited in the resources they may target for compromise or harm. In fact, they may direct their efforts against specific resources based on their motivations and technological skill. For instance,
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an external attacker who is interested in either drawing attention to themselves in order to gain status in the community or promoting a particular ideological agenda may choose to deface the public website of a company or service provider (e.g. Andress and Winterfeld 2011; Woo et al. 2004). A defacement involves replacing the normal html code of a webpage with images, text, and content of the attacker’s choosing (Denning 2011; Woo et al. 2004). Web defacements began as a vehicle for hackers to call out system administrators who used poor security protocols and gain attention for themselves through self-promotion (Woo et al. 2004). This sort of attack can cause embarrassment to a company due to the perception that their security protocols are weak, and it provides an opportunity for attackers to express dissent or attribute the attack to a specific social cause or ideology. Some attackers may also delete the original web content entirely, which may cause more harm than simply redirecting the site to a separate page (Denning 2011; Woo et al. 2004).

Similarly, external attackers of all skill levels can utilize distributed denial of service (DDoS) attacks against corporate targets, where a flood of requests are sent to servers and resources that overwhelms the resources, rendering them unusable to others. Such attacks can cause financial harm to a target by eliminating customers’ ability to use their service. In fact, recent estimates indicate that the average cost to defend a company against DDoS attacks that result in site downtime is $2.5 million (Kerner 2011). DDoS attacks can be performed through the use of various tools which can be rented or obtained for free from various attacker groups online (Denning 2011; Kilger 2017). For instance, the hacker group Anonymous has gained attention for their use of a DDoS tool called the “Low Orbit Ion Cannon.” This program has been used in attacks against personal, industrial, and government targets around the world in furtherance of their beliefs of transparency, anarchy, freedom of information, and the removal of intellectual property laws (Correll 2010).

Individuals interested in monetary gain may be more inclined to target databases of customer records and details in order to engage in fraud or resell this information to others in the underground black market (e.g. Franklin et al. 2007; Holt and Lampke 2010). The attackers who have the potential to access these resources are often much more technologically sophisticated than other attackers, though they may sell the data to others who do not have the same degree of skill (Wehinger 2011).

Finally, those individuals working on behalf of a nation-state or interested in corporate espionage may attempt to gain root-level access to system resources, install keylogging software, and monitor the internal/external communications made by employees (Andress and Winterfeld 2011; Nasheri 2005). Such information could be invaluable to understand competitor plans and potentially beat them to market with products. Others may simply steal intellectual property and use it to manufacture or create goods without having to invest the research and development resources needed to create them on their own (Andress and Winterfeld 2011). For example, Chinese hackers with government ties were thought to be responsible for a series of attacks against multiple high-profile businesses, including Google, Adobe, Juniper Networks, Yahoo, Symantec, Northrop Grumman, and Dow Chemical, through the use of innovative and never-before-identified attack tools (Zetter 2010). The attackers initially sent targeted phishing emails to individuals within corporations in order to compromise their machines and harvest intellectual property within these companies to gain corporate or political advantage (Markoff and Barboza 2011; Zetter 2010).
Cybercrime Prevention

The diverse nature of cyber threats requires a complex and coordinated response from both the public and the private sector in order to detect and investigate attacks as well as (to the extent possible) prevent further attacks (e.g. Wall 2001). This section discusses the capabilities of unique parties involved in prevention, as well as the instruments they use.

ISPs

Within the private sector, network infrastructure providers (also known as ISPs) play a pivotal role in the regulation of online behavior through the contractual agreements they make with their clientele, whether as end users for internet connectivity or as hosting services (Crawford 2003; Wall 2007). This contractual governance is illustrated in the form of terms and conditions arrangements, sometimes called fair use policies (Holt and Bossler 2014; Wall 2007). These terms and conditions are typically guided by legal statutes at the local, state, federal, or national level, as well as by the ISP’s own economic interests. For instance, ISP records may be retained for extended periods of time, or provided to law enforcement upon request to support criminal investigations of specific users’ activities.

Such information must be communicated to end users to ensure transparency to the ISP’s customer base while at the same time successfully cooperating with law enforcement requirements. This is frequently accomplished through internet use policies (IUP) or fair use policies (Sommestad et al. 2014) that communicate acceptable behaviors to end users and explain the possible sanctions that may result from engaging in such activities (Li et al. 2010). The majority of research suggests these policy statements are generally unsuccessful in reducing misuse, especially on corporate-controlled networks (e.g. Li et al. 2010; Sommestad et al. 2014).

ISPs’ ability to operate transnationally means that they may have users who live in different nations with unique laws and regulations (Wall 2010). As a result, ISPs must be compliant with various domestic and foreign legal statutes, as a failure to do so may leave them liable to fines or criminal charges for allowing their services to be used in the furtherance of certain crimes, like the distribution of child pornography (Wall 2007).

Corporate Security Organizations

Similar to network infrastructure providers, corporate security organizations implement contractual agreements with their employees and clientele to (i) govern their own commercial interests and (ii) ensure compliance with all appropriate laws (Wall 2007). Corporate security organizations commonly enforce software solutions to directly shield themselves from external threats posed by hackers and cybercriminals and identify problematic behavioral patterns both in their systems and among their clientele (Spitzner 2003; Wall 2007). The use of programs such as intrusion detection systems (IDS) is essential to identify and terminate malicious activity when it happens within the network, and potentially identify employee misconduct (Holt and Bossler 2014; Maimon et al. 2015). Serious cases may even result in corporate security organizations invoking criminal prosecutions against their employees on the basis of violations to either their contractual agreements or relevant local criminal codes (Wall 2007).
Corporate security organizations can also play a role in managing the behaviors of their clients and the broader population of internet users through regulation of their services. For instance, online currency providers can limit the use of their services to pay for certain products. Similarly, Craigslist and Backpage— which serve as online classified ad spaces—limit the kinds of services individuals can advertise, particularly paid sexual encounters (Cunningham & Kendall 2010). The relatively low public visibility of corporate security interests and their minimalistic contact with law enforcement agencies make it difficult to evaluate their utility in regulating cybercrime (Wall 2001, 2007).

Other Private Organizations

Non-governmental, non-police organizations are mixtures of both private and public entities that serve as governance figures in cybercrime prevention (Wall 2007). They frequently serve as clearinghouses for information on cybercrime threats and techniques to reduce victimization, or even operate hotlines to facilitate the reporting of criminal activity to ISPs or police (Holt et al. 2015; Wall 2007). For instance, the Internet Watch Foundation (IWF) is a charitable organization located in the United Kingdom that is dedicated to removing child pornography and obscene content from the internet (Internet Watch Foundation 2019). They operate a hotline to report child pornography and engage in coordinated information sharing with law enforcement and ISPs to facilitate blocking harmful content and investigating child sexual exploitation.

Importantly, a non-governmental, non-police organization has no constitutional role in law enforcement, arrest, or sanctions for offenders— that is, they have no formal accountability in the broader structure of public corporations and traditional police agencies. As a result, their operations tend to focus on streamlined roles that can be facilitated through public functions, such as serving as a clearinghouse for information on victimization or attempts to regulate and operate tip-lines for offenses (Wall 2007).

Governmental Organizations

Governmental non-police organizations monitor the internet and online behaviors through the use of regulations, laws, fines and charges, and threats of prosecution (Wall 2007). Despite being an informal law enforcement agency, governmental non-police organizations actively participate in the role of investigating, resolving, and adjudicating cases (Wall 2007). Included in this typology are agencies that govern and oversee cybersecurity policies for internet protection purposes (Wall 2007). Governments that use these agencies to control citizens’ internet use and availability of content include Singapore, China, Korea, Vietnam, and Pakistan (Caden and Lucas 1996). These governmental non-police organizations are also able to set regulatory policies that are responsible for trade and e-commerce (Wall 2007). In the context of the United Kingdom, this includes the Department of Business, Innovation and Skills (BIS), while in the United States it is the Federal Trade Commission (FTC) (Wall 2007).

Discussion and Conclusion

Given the scope of cybercrimes, particularly against businesses, there is a need for greater research to understand these offenses. There are, however, few data sources available documenting the number of cybercrimes reported. For instance, statistics on cybercrimes
reported to law enforcement are absent in the US Uniform Crime Report (UCR), and are available in limited numbers in the National Incident-Based Reporting System (NIBRS) (e.g. Holt 2010; Holt and Bossler 2012; Stambaugh et al. 2001). These sources may not capture white-collar cybercrimes, as businesses frequently under-report cybercrimes that target their resources or affect their customers (e.g. Furnell 2002; Nasheri 2005). In fact, industrial surveys which go directly to respondents within corporations frequently have very low participation rates and do not provide representative samples of businesses generally (e.g. Rantala 2008; Ponemon 2014).

There are several reasons businesses may not report cybercrime incidents to law enforcement or external regulatory agencies (Kennedy 2016a). Companies may lose customers or experience drop in stock value if they report that their systems have been compromised by external attackers (Furnell 2002; Wall 2001). Furthermore, embarrassment over the loss of sensitive information may engender cover-ups or diminished reporting in order to reduce the loss of business (Holt and Bossler 2012). Finally, individuals working in high-level security positions may be forced to resign or be held accountable for a failure to maintain data security or minimum security protocols – thus, individual-level reporting is unlikely (Nasheri 2005).

As a result, much of the information that is available regarding cybercrimes with a direct impact on industrial targets may be unreliable as a basis to develop trends or profiles of attackers. There is a particular dearth of information regarding insider attackers, as few businesses provide information on compromises performed by insiders unless it leads to a substantive loss of sensitive information or directly affects system security (Cappelli et al. 2009). Studies examining external attackers are similarly limited by using college student samples (see Holt and Bossler 2014 for review), though increasing research has begun to utilize online data to assess the attack techniques used by active hackers and malware writers (e.g. Franklin et al. 2007; Holt and Lampke 2010; Motoyama et al. 2011). These studies do not, however, provide much detail on the actual factors affecting both the foreground and the situational dynamics that affect offenders during the course of an attack. As a result, there is a need for substantive research to improve our knowledge of the decision-making processes, attitudes, and behavioral characteristics of both internal and external attackers.

Finally, research is needed to understand how the larger criminal justice system is responding to cybercrimes that target corporations, businesses, and their customers. Since cybercrimes are largely unreported, there is limited information regarding the extent to which they are subject to law enforcement investigations and prosecutions. One of the few studies to assess this issue considered how cybercrime cases were processed by the criminal justice systems in Australia, Canada, and the United States (Smith et al. 2004). Those actors who were prosecuted largely received small sentences relative to the potential harm they may have caused to their victims. Few have attempted to replicate this study or document any changes in the number of actors processed, limiting our knowledge of the ways that the criminal justice system has changed in response to cybercrimes over time. Such research can improve our knowledge of cybercrime and the relationships that it has to various forms of white-collar crime.

References


The Elusiveness of White-Collar and Corporate Crime in a Globalized Economy

Karin van Wingerde and Nicholas Lord

Introduction

Have you ever considered how many of the things we use on a daily basis and how many of the activities we engage in are created and enabled by business firms operating across the globe? Just think about the gasoline your car runs on. The chances are that you bought it at a gas station owned by Royal Dutch Shell, Exxon Mobile, BP, Chevron, or Total, all belonging to the Top 30 of the Forbes Global 2000 list of the world's largest companies (Forbes 2018). The chances are even bigger that most of the oil used to produce it is extracted from the Middle East and Africa. And what about the glass of wine you drink at night, the piece of paper used to write down your list of groceries, and the electronics around the house? Almost all of these products are produced in different countries than the one where they are eventually used, and made possible by multinational business firms operating in global economic supply networks. Nowadays, companies such as Nike, Facebook, Apple, Samsung, and Google are household names and their Chief Executive Officers (CEOs) are like celebrities.

We live in a time that is characterized by the dominance of multinational business firms. The dynamics between these firms, governments, and civil society have fundamentally changed over the past two decades. Rather than nation-states, these firms are (and have been for a while) at the center of the economy. In fact, the global economy is increasingly being dominated by complex networks of production, controlled and coordinated by multinational business firms (Dimaggio 2001; Powell 2001; Forsgren 2008; Dicken 2015). Some of these firms have become so powerful that their sales and profits are greater than the gross national product of many countries in Africa and Asia (Hertz 2003; Global Justice Now 2016). While globalization has undeniably enabled firms to expand their business, this has also created greater opportunities for corporate crimes, led to the transference of social, economic, and environmental harms to other parts of the world, and increased problems for monitoring and enforcement (Passas 1999, 2000; Passas and Goodwin 2004; Friedrichs 2010; Gibbs et al. 2010; van Erp and Huisman 2010; Rothe and Friedrichs 2015; van Wingerde 2015). That opportunities arise within the context of globalization does not mean...
actual crimes will happen; opportunity is a necessary but not a sufficient condition. But where opportunities interact with actors motivated or incentivized to offend under amenable conditions and who possess the skill set, knowledge, or network to realize such opportunities, corporate crimes can occur. For example, across-country differences in regulatory frameworks and low-cost solutions to dispose of and process waste provide growing opportunities for companies to relocate environmentally unfriendly operations to developing countries where environmental regulations are less strict or even absent. The recent Panama and Paradise Papers scandals illustrate the tension between creating an economic climate which is favorable toward international business and simultaneously preventing crimes such as corruption, money laundering, and tax offenses. As has become apparent so far, this chapter focuses on behavior that criminologists have long been referring to as corporate crime. Corporate crime refers to those illegal or harmful behaviors committed by corporations or their officials for the benefit of the corporation (Clinard and Yeager 1980). Criminological and socio-legal research has long recognized the potential pitfalls in combating crimes by the elite and powerful. In his seminal book Where the Law Ends (Stone 1975), Christopher Stone already described the paradox that the largest and most powerful corporations in the world require more efforts from regulatory and enforcement agencies to limit violations, yet it is very difficult to accomplish that due to the complexities of these firms, their international character, and their value for the economy.

In sum, many of the corporate crime scandals over the past decades illustrate that – given the global impact of contemporary business firms – we may also expect global damages if things go wrong (Shover and Hochstetler 2006; Gibbs et al. 2010; van Erp 2016). Yet, the control of multinational business firms and the prevention of these types of crime (along with full enforcement of laws against them) remain elusive (Yeager 2016). This chapter discusses and illustrates these issues using three case studies: the (mis)use of corporate vehicles for financial gain, transnational corporate bribery, and environmental crime in the waste industry. The next section discusses the relationship between globalization and white-collar and corporate crime. Each of the three sections that follow introduces one of the case studies. We conclude by raising some of the key challenges for the future study of white-collar and corporate crime.

Globalization and White-Collar and Corporate Crime

While the significance of globalization for the study of white-collar and corporate crime seems self-evident, the term “globalization” in itself is highly contested and is used to mean many different things. We do not attempt to define globalization in this chapter as others have done so more extensively before us (see for example Rothe and Friedrichs 2015) and our key objective here is to link some of the consequences of globalization to specific cases of corporate and white-collar crime. Nonetheless, to analyze our case studies we would need to discuss the characteristics of globalization and understand its consequences. In doing so, we mainly draw on the work of Dicken (2015), Passas (1999, 2000; Passas and Goodwin 2004), and Friedrichs (2010; Rothe and Friedrichs 2015). One key theme that emerges from the literature on globalization is the increased interconnectedness of different parts of the world. This interconnectedness has several dimensions.

First, it refers to the mobility of ideas, information, capital, people, goods, and services around the globe. Globalization allows us to consume products from all over the world, to
visit and learn from other cultures, and to connect to people from other societies, and it has
greatly enhanced the accessibility of information. Yet, this also allows for the movement of
illegal goods and services and the import of tainted or risky products (contaminated food,
medicine, supplements), and it means a greater supply of potential offenders and victims
(Grabosky 2009). Moreover, globalization contributes to corporate and white-collar crime
through so-called criminogenic asymmetries (Passas 1999, p. 400).1 These are structural
inequalities between different parts of the world in the spheres of politics, culture, the
economy, and the law (Passas 1999, p. 400). The mobility inherent in globalization allows
corporations to exploit these inequalities by moving activities that are illegal in one juris-
diction to another where they are not (legal/enforcement asymmetries), by externalizing
harms to countries that depend on foreign investments to foster economic growth
(economic asymmetries), and by offering the rationale to engage in these harms particularly
when certain behaviors, such as bribery, are normalized in some parts of the world to
get business done (cultural/political asymmetries). In addition, awareness and knowledge
about harms can be asymmetrical, as can the legal means to stand up against multinational
business firms. Legal, political, economic, and social asymmetries thus enable firms
operating in multiple parts of the world to seek a home in jurisdictions that allow their
activities under the best economic circumstances. In this way, globalization facilitates
“crimes without lawbreaking” or “legal corporate crimes” (Passas and Goodwin 2004;
Passas 2005): behaviors that are essentially lawful, but extremely harmful.

Second, such mobility is no longer limited to the physical movement of people, things,
finance, and ideas, but has been expanded to virtual markets, products, and services. In its
most simple terms, technological innovations increasingly allow business to be conducted
remotely and at long distance from potential harms, damages, and victims, making it easier
to neutralize and normalize certain unwanted behaviors. For example, in their study of tele-
marketing fraud, Shover et al. (2004) showed that fraudulent telemarketers (increasingly
operating from overseas territories) could rationalize their potential guilt partly because
they were not directly confronted with their victims. The internet has also made it more
difficult for states to govern certain types of business behavior, especially when the behavior
is allowed in one country and prohibited in another. In the Netherlands, for example, at the
time of writing this chapter, online gambling is prohibited (Netherlands Gaming Authority
2018). Yet, online gambling is legal in many other countries, including the United States and
many countries in Europe. The World Wide Web allows gamblers across the globe to access
these games nonetheless. Firms offering online betting often operate from jurisdictions
where it is legal, leaving them relatively untouchable to the Netherlands Gaming Authority.

Furthermore, technological innovations have contributed to so-called hyperrealities (Friedrichs
2010, p. 167), meaning that modern business behavior increasingly revolves around virtual real-
ities in complex, partly simulated markets, making business decisions more and more detached
from real value as well as from real people and harms. These innovations also contribute to new
behaviors and activities that are largely ungoverned under current rules and regulations. Take, for
instance, the issue of high-frequency trading on financial markets (Lewis 2014). This is a com-
pletely automatized form of trading on financial markets by computers using self-learning algo-
rithms. This allows trading companies to conduct a large number of trades at extremely high
speed. In his book Flash Boys – A Wall Street Revolt, Michael Lewis (2014) argues that financial
markets have been manipulated by the practice of high-frequency trading to the extent that stock
prices are rigged. Yet, what does it mean for regulation and enforcement when important
decisions are no longer made by people, but by machines (similarly van Erp 2016, p. 11)?
A final dimension of interconnectedness is the interdependency of actors, markets, and industries that comes with it (Grabosky 2009, p. 133; Friedrichs 2010, pp. 167–168). Not only does this mean that the activities of multinational firms can have an impact well beyond national borders (the 2008 US housing market crash, for example, has led to an economic crisis with global consequences), but it also means that doing business has become more and more complex. Businesses increasingly operate in global economic supply networks that connect many different actors in many different countries. Businesses are connected through complicated corporate deals, legal contracts, different organizational components and offshore legal structures, and financial arrangements set up and maintained by a range of different actors (like lawyers, notaries, financial advisors, and so on) in varied countries. Companies increasingly use subcontractors or intermediaries in other countries to take care of business. On the one hand, this complexity makes it very difficult for all the different actors involved to fully understand the deals and activities in which they are involved, risking the situation in which rule-breaking by other actors goes unnoticed (Friedrichs 2010, p. 168). On the other hand, it may make it easier to deny responsibility for their involvement in certain unwanted behaviors, because they can easily shift the blame to other parties involved.

In sum, globalization has not only provided the (mostly legal) opportunities to firms to externalize the adverse environmental, social, and economic consequences of their activities elsewhere, but it has also provided the rationalizations to do so. In global economic supply chains corporate decision-making and consumption often take place at great distance from the actual risks and harms surrounding production, making it potentially easier not to think about possible damages and victims. As decision-making becomes increasingly more fragmented and decentralized, red flags about potential harms and wrongs are easily overlooked. While the environmental, social, and economic consequences of globalization are many, one of the most significant issues is that these are often the result of business practices that are mostly legal, unregulated, or happen in the gray zone between the legal and illegal – yet are unethical.

The developments described above raise important issues for the monitoring and control of business behavior. Globalization not only creates “regulatory loopholes” (e.g. spaces between the law where certain harmful practices are unregulated), but it also makes the control and enforcement of illegal practices incredibly fragmented. In fact, while the expansion of cross-border activities by multinational business firms requires an international legal framework, cooperation, and information exchange between enforcement authorities, regulation and enforcement remain almost exclusively organized on a national level (Braithwaite and Drahos 2000; Passas 2000, 2005; Financial Services Authority 2009; Gibbs et al. 2010). Moreover, power asymmetries and economic dependencies between multinational business firms and various governments and regulatory bodies have often been said to explain why it is so difficult to act against harmful and illegal acts. Firms are often able to lobby against stricter regulation and enforcement and can influence laws and regulations in such a way that prevents criminalization of their activities (Snider 2010). This further impacts the possibilities to prosecute, convict, and sentence offenders. Even when investigations occur, these rarely result in official (before-the-court) administrative or criminal proceedings. For example, in his book Too Big to Jail, Garrett (2014) convincingly demonstrates that corporate crimes in the United States are almost exclusively dealt with through backroom deals and corporate settlements (similarly, see Steinzor 2014). What is more, aside from a small number of major cases with huge billion-dollar settlements or fines, most official enforcement instruments are no match to the economic power of multinational business firms. Rather than
effectively punishing corporate crimes and influencing firms to reduce the adverse consequences of their activities, regulation and enforcement may even contribute to the existing power imbalance and foster economic inequalities between the winners and losers of globalization (Grabosky 2009; Friedrichs 2010; Dicken 2015; Rothe and Friedrichs 2015).

In the next three sections we provide three examples of these issues, drawing on empirical research on the (mis)use of corporate vehicles, transnational bribery, and environmental crime in the waste industry.

(Mis)Use of Corporate Vehicles for Financial Gain

On April 4, 2016, the International Consortium of Investigative Journalists (ICIJ) exposed the hidden wealth of political leaders, drug traffickers, celebrities, and multinational corporations in the so-called Panama Papers scandal.3 The scandal revolved around 11.5 million leaked files from the Panamanian law firm Mossack Fonseca, which specialized in setting up and managing corporate vehicles and legal structures in offshore jurisdictions such as the British Virgin Islands (BVI), the Cayman Islands, and the Bahamas. The Panama Papers – and other data leaks afterwards such as the Bahama Leaks (1.3 million files in 2016) and the Paradise Papers (13.4 million files in 2017) – highlight how rich global elites (both individuals and companies) exploit legal asymmetries and differences in tax rules between jurisdictions to manage their finances and wealth. Such exploitations are carried out for varied legal (but harmful) and illegal purposes, such as the avoidance and evasion of tax, the concealment of corrupt funds by public officials, and money laundering by organized crime groups, among others. These behaviors are facilitated and enabled by a range of legal corporate vehicles and structures across jurisdictions.

The term “corporate vehicle” is not a legal term, yet it refers to a range of legitimate organizational structures and forms (such as limited partnerships, trusts, and foundations) used in economic trade to structure commercial activities or the control and movement of wealth and assets (OECD 2001, p. 13). Corporate vehicles allow natural persons not to take part in economic trade as individuals, but as corporates, separating individual and corporate liability. Corporate vehicles often have limited liability characteristics, meaning that personal assets of shareholders remain out of reach of creditors. The ownership of corporate vehicles can take many forms, with shares being issued to natural or legal persons in registered or bearer form, and they can have a variety of purposes (OECD 2001; FATF/OECD 2006). Corporate vehicles can be created (or dissolved) relatively straightforwardly, and at low cost (van de Bunt et al. 2007; Sharman 2010).

Using corporate vehicles in itself is perfectly legitimate, and large flows of money move through the global financial system in this way. For instance, these vehicles allow business firms to incorporate companies in low- or no-tax regimes, provide flexibility in global markets, and reduce the level of regulation, particularly when set up in jurisdictions that offer great confidentiality (or secrecy). However, these licit corporate entities (or at least some of them) provide opportunities to conceal and control money by offering the possibility of anonymity of the “beneficial owners” – the people who truly own and benefit financially from them – and by offering the appearance of legitimacy to these entities and/or the clients who use them to transfer funds. The anonymity provided by certain corporate structures has been used in a broad range of crimes, ranging from money laundering to financing of terrorism, tax evasion, corruption, etc. (Lord et al. 2018).
Furthermore, using corporate vehicles enables behaviors that Passas has labeled as “lawful but awful” (Passas and Goodwin 2004; Passas 2005), and it is those behaviors that we are interested in in this chapter. Tax avoidance by multinational corporations is one such harmful act. Contrary to tax evasion, tax avoidance is formally legal in most jurisdictions, and it involves the circumvention of tax regulations in a firm’s home country by shifting corporate profits to corporate entities in low- or no-tax regimes (Eurodad 2016). For example, in their case study of Vodafone, Whalley and Curwen (2014, p. 373) illustrate how Vodafone, one of the world’s largest telecommunications companies headquartered in the United Kingdom, used a subsidiary in Luxembourg to reduce the amount of tax to pay. In 2000, Vodafone had planned to take over Mannesmann AG, a German-based firm. The actual purchase, however, was made by Vodafone Investments Luxembourg S.a.r.l (its Luxembourg subsidiary), meaning that Vodafone had to pay tax in Luxembourg, not in the United Kingdom. A few years later, HM Revenue and Customs (HMRC), the United Kingdom’s tax, payments, and customs authority, investigated how Vodafone had calculated its revenues, specifically how the company had dealt with the profitability of its controlled foreign companies. UK legislation aims to prevent companies from reducing their tax liabilities by shifting profits abroad. Yet, rather than accepting current legislation, Vodafone challenged the legality of the United Kingdom’s “controlled foreign companies” legislation. Ultimately, HMRC won the case and Vodafone eventually paid £1.25 billion (approximately US$1.59 billion) to settle the case. Yet, this appeared to be a lot less than the sum of money set aside by Vodafone to settle.

As the Panama Papers (and other data leaks) indicate, Vodafone is hardly alone in using corporate vehicles across jurisdictions to reduce taxes. In fact, in his book *The Hidden Wealth of Nations*, Gabriel Zucman (2015) shows how multinational business firms avoid billions of dollars in taxes by shifting profits to jurisdictions where corporate taxes are low or zero. For example, more than 50% of the profits of US firms are kept in overseas tax havens (Zucman 2015, p. 4). While it is entirely legal to organize finances in this way, tax avoidance has extremely adverse consequences. It raises the tax burden on mostly middle-class households because the taxes avoided by firms need to be compensated, and it thus contributes to growing inequalities (Zucman 2015). What is extremely problematic about the misuse of corporate vehicles and tax asymmetries in this way is that – while these harmful practices are often associated with offshore financial centers and offshore tax havens, like the BVI and Bermuda – they are mainly facilitated through tax regulations of European countries, such as the United Kingdom, Switzerland, Luxembourg, and the Netherlands. Zucman (2015), for instance, shows that the Netherlands is actually the tax haven of choice for most Fortune 500 companies, because of its lenient tax climate. For example, the move of the operating headquarters of the Dutch-UK firm Unilever from London to Rotterdam (the Netherlands) can be seen in this light. When Unilever announced that it planned to close one of its offices, current Dutch Prime Minister Rutte – who happens to be a former Unilever employee – promised to lower corporate taxes and to scrap the tax on dividends for overseas investors.4 Furthermore, there is competition between jurisdictions to create a tax climate favorable toward international businesses in order to attract capital or new job market possibilities. In turn, however, this may also attract criminal money to jurisdictions known for their lenient tax regimes, often through shell corporations or mailbox firms that do not have any real activities and that are hard to control (Lord et al. 2018). Many of these complex business structures are able to withstand legal intervention as enforcement asymmetries, obstacles to cross-border information exchange, and cultures of corporate non-compliance globally create barriers to regulatory responses (Sharman 2010, p. 138). In this
way, the misuse of corporate vehicles and tax asymmetries illustrates the tensions between creating an attractive economic and fiscal climate for businesses and preventing the movement of illicit finances.

In response to the scandals that we started this section with, citizens around the world have urged their governments to take action against corporate tax dodging. For example, in the Netherlands, the Panama Papers have resulted in a parliamentary investigation into tax deals of the government with multinationals. Political will to increase transparency and to regulate tax havens now seems to be on the rise. However, it is our view that we need to question the ethics of a system which enables the accumulation of wealth that leads to growing financial inequalities. Yet in order to do this, we need systematic criminological inquiry into the organization of these practices, and to better understand how laws can be shaped or circumvented for the benefits of a minority social group. For instance, who enables these arrangements to flourish and how do they do this? Elsewhere we have argued that a whole new industry has emerged in which lawyers, notaries, advisors, and so on provide advice on how to exploit legal and fiscal asymmetries (Lord et al. 2019). A simple Google search reveals numerous so-called “trust and company service providers” (TCSPs) and “company formation agents” (CFAs) that offer ready-to-use off-the-shelf limited companies for only a few hundred dollars. It is these practices that warrant further analysis.

Transnational Corporate Bribery

As businesses expand into other markets to make their products and services available to new clients, they need to understand how business is conducted locally in those areas as expectations can vary when compared to their home countries. In terms of bribery, a key issue is that cultural asymmetries often exist, whereby local conventions may dictate that inducements ought to be offered in order to receive preferential treatment in the awarding of contracts, to obtain licenses to operate, or for other ways of ensuring business flows smoothly. This creates issues for businesses – particularly those from countries that are signatories of the OECD's Anti-Bribery Convention 1997 – as such practices are considered corrupt within many legal frameworks, despite being considered "normal" business practice in some jurisdictions. Accessing new markets is more difficult for new businesses (even if they have superior products) as pre-existing bribery arrangements between public officials and other competitor companies can restrict access, in turn incentivizing such businesses to move in line with expected local practices. Thus, the expansion of business operations globally into jurisdictions with differing normative expectations creates a fault line for businesses as they must grapple with the need to expand in the pursuit of profit generation whilst abiding by the expectations and standards of global organizations, such as the OECD, and their domestic laws. The international anti-bribery agenda (see OECD Anti-Bribery Convention 1997 and the United Nations Convention against Corruption 2003) is primarily concerned with bribery being directed toward so-called developing countries where cultures vary and enforcement infrastructures may be less developed, but bribery can also be directed toward those jurisdictions considered more developed.

To expand into new markets, most businesses would employ local agents, intermediaries, or other third parties to operate on their behalf, or would establish subsidiaries in these countries to utilize local actors. Such strategies would better enable companies to access local networks and those key public officials with decision-making responsibilities in order to “lobby” them to favor their business. Such global interconnectedness is a feature of
globalization. When inducements are offered with an intent to influence the decisions of public officials, this is considered bribery, but given the cultural asymmetries mentioned above, there is a large gray area where concepts of bribery, hospitality, marketing, and influencing are intertwined and blurred. This is further complicated as companies may present themselves as being unwittingly involved in (but perhaps more accurately are willfully blind to) bribery by those local third parties and intermediaries operating on their behalf, making it difficult to establish the criminal liability of such companies in most jurisdictions. Notably, in the United States, vicarious liability makes this more straightforward.

In those cases where preferential treatment in business is explicitly sought by offering or giving incentives, it is clear bribery has occurred. Such transnational corporate bribery involves the bribing of foreign (public) officials by corporations operating in international business in order to win or maintain a business advantage (Lord 2014a, 2014b, 2015). Bribery can take different forms such as monetary payments but also nonmonetary favors such as trips, concert tickets, the provision of prostitutes, or the promise of employment, among other forms of inducement. Whilst blame is frequently placed on those companies offering or paying bribes, such inducements may also be extorted by local public officials engaging in “rent-seeking” for personal (rather than public) gain. In addition, so-called “facilitation payments” (i.e. small payments to expedite otherwise legal behaviors, such as providing permits or permission to travel through borders) vary in legality in different OECD countries. In the United States, for instance, such payments are permitted, but in the United Kingdom and the Netherlands they are criminalized.5 This creates further asymmetries as similar companies must operate in accordance with different laws.

As with most white-collar and corporate crimes, such transnational corporate bribery is highly elusive in the globalized economy as those illicit transactions mirror practices and relations that exist in otherwise legitimate business. In these terms, such bribery is “parasitical” on legitimate business practice (Benson and Simpson 2018), as bribes can be easily concealed behind the daily and routine activities of those actors involved. In addition, the corporate actors implicated at the “supply side” of bribery are often perceived to be respectable businesspersons; this combination of supposed virtue and actual vice has long been recognized as a key feature of much white-collar offending (see Ross 1907; Bonger 1916; Sutherland 1983). This in turn makes detection rare, and where it is detected, creates difficulties in the criminal courts when pursuing the criminal standard for prosecution.

A notable case of such transnational corporate bribery involved the UK’s largest arms manufacturer, BAE Systems (BAES). In 2010, BAES paid criminal fines in the United States (US$400 million) and the United Kingdom (£0.5 million) to settle charges related to failures in accounting and bookkeeping; these charges were – of more concern – in connection to allegations of bribing foreign public officials in Saudi Arabia, Tanzania, the Czech Republic, and Hungary to win or maintain arms contracts (for details see Department of Justice 2010). The bribery involved inflating prices to enable “kickbacks” to be paid in order to cover extravagant expenses, such as yachts, sports cars, a private jet, and cash payments for public officials with decision-making responsibilities. To transfer the funds for the bribes, BAES used offshore shell companies and bank accounts, as well as local agents and intermediaries, and – according to court documents – made a series of substantial payments (recorded as fees for “marketing advisors” or the provision of “support services”) via these “vehicles” and actors that were not sufficiently scrutinized. In one such instance, BAES established a shell company called Red Diamond Trading International Ltd. in the BVI in order to: (i) conceal its marketing advisor relationships (identity and payments); (ii) create obstacles for investigating authorities; (iii) circumvent laws prohibiting such relationships;
and (iv) assist advisors in avoiding tax liabilities for payments from BAES. Through Red Diamond, BAES made payments of more than £135 million despite being aware the funds would be used to influence contract decisions in foreign governments. In another instance, in one 20-month period, BAES paid over £8 million to a front company called Robert Lee International (RLI) created by BAES to entertain top Saudi officials with payments transferred via intermediary-owned bank accounts in Switzerland. Payments were also concealed through other front companies created by BAES. The case demonstrates many features of globalization – companies and accounts were created in different jurisdictions to facilitate business in other countries, innovative technologies enabled instantaneous movements of funds globally, and actors in different markets were highly interconnected.

A further complexity in the area of transnational corporate bribery is differential enforcement. Enforcement asymmetries exist as jurisdictions notably vary in how actively they enforce anti-bribery legislation. This raises questions over whether there is a fair playing field. For instance, corporations with some level of business in the United States (even holding a US bank account), but also the United Kingdom and now France, are liable for investigation, prosecution, and sanctioning given the extra-territorial reach of domestic laws. Furthermore, some key economic players fall outside of the OECD convention (such as Russia, China, and Brazil), yet these countries are direct competitors to US and European companies for international business. Such fragmented enforcement dynamics create tensions for governments between protecting economic expansion in times of social/economic change (e.g. “Brexit” in the United Kingdom) and appeasing actors such as intergovernmental and non-governmental organizations that promote international standards.

There are also notable information asymmetries between powerful corporate players on the one hand and investigative authorities on the other. Investigative authorities often largely depend on the cooperation and information of the perpetrators themselves to gain sufficient insight into the modus operandi of international bribery offenses. In the Netherlands, for example, all known cases of international bribery were reported to the authorities by the firms themselves (van Wingerde and Smid 2015). In return, firms have the power to negotiate the conditions under which their case is being handled, often resulting in out-of-court settlements. Given the elusiveness of such bribery (due to the nature of the offenses and offenders) and the difficulties of pursuing full criminal prosecution, alternative prevention and intervention measures could reduce actual and potential bribery (see Chapter 16). For instance, one possibility may be to focus on the “money component” of bribery – the finances required for and generated from bribery – as this can plausibly offer a situational route to intervention (Lord and Levi 2017).

Environmental Crime in the Waste Industry

Between the evening of August 19, 2006, and the morning of August 20, 2006, over 500 tons of toxic waste were unloaded from a ship, the Probo Koala, and dumped in multiple locations throughout Abidjan, capital of Ivory Coast (van Wingerde 2015). Even though the direct causality is still contested, numerous deaths were reported and over 100,000 people sought medical attention. The multinational firm Trafalgar was the owner of the waste. The Probo Koala case is an illustrative example demonstrating the criminogenic and harmful consequences of asymmetries in environmental regulation and enforcement and cross-border activities of multinational firms dealing with waste.
In nearly every industrialized country, waste companies fulfill important public tasks. The collection, transportation, treatment, and processing of waste are directly associated with hygiene, environmental protection, and the state of our quality of life. Given these public interests, the waste market has traditionally been subject to a high degree of regulation and close involvement by governments. In the Netherlands, for instance, most waste facilities were owned and operated by municipalities (Daele et al. 2007). However, the waste market has changed considerably over the past decades. Among its key developments are privatization, merger activity, expansions, and internationalization. As a result, the waste industry became a highly competitive and capital-intensive industry. In other words, waste management has become “big business” and the market is dominated by large and powerful commercial corporations that increasingly operate across national borders.

At the same time, the waste industry has often been characterized as a highly crimino-genic industry, vulnerable to environmental crime (Szasz 1986; Huisman 2016). First, this concerns the waste product itself. Waste is a product that has a negative value attached to it – i.e. it is something to get rid of. This means that waste has an inverse incentive structure: rather than paying for it when you collect it (as with other “normal” products), you pay for it when you want to get rid of it. So, waste companies already make money by simply collecting waste before having to invest in expensive means of disposal. This inverse incentive structure thus creates an incentive for firms to “shop” for the best deal in waste disposal, which may include the illegal dumping of waste in countries where environmental monitoring and enforcement are less strict or absent. In the Probo Koala case, for example, Trafigura had sought to dispose of the waste in Amsterdam first. However, since Trafigura and the disposal company could not agree on a price for the disposal, Trafigura decided to load the waste back into the Probo Koala and to transport it to Ivory Coast. Ultimately, a local company “disposed” of it (as described above) for a substantially smaller fee than in Amsterdam (van Wingerde 2015). Furthermore, waste has been characterized as a product of low integrity. On the one hand, this means that it is a product which is highly vulnerable for manipulation by blending or mixing it with other products such as oil (van Erp et al. 2016). Yet, this also makes it difficult to assess the composition of the waste, the level of toxicity, and thus the causality between the waste and possible environmental and health consequences. Even today, Trafigura contests that the waste from the Probo Koala was the cause of the health problems of the people in Ivory Coast. On the other hand, waste is a product that is very difficult to define. In most Western countries it is a product that we want to get rid of. However, what is considered waste in one country can be perfectly useful in other countries where there is a market for secondhand goods, as the global trade in e-waste demonstrates (Gibbs et al. 2010; van Erp and Huisman 2010; Bisschop 2012). This ambiguity allows waste to be transported under the guise of reusable goods, often to countries that lack the environmentally sound facilities to handle these goods that contain numerous hazardous substances like lead and arsenic.

Second, the industry in itself also has some characteristics that are considered to be crimino-genic. The rapid growth and globalization of the industry have created complex global economic supply chains in which many different actors are involved in various countries, ranging from collection and transportation of the waste to treatment and processing. As mentioned before, these interdependencies make it possible that rule-breaking by one actor is not noticed by the others and it creates opportunities to rationalize harmful activities. Furthermore, this contributes to difficulties for supervision and enforcement, particularly regarding the decision on who is ultimately culpable and which country and authority has
jurisdiction for enforcement. Again in the Probo Koala case, the ship was owned by a Greek firm; it was registered in Panama; it was chartered by a Dutch-based firm with operating headquarters in London; and the ship sailed from Amsterdam to Estonia, Nigeria, and Ivory Coast where the waste was eventually dumped by a local firm (van Wingerde 2015, p. 267). Trafigura has always denied responsibility and shifted the blame to: the Dutch authorities who officially gave the ship permission to leave Amsterdam; the local company for the waste dump, by saying that the company was fully informed about the nature of the waste and was fully licensed to properly handle the waste; and the local authorities in Ivory Coast, by saying that Abidjan is one of the most sophisticated ports in West Africa (van Wingerde 2015, p. 267).

The Probo Koala case is a notorious example of how firms use legal and enforcement asymmetries and complexities in markets to trade waste to other parts of the world where the facilities to dispose of and treat harmful substances are less developed. But this case is also an example of how economic and power asymmetries hinder the enforcement and prosecution of environmental crimes and why legal sanctions often lack impact. Established in 1993, Trafigura is one of the world’s largest independent commodity trading companies. The firm is privately owned and it has 62 offices in 35 countries all around the globe, almost 4000 employees worldwide, and in 2017, it ranked 32nd in the global Fortune 500 ranking. In sum, this is one of the largest companies in the world. Not only does this make the company more powerful than certain governments, its size and resources also allow it to fight allegations effectively and to easily overcome the financial consequences that official sanctions may have. For instance, in 2006 (the year of the waste dump) Trafigura’s turnover was US$45 billion, while the Ivory Coast (the country affected by the waste dump) had a gross national product of approximately US$18 billion. Moreover, in the aftermath of the scandal, a criminal case was initiated in the Netherlands against Trafigura, its CEO, and one of its employees. Ultimately, the company was convicted in the Netherlands to pay a fine of 1 million euros in 2011. Yet, in the same year, the firm was financially very successful with a turnover of over US$120 billion and a net profit of close to US$ 1 billion. In other words, official sanctions hardly impact these big corporate giants. As evidenced elsewhere, over the past few years Trafigura has fought tooth and nail against any allegations of wrongdoing and arguably was very successful in doing so – for example, by arguing that the court case in the Netherlands had nothing to do with the dumping of the waste in Abidjan as well as by threatening critical voices with court cases (van Wingerde 2015). So-called Strategic Lawsuits Against Public Participation (SLAPP-suits) are increasingly being used to silence legitimate protest (Pring and Canan 1996; Greenpeace 2018).

On the face of it, these multinational companies might literally be “too big to deter” (Garrett 2014). Yet, it may also very well be that times are changing. The Probo Koala incident was not the first time that Trafigura was under scrutiny and, by itself, the company would make a perfect case study of the three themes discussed in this chapter (environmental crime, bribery, and the misuse of corporate vehicles). As it happens, the company was mentioned in the revelations of the Panama and Paradise Papers with regard to corruption and bribery in Angola through setting up and managing several companies. These revelations have contributed to increased public awareness and concern over the actions of multinational corporations and the growing inequality that is the result of such actions. While effective solutions are far from reality in most countries, transparency about firms’ involvements, activities, and harms is one step in the right direction.
Concluding Thoughts

One of the most significant concerns in the study of white-collar and corporate crime is how to effectively influence the behavior of powerful elites and business firms operating across the globe. We have discussed three case studies – misuse of corporate vehicles, transnational bribery, and environmental crime in the waste industry – that all demonstrate the harmful consequences of doing business in a globalized economy. On the one hand, one could argue that these case studies present nothing new. Criminological research has long recognized how asymmetries in the political, legal, economic, and cultural sphere facilitate corporate wrongdoing and make the prevention of these acts (and full enforcement of the laws against them) challenging. In this sense, these case studies reinforce these issues. On the other hand, these case studies demonstrate that corporate wrongdoing increasingly takes place in highly advanced, increasingly technological, and complex markets. In this way, our case studies raise the question of how different types of crime or harmful practices are interconnected. For example, the Probo Koala incident highlights that corporations engage in wrongdoing across regulatory contexts. To what extent is corporate crime consistent across different contexts? What factors influence this consistency, and what does this mean for regulation, enforcement, and the information exchange between regulatory authorities and supervisory bodies?

This chapter has focused on corporate crime as a specific subcategory of white-collar crime. Needless to say, there are other types of organizations that could engage in illegal or harmful practices. What type of organizations have been neglected thus far in the study of corporate crime and would warrant further study? For example, while the Paradise Papers uncovered that over 100 US universities and colleges used offshore jurisdictions to hide their money and to help minimize paying taxes, universities and colleges have largely been overlooked in discussions on corporate crime. Furthermore, over the past few years we have seen many examples in which the power of multinational business has been counterbalanced by the resourcefulness, investigative, and communicative powers of non-governmental organizations (NGOs). However, to some extent, one could argue that some of these NGOs share many of the characteristics of the large complex multinationals that they have been fighting against. Have these organizations also become as bureaucratic and hard to steer as multinational businesses? As one example, in 2014 the director of Greenpeace International came under scrutiny for commuting from his home in Luxembourg to his work in Amsterdam by airplane.

Finally, this chapter also demonstrates that studies of regulation and enforcement need to adopt a global angle. Traditionally, the state is seen as the key actor in regulation and enforcement of business behavior. Over the past decade or so, governance has been increasingly emerging as a network of different actors – including governments, businesses, civil society organizations such as NGOs, local communities, labor and trade organizations, and the media across many different countries – all of which play a role in the regulation and enforcement of business behavior and in the prevention of corporate and white-collar crime. One of the ways in which this emergence of networked governance is being manifested is in so-called multi-stakeholder initiatives. Despite the broad acceptance of these multi-stakeholder initiatives in the literature, little is known about the dynamics in which these initiatives develop and effectively regulate white-collar and corporate crime. How do these initiatives develop? How do they operate? How effective are these initiatives in pressurizing firms to reduce the adverse consequences of their activities? What kind of legal, practical, and social conditions are necessary to make these initiatives operate effectively?
And – given the fact that only a limited number of actors can play an active role in these initiatives – how do we need to conceptualize these initiatives theoretically and ethically? These are the questions that should interest future students of white-collar and corporate crime – ourselves among them.

Notes

1 As many of the behaviors that we focus on in this chapter are not necessarily illegal, the term “criminogenic” may not be very accurate. Nonetheless, we use it here to reflect a tendency toward deviancy or illegality.

2 Yet, interestingly, Lewis also shows that geographical proximity allows data to travel on the server quicker if it is closer to the stock markets. So whilst decision-making is all instantaneous, fractional advantages can be gained by being closer.

3 https://www.icij.org/investigations/panama-papers.


5 However, neither the Netherlands nor the United Kingdom actively prosecute facilitation payments due to a lack of enforcement capacity (van Wingerde and Smid 2015; Lord 2015).


8 This essentially was true. The Dutch court case revolved around the highly technical question of which regulation was applicable to the discharging and reloading of the waste in Amsterdam and whether or not the waste was allowed to be transported out of the European Union.


References


Controlling Corporate Crimes in Times of De‐regulation and Re‐regulation

Steven Bittle and Jasmine Hébert

Introduction

A transnational corporation (TNC) spills hundreds of gallons of toxic sludge into a river, killing untold numbers of fish and wildlife and contaminating the town's drinking water source; a board cuts corners on production costs, resulting in an explosion that kills several workers and injures dozens more; senior executives from several different companies conspire to fix the prices of their competing products and subsequently realize record profits; company insiders fraudulently inflate a company's earnings to drive up share prices – the company eventually becomes insolvent and declares bankruptcy, leaving investors with worthless stocks and thousands of workers without jobs; a popular TNC gives hundreds and thousands of dollars to children's charities while at the same time relying on child labor in its supply chains; and a large financial institution aggressively lobbies against new regulations aimed at the sort of risky financial products that had previously resulted in massively fraudulent investment schemes.

These and countless other examples of corporate harm and wrongdoing reveal a troubling reality about the for‐profit, limited liability corporation: it routinely generates massive social, economic, and environmental harms (Barak 2017; Friedrichs 2010; Tombs and Whyte 2015). And yet despite the frequency and seriousness of these incidents, Western capitalist states – countries in which many large TNCs originate and/or are domiciled – appear incapable of holding (or unwilling to hold) corporations and senior corporate executives to account for their wrongdoing. Outside the symbolic or token sentencing of some executives following high‐profile cases of corporate malfeasance, such as the meting out of jail terms following the US Savings and Loan scandal in the 1980s or the “Enronitis” punishments of the early 2000s (Barak 2017), the reality is that “when corporate actors commit crimes they are rarely charged; if charged, they are rarely convicted; and if convicted, they are rarely punished severely” (Glasbeek 2002, p. 118).

This chapter explores why corporations and corporate executives produce so much harm and devastation with virtual impunity. Why do states regularly fail to discipline corporations in the face of such serious harms and crimes? In addressing these and related
questions, the chapter explores, among other factors, the impact of neoliberalism for the regulation and control of corporate crime. Of particular concern are the conditions of modern capitalism that make it possible for corporations to avoid criminal justice scrutiny; how corporations are lionized as inherently rational and benevolent; and how academic knowledge claims matter when it comes to scrutinizing crimes of the powerful. In so doing we draw insight from David Whyte's (2014) notion of state “regimes of permission” – the “infrastructure” that allows corporate harm and wrongdoing to persist and for corporations and corporate actors to evade legal scrutiny. From our perspective, we must interrogate these conditions to explicate the limits of the state in regulating corporate crime and to better challenge the underlying factors that make corporate crime possible and probable.

The chapter contains five sections. The first section briefly explores definitional issues within the corporate crime literature and challenges us to think in structural terms. Section two explores the criminogenic corporation through the lens of capitalist greed and sacrifice, demonstrating how capitalism combines with corporate personhood and limited liability to create conditions immanent to crime and misconduct. Section three examines the particularities of law and the role it plays in (re)producing corporate crime. Section four focuses on the dominant regulatory ideology (or “regulatory orthodoxy”) observed under neoliberal regimes and how this approach serves to downplay efforts to regulate corporate offending. This section also considers the dominance of corporate social responsibility (CSR), despite little empirical evidence supporting its use and effectiveness. We conclude by advocating for strategies that challenge the increasingly symbiotic relationship between states and corporations (Tombs and Whyte 2015) and other related conditions of the criminogenic corporation (Glasbeek 2002, 2017).

What Is Corporate Crime?

Today’s world of online social networks and 24-hour media bombard us with images of “street” crime. The perils of drug dealers, gangs, gun shootings, and terrorism provide a steady diet of media messaging about the “real” dangers lurking around every street corner. Without minimizing the seriousness of these crimes, particularly for marginalized and racialized groups who are disproportionately impacted as both victims and as offenders (Bernstein et al. 2009; Gordon 2010), these are highly distorted images. While we are told to fear violent street crime, the truth is that most people have a greater chance of being victimized by corporate crime (Snider 2015; Tombs and Whyte 2015). As David Friedrichs (2010, p. 50) notes, the “direct” economic costs of white-collar crime “dwarf” those associated with “conventional crime,” with estimates ranging from 10 to 50 times greater costs associated with the former.

Despite the seriousness of corporate crime, debates exist within some political and academic circles about whether elite offenders are “true” criminals. As Garry Gray (2006, p. 877) argues, corporate offenders are viewed differently from “malicious street criminals” because they are seen as responsible social actors engaging in productive economic activities, and their harms are seen as regrettable but often unavoidable “accidents.” This viewpoint is partly because corporations dominate contemporary capitalist society (Tombs and Whyte 2015). For instance, corporations routinely track our consumption patterns, taking advantage of this information to cater their sales messaging and remind us of all the “good” that they do. Furthermore, not only do corporations influence what is reported in the news, but media organizations are corporations themselves and thus may be more inclined to portray business in a positive light. Referring to a “synoptic” or “viewer” society,
Tombs and Whyte (2015) argue that “… the corporate presence in our lives … significantly shapes how we think about corporations and makes the corporation appear to us as ‘natural’ and a permanent social institution.” We revisit the ascendency of corporate power later in this chapter. For now we simply note that, while street criminals are seen as calculating, dangerous, and deserving of serious punishment, corporations are generally viewed as benevolent and any harms they cause are “unintentional” or the result of “bad apples” (Barak 2017; Snider 2015).

The fact that corporations are not seen as “criminal” does not mean society has no understanding of the abuse of corporate power. The flip side of 24-hour news cycles, which do not always fixate on street crimes and thus do occasionally report on crimes of the powerful, is that many people are now aware of the serious harms caused by corporations (Snider 2015). For instance, the BP oil disaster in the Gulf of Mexico in 2010, killing 11 workers and destroying the aquatic environment along the US Louisiana coastline (Ruggiero and South 2010), produced media and public awareness about the perils of under-regulated capitalism. And even though no senior executive was held to account for the 2007/2008 global financial crisis (Barak 2017) – where world gross domestic product (GDP) declined 6%, $25 trillion was obliterated overnight, hundreds of thousands of people lost their jobs and pensions, and the greatest economic downturn since the Great Depression ensued (Will et al. 2013) – it did give rise to the Occupy Wall Street movement and growing awareness of massive inequalities of wealth (Barak 2017). Likewise, resistance to the Dakota Access Pipeline in the United States indicated growing concerns with environmental destruction and reminded us that state and corporate power is far from absolute (Bradshaw 2018).

At their core, the different conceptions of corporate malfeasance raise fundamental definitional issues. In this sense, academic knowledge claims about corporate offending and the language used to characterize corporate crime matter, importantly shaping our thinking and actions (Ericson and Haggerty 1997). We do not have space here for a protracted discussion of the various definitions of corporate crime. However, while the literature contains different ways to describe crimes committed by corporations and corporate actors (e.g. elite deviance, crimes of the powerful, economic crimes, occupational crime, and safety crimes), important distinctions exist between the two most commonly used terms: white-collar crime and corporate crime. Edwin Sutherland, who pioneered the term “white-collar crime” in the 1940s, defined it as: “crime committed by a person of respectability and high social status in the course of his occupation” (Sutherland 1949, p. 9). Sutherland’s groundbreaking work challenged the idea that crime was a distinctly lower-class phenomenon, pointing to how businessmen and professionals routinely committed serious harm and wrongdoing. While not undermining Sutherland’s contributions, some corporate crime scholars argue that his definition anthropomorphizes the corporation, meaning it still conceives corporate offending as a product of individual actions or decisions to break the law, therein ignoring broader structural concerns (Pearce and Tombs 1998; Slapper and Tombs 1999, p. 1; Tombs and Whyte 2017). These scholars direct our attention to the organizational and socio-economic factors of corporate crime, employing definitions that transcend humanist accounts to conceive corporate offending as a result of “structural irresponsibility” (Tombs and Whyte 2017). Accordingly, the modern corporation is hardwired to incessantly seek maximal profits – the corporation as amoral calculator – rendering it inherently criminogenic (Glasbeek 2017). Taking this position does not negate the role of individuals, or claim that individuals are without fault, but that structural forces influence actions (Glasbeek 2002; Pearce and Tombs 1998).
Relying on a structural perspective encourages us to consider organizational or political-economic factors associated with corporate crime. Take, for instance, the argument that corporate crime is a form of structural violence: “injury that is not immediately attributable to an acting subject but is built into the structure and manifests itself as inequality of power” (Winter 2012, p. 195). Contrary to individualist understandings of violence, structural violence emanates from “policies that have occurred and accumulated over a long period of time and may involve many decision-making bodies” (Chasin 2004, p. 16). From this we can ask if there is something peculiar about the modern corporation's structure – its very modus operandi – that demands critical scrutiny. We outline these factors in the sections that follow, beginning with the concept of the criminogenic corporation.

The Criminogenic Corporation: Capitalist Greed, Corporate Personhood, and Limited Liability

Capitalist Greed and Sacrifice

Corporate crime scholar Harry Glasbeek has written extensively about the modern corporation's criminogenic roots (2002, 2007, 2013, 2017, 2018; also see Pearce and Tombs 1998; Tombs and Whyte 2015). For Glasbeek, capitalism's justification of the pursuit of self-interests, combined with corporate personhood and limited liability, renders the corporation inherently criminogenic. He highlights how capitalism is predicated on the idea that people always believe that “more is better than less,” endorsed by the fact that we tend to value the accumulation of wealth at almost any cost (Glasbeek 2002, p. 15).

Capitalism, in short, justifies greed (Barak 2017; Glasbeek 2017, 2018) and the corporation has become the dominant vehicle in the pursuit of that greed (Glasbeek 2002, p. 19). While capitalism does not cause corporate crime (crimes of the powerful do exist in non-capitalist countries), the unabashed promotion of individual self-interest does sow the seeds for the abuse of power. In Adam Smith's classic formulation, “It is not from the benevolence of the butcher, the brewer, or the baker that we expect our dinner, but from their regard to their own self-interest.” The capitalist market thus lionizes greed and inequality, underpinned by (erroneous) beliefs that this produces the greatest economic efficiency and that everyone gets what he or she “deserves” based on their individual contributions to the market (Glasbeek 2002, p. 19).

We can think further about this structural motivation by considering how the system of capitalism contains elements of sacrifice – the idea that certain amounts of suffering must happen en route to realizing a “greater good.” The original notion of sacrifice is a religious act with moral value (Hubert and Mauss 1964), the “necessary passage through suffering” that leads to a supreme truth (Keenan 2005, p. 1). This frames sacrifice as an ethical action that one is obliged to do, and which offers a benefit greater than the value of any one person. The purpose or motive of the sacrifice is as an inevitable and necessary gift to a centralized power that ensures a common good or prosperity (Derrida 1995; Keenan 2005). In contemporary industrial societies, the capitalist way of life is seen as sacred (Datta and MacDonald 2011, p. 78). The spirit of modern capitalism is often hailed as “involving rational conduct in the form of disciplined work, careful calculation, and a willingness to sacrifice short-term gains for long-term gains” (Keenan 2005, p. 11). We live in a society whose dedication to capital can be seen in its social organization, its ideologies, its education system, its
socialization practices, and more. It is one characterized by the worship of private property and of individual “freedom” (Pearce 2010). This, in part, is due to dominant ideologies that exemplify capitalism as “the source of everything that is good, favorable, and legitimate” (Pearce 2003, p. 56). Consequently, possession, consumption, and sovereignty become sacralized (Bell 2002, p. 343).

The notion of sacrifice raises two points regarding the criminogenic corporation. First, as a prominent vehicle of sacrifice, the modern corporation is expected to take risks to remain competitive and innovative. Second, when the risks that companies take cause, for instance, injury, death, or environmental destruction, the resulting harms are often explained away as unfortunate but inevitable sacrifices – the collateral consequences of capitalism’s “progress.” Unfortunately, many sacrificial systems “make a point of minimizing their own violence, excusing it, sometimes even apologizing to victims before immolating them” (Girard 2011, p. 6). In all, the relationship between capitalism and sacrifice further diminishes efforts to regulate and hold corporate actors to account, because their crimes are sacralized – they are not only legitimized, but successfully claimed as a universal good, more important than the harm inflicted on the victim.

**Limited Liability and Corporate Personhood**

In addition to capitalist greed and sacrifice we need to understand how the corporation is “legally built” to generate harm and misery (Glasbeek 2002; Tombs and Whyte 2015). The modern corporation is a “creature of statute” with its own “legal existence” that is separate from those who invest in the company (Yalden et al. 2008, p. 133). In essence, it is a natural, independent person, commonly referred to as corporate personhood (Tombs and Whyte 2017), regardless of whether one or more individuals own shares in the company (Yalden et al. 2008, p. 135).

A key element of the corporation is limited liability in which the primary risk for the individual investor is the money that they provide to the venture (Glasbeek 2002, Snider 1993, 2015). Rapid economic development in the nineteenth century resulted in greater demands across the business world to pool economic resources (Clarke 2004, p. 2) to encourage new businesses and generate capital (Snider 1993, p. 22). Despite considerable success, there was growing hesitation on the part of investors who were concerned about what would happen with their “personal fortunes” in “unincorporated joint stock companies with unlimited liability” (Clarke 2004, p. 2). It was within this context that pressures mounted for the state to recognize the limited liability corporation.

From a “market capitalism perspective,” the limited liability corporation represents a tremendous outcome (Glasbeek 2002, p. 9). It facilitates the pooling of resources for creating economically and socially productive ventures. At the same time, those who invest in the corporation have few risks beyond their monetary contribution, which in turn stimulates economic growth by encouraging as many investors as possible to participate in the marketplace. Although some investors risk more wealth than others, there is an overall incentive to spread individual contributions across different firms to reduce risks (Easterbrook and Fischel 1985). In addition, since most investors are involved in many different ventures, it is neither efficient nor desirable for them to be actively involved in monitoring the corporation, something that is trusted to those with major investments in the firm and creditors whose interests are integral to the bottom line (Yalden et al. 2008, p. 153).
Some observers question the limited liability corporation's division between owners (shareholders) and those managing the enterprise (Clarke 2004, p. 2). For instance, many economists, including Adam Smith (1937, p. 700), worried about potential inefficiencies given that managers do not have the same economic interests as owners, and therefore lack incentive to watch over the operation with the same “anxious vigilance” (cf. Clarke 2004, pp. 2–3). Berle and Means (1967) labeled this a fundamental shift in the structure of corporate ownership, effectively surrendering the right to operate the organization solely with ownership’s interests in mind (Berle and Means 1967, p. 312; also see Chandler 1977; Clarke 2004, pp. 3–4). For them, the “visible hand of management” effectively replaced the invisible hand of market forces (Clarke 2004, p. 33).

Most important for our purposes is that although limited liability was historically a privilege bestowed by the state, it soon turned into a right once governments and investors realized the potential for corporations to generate significant revenues (Bakan 2004; Glasbeek 2002). In this respect, the corporation’s main motivation evolved into profit maximization for shareholders (Clarke 2004; Glasbeek 2002). While this does not mean corporations always or necessarily act as amoral calculators, the bottom line nevertheless significantly informs decisions made by corporate boards and senior executives (Pearce and Tombs 1998). As a result, decisions about how to run the corporation are not always congruent with ensuring worker safety, respecting the environment, or following legal financial practices. Meanwhile, the company’s shareholders, most of whom are far removed from the corporation’s inner workings, await profits without worrying about the harms that the corporation might cause along the way.

Our point in questioning the criminogenic tendencies of the modern corporation – including dangerous modes of production and the inherently competitive and risky nature of business – is to reveal its structural conditions, or what Whyte (2014) might refer to as “regimes of permission.” Self-interest of the decision-makers, the capitalist goal of profit maximization, and the structure of the corporation itself all come together to produce widespread crime and violence (Chasin 2004, p. 80; also see Barak 2017; Glasbeek 2002, 2017; Tombs and Whyte 2015). Not only does the legal structure of the corporation shield actors from accountability for their harms, but this organizational culture can promote further harmful acts by creating distance between perpetrators and victims. This distance is physical but also social and temporal (Chasin 2004); not only do elites not identify with their victims, but there is usually a significant time lag between when decisions are made in boardrooms and when people get injured or killed (see also Chapter 5, this volume).

Law and the Reproduction of Corporate Harm

In addition to understanding how the corporation is a “legally structured site of irresponsibility” (Glasbeek 2007), we need to examine additional particularities of law in the (re)production of corporate harm and impunity. As Laureen Snider (2014, p. 757) argues, “to study corporate crime is to realize that equally harmful acts are not equally punished.” In this section we consider how law is ill-fitted for disciplining the corporation and the substantial effort directed at either reforming existing criminal law in response to corporate offending and/or responding through a separate regulatory law framework (Tombs and Whyte 2007).

We can understand the differential treatment of corporate crime by considering that the rule of law is largely mythical, meaning that law is anything but neutral and fair, something
which is acutely evident when exploring the differences between law-as-legislation and law-as-practice (Chunn and Lacombe 2000, p. 11). As Naffine (1990, p. 24) notes, “the official version of law – what the legal world would have us believe about itself – is that it is an impartial, neutral and objective system for resolving social conflict” (as quoted in Comack 2014, p. 21). In reality, however, Western law has its roots in gendered, racialized, and capitalist experiences, most notably the liberal belief that law should protect the “rights and freedoms of the individual” (Comack 2014, p. 25 – emphasis in original). The fact that the corporation is its own individual in the eyes of the law and yet does not exist as a “flesh and blood” person (Glasbeek 2002) creates a troubling scenario for disciplining the corporation through law.

Law was formulated in a particular historical epoch and “derived its characteristic shape” from fundamental features of the social relations of that time (Norrie 2001, p. 8). Law, for instance, emerged historically alongside free market capitalism, meaning that legal thought has strong affinities with the advent of the commodity form and with forging the very conditions necessary for capital (re)production (Alvesalo-Kuusi et al. 2018; Woodiwiss 1990). In essence, the logic of capital is embedded in law and legal reasoning, generating legal abstractions like the “reasonable man” and “due process” that are vital for the exchange of commodities and for legal subjects to “freely” and “equally” enter into contractual relations for market exchange (Milovanovic 2011; Woodiwiss 1990).

Law’s fixation with individualized forms of intent is particularly relevant for our purposes. For instance, in their dismantling of the modern corporation, Tombs and Whyte (2015) question law’s hierarchy in which the most serious criminal offense is intentional or planned murder. Corporate violence, they continue, rarely fits this individualized model of intent and is instead the by-product of decision-making within complex organizations. Within this context, the corporate killer will rarely be seen in the same light as the intentional killer, regardless of whether individuals within the corporation, particularly the senior officials who ultimately decide how companies are run, make reckless and (in some instances) seemingly intentional decisions resulting in death – what Jeffery Reiman (2004) refers to as “absentee killers.” Law’s hierarchy is thus seen as a natural, legal outcome and not a social product that obscures the conditions of the criminogenic corporation.

Further to law’s hierarchy, there is incongruence between the nature of corporate offending and the practices of law. As the corporation expanded significantly throughout the nineteenth and twentieth century, it pushed the limits of production in the pursuit of profit, bringing with it frequent and serious injury and death in the workplace. This growing violence increased demands for the state to introduce new laws to discipline corporations and corporate actors (Slapper and Tombs 1999, p. 25). However, corporations were generally successful in lobbying against reforms they perceived as overly stringent. Underpinning this resistance was the belief that corporations were private property, and therefore what went on within a company was the owner’s private business. Nevertheless, as time passed there was growing recognition of the social and economic damages that corporations were capable of inflicting (Glasbeek 2002). It was therefore during the mid-1900s that various efforts emerged to develop strategies for holding corporations criminally accountable for their harmful acts.

In the United Kingdom, for instance, a series of cases in the 1940s first introduced a legal principle referred to as the identification doctrine, which attempted to assign responsibility to the corporation by equating the mens rea of certain employees – the “controlling officer,” the individual who effectively acted as the company – with that of the company itself (Slapper and Tombs 1999, pp. 29–30). The problem, however, was (and is) the misalignment between the principles of criminal law and the nature of corporate offending.
instance, Slapper and Tombs (1999, p. 31) note that in cases involving manslaughter, courts found it difficult to convict corporations given the distribution of responsibility throughout the corporate body, which made it difficult to single out one responsible individual. Since the identification doctrine only applied to “high-level managers with decision-making authority,” and since lower-level managers were often the people interpreting company policies, tracing responsibility up to senior management frequently proved difficult (Cahill and Cahill 1999). While the identification doctrine provided the legal groundwork to hold corporations criminally accountable, it remains commonplace for corporations to avoid responsibility for their harmful acts (Glasbeek 2002, p. 130; Pearce and Tombs 1998; Snider 1993).

The challenges of using traditional criminal law to discipline corporations continue today. In recent years, as corporations continue to kill with relative impunity, further calls have surfaced to reform the criminal law to hold corporations to account for their violence. In Canada and the United Kingdom, for instance, a series of high-profile corporate disasters where lives were lost as a result of corporate negligence and for which no one was held to account resulted in changes to the law. Two prominent cases provided watershed moments: (i) the 1992 underground explosion at the Westray mine in Canada that killed 26 miners (Bittle 2012; Glasbeek 2002) and (ii) the 1987 sinking of the UK-based sea ferry the Herald of Free Enterprise outside the Belgian port of Zeebrugge, killing 193 passengers and crew (Tombs and Whyte 2007). As a result of these and other tragic incidents, along with long-term public pressure, the Canadian government enacted corporate criminal liability (CCL) legislation in 2004 and the UK government introduced the Corporate Manslaughter and Corporate Homicide Act (CMCHA) in 2007. Each law was intended to make it easier to hold corporations accountable for their violent offenses.

The story of what happened to these laws is beyond the scope of this chapter (see Almond 2013; Bittle 2012; Glasbeek 2013; Gobert 2008; Slapper 2013; Tombs 2016). For our purposes, however, three issues demonstrate the ongoing problems of applying criminal law to corporate offending. First, as is commonplace when states contemplate disciplining corporations (Snider 2015), corporate power influenced both law reform scenarios. Whether it was organized business in the United Kingdom expressing concerns with the idea of criminal prosecution for workplace fatalities (Tombs 2013), or some legislators not wanting to be seen as overly harsh in their treatment of corporations (Bittle 2012), there was a general concern with the prospects of criminalizing the corporation. This is a drastically different scenario from what we normally see when legislators contemplate new laws dealing with violent street criminals (Bittle and Snider 2015; Tombs 2016). Second, in both countries initial demands to change the law included measures to hold senior executives and boards to account for workplace fatalities. However, concerns with whether it was possible, or even fair, to prove the intent (mens rea) of individuals who were not “directly” involved in an incident meant that both laws ultimately criminalize only the corporation (i.e. the corporate person) (Bittle 2012; Tombs 2016). Finally, both Canada’s and the United Kingdom’s laws have failed to live up to expectations in terms of their enforcement, with only a handful of convictions/guilty pleas in Canada and just over 20 successful proceedings in the United Kingdom. What is more, consistent with the historical record on policing corporate offending (Snider 2015), only the smallest and weakest companies have faced criminal justice scrutiny (Glasbeek 2013; Tombs 2013).

This poor enforcement record is, in part, related to a lack of education about the laws throughout the criminal justice system (or perhaps a lack of political will to enforce the laws), but it also raises questions about the structure of law and law enforcement. In addition to law’s fixation with the individual offender, criminal justice officials are not immune to
societal attitudes that corporations are inherently good and law-abiding. In this sense, as Gary Slapper (2013, p. 93) points out, “[i]n the vast majority of [corporate killing] cases … the officers investigating are detectives for whom such work represents a considerable departure from their normal responsibilities of investigating serious personal crime.” All this is not to suggest that changes to Canada’s and the United Kingdom’s laws were meaningless – they do represent official acknowledgement that corporations can kill – or deny that different decisions could have been (and could be) made about the law’s scope and enforcement. It does, however, remind us that powerful corporate actors face a different brand of justice than what is commonly portrayed through liberal ideals about the rule of law. The next section considers another state “regime of permission” (Whyte 2014) that allows for this avoidance of justice: the dominance of non-criminal regulations in response to corporate offending.

**Regulation, Neoliberalism, and Regulatory “Orthodoxy”**

Regulatory Justice

In juxtaposition to efforts at amending the criminal law stand various and dominant forms of non-criminal regulations. Regulatory justice refers generally to rules intended to deal with companies that “fail to comply” with certain standards relating to such things as food safety, workplace safety, and environmental practices (Drake et al. 2010, p. 10). It emphasizes persuasion and education as a means of ensuring that companies comply with law, with punishment used only as a last resort (Simpson 2002, p. 93). It is predicated on the belief that individuals are “reasonable, of good faith, and motivated to heed advice” (Braithwaite 1989, p. 131), and that corporations and corporate actors are, with some exceptions, inherently good and law-abiding (Pearce and Tombs 1990, 1998; Tombs and Whyte 2007). Regulatory justice typically includes the legal standard of strict liability, which “imputes liability to a person regardless of their culpability” (Tombs and Whyte 2015, p. 93). Strict liability has roots in British Factory Acts introduced in the first half of the 1800s to address increasingly deteriorating and dangerous working conditions in industrial factories (Carson 1980). Originally intended as criminal offenses, these laws were gradually interpreted and enforced in ways that removed the requirement to prove the guilty mind of factory owners (Alvesalo-Kuusi and Tombs 2015; Carson 1980). Consequently, strict liability effectively “conventionalized” factory crimes, differentiating them from “real” crimes (Alvesalo-Kuusi and Tombs 2015, p. 1201).

When it comes to contemporary regulation scholarship and policies, John Braithwaite’s work factors prominently (Ayres and Braithwaite 1992, Braithwaite 1982, 1989, 2005; Braithwaite and Fisse 1985, 1987, 1990). Based on rational actor theory, Braithwaite’s pyramid of regulation advocates persuasion first, providing corporations with the opportunity to learn from their mistakes and take the corrective action. Such an approach, it is argued, avoids the assumption that all corporations are potential offenders; it reduces the defensiveness and resistance of corporations by turning to education and bargaining instead of punishment; and it does not assume that criminal law is the hallmark of a punitive approach (Braithwaite 1989, pp. 132–133; for summaries see Haines 1997; Rorie 2015).

For corporate crime scholars who view private, for-profit corporations as inherently criminogenic (Glasbeek 2017; Pearce and Tombs 1998; Tombs and Whyte 2015), compliance models of regulation are problematic. In addition to pointing out that corporations will not
self-regulate in the absence of external pressures (Slapper and Tombs 1999, p. 184), they note that compliance approaches confound the way things are with the way things should be. As Pearce and Tombs (1990, p. 429 – emphasis in original) argue, “their work is limited because the legitimacy of a capitalist system and the illegitimacy of its being policed are in fact starting-points for their analysis.” In essence, while cooperative models tout flexibility as consistent with market efficiency, in the end they work to the advantage of powerful corporate interests (Noble 1995, pp. 271–272), ignoring how the organizational imperative to accumulate maximal profits can and does take precedence over compliance with the law (Tombs and Whyte 2007, p. 157).

As we shall see below, the “regulatory orthodoxy” stemming from the compliance scholarship coheres well with neoliberal commitments to minimal state intervention in the private accumulation of wealth (Tombs 2016). Even if compliance scholars are concerned with deterring corporate harm and wrongdoing, they share an underlying commitment with the neoliberal idea that business can self-regulate (Tombs 2016; Tombs and Whyte 2013). The result, whether or not intended, is that corporations are afforded the privilege of helping design and implement the measures that prevent them from breaking the law and the “disciplinary” measures when laws are broken (Tombs 2016). In official terms, overly burdensome regulations are therefore unnecessary given that market forces will prevail and corporations that do not act responsibly will be naturally punished by consumers who choose not to purchase their products or by a labor force unwilling to work for them (Tombs 2016). As Tombs and Whyte (2015, p. 753) note, “crucial here is that this [compliance] scholarship can be invoked by governments to justify the withdrawal of enforcement resources, not simply to justify ‘no-cost’ compliance outcomes, but in fact to support claims that overall levels of compliance can be improved at the same time as inspection and enforcement are diminished.” It is the neoliberal context which underpins regulatory orthodoxy that we turn to next.

Neoliberalism and Regulatory Orthodoxy

It is impossible to consider corporate crime and state “regimes of permission” (Whyte 2014) without discussing the current political-economic context. Of note is the advent of neoliberalism and its commitments to private enterprise, the all-or-nothing, take-no-prisoner approach to corporate profits which emphasize minimal state regulation of business, unless facilitating the private accumulation of wealth (Tombs 2016). Neoliberalism has been defined as a “theory of political economic practices that proposes that human well-being can best be advanced by liberating individual entrepreneurial freedoms and skills within an institutional framework characterized by strong private property rights, free markets, and free trade” (Schwarzmantel 2007, p. 262). It is a policy model characterized by the transfer of control of economic factors from the public sector to the private sector. More critically, however, it champions the worship of private property and of individual “freedom” over collective endeavors and genuine equality (Pearce 2010; Pearce and Tombs 1998).

Keynesian economic principles, which emerged in the aftermath of the Great Depression of the 1930s, posited that the state needed to offset the downside of “capital’s relentless drive to accumulate” by, at least theoretically, providing citizens with a suitable standard of living, or what was commonly referred to as the “universal social safety net” (Fudge and Cossman 2002). However, with an end to the post-war worker shortage – propelled by a growing number of women working outside the home, an influx of new immigrants seeking
employment, and increasingly global and technologically driven production processes—
dominant corporate voices challenged Keynesian thinking and pushed for greater economic freedoms (Wolff 2010). Fueled by neoclassical economic reasoning, which argues for minimal state intervention in the free market economy, most Western capitalist governments responded by abandoning their welfare state ideals, reducing corporate taxes, and redesigning the regulatory environment in pro-business ways (Fudge and Cossman 2002). Free market enterprise thus started to dominate as the most effective and efficient means of generating and distributing economic benefits in society (Soederberg 2010), while corporate crime virtually disappeared as a concept as laws governing corporations were argued—largely, and successfully, by corporations themselves—to be unnecessary (Snider 2000).

Myriad consequences followed the neoliberal turn and are germane for our purposes. First, while corporations have long operated globally, the full forces of globalization were only realized throughout the 1980s and 1990s, mainly through trade agreements that abolished national protective tariffs and established a truly global economy. Since most laws restricting and regulating corporate operations are state-based, and many countries in the Global South have inadequate or absent labor, environmental, and financial laws, TNCs essentially gained free rein to run their businesses in ways that maximized profits and externalized all environmental, social, and cultural costs (Snider 2015). Within this context, Raymond Michalowski and Ronald Kramer (1987) argue that TNCs exploited the “space between laws”: relocating their production processes to jurisdictions with less onerous regulations, thereby ensuring that “injurious acts” prohibited in their home country went uncensored in the host countries where they operated.

Second, and relatedly, under globalized capitalism the new-found corporate power and “freedom” had an ominous downside, evidenced by a seemingly endless list of high-profile corporate disasters, including: the 1982 Bhopal chemical disaster that killed thousands instantly and seriously sickened and killed thousands more in the following decades; the aforementioned sinking of the sea ferry the Herald of Free Enterprise; the BP oil disaster in the Gulf of Mexico; and the 2008 global financial crisis. Neoliberalism, with its concomitant under-regulation of corporate harm and wrongdoing, has thus profoundly produced corporate crime in recent decades.

Third, as the corporate debacles and disasters mounted, so did demands for greater accountability. As we noted earlier, in some instances this resulted in changes to criminal laws. However, in opposition (and resistance) to these developments stands a growing interest in various CSR initiatives, along with examples of capitalist states doubling down on their commitments to neoliberal ideals. In recent decades, non-governmental organizations and human rights groups promoted CSR as a means of conveying what they expected of corporations both normatively and ethically (Livesey and Kearins 2002). Today, corporations variously employ the language of transparency, trust, learning, and caring as routine elements of their public pronouncements to social responsibility.

Beginning in the early 2000s the United Nations (UN) started to embrace the idea of CSR. Programs such as the Global Compact, introduced to promote social responsibility among some of the world’s largest companies, and the Special Representative of the Secretary-General on business and human rights, charged in 2005 with identifying and clarifying human rights “standards and practices” for businesses and providing recommendations for their implementation, are emblematic of these efforts. Proponents applauded these initiatives for promoting CSR, while critics worried that without legal obligations empowering authorities to investigate allegations of corporate wrongdoing and issue punishments and/or remedies, and without independent verification to ensure that
corporations amend their policies and practices accordingly, they were (and are) largely symbolic and toothless responses (Bittle and Snider 2011; Jochnick and Rabaeus 2010; Lipschutz and Rowe 2005; Soederberg 2007). Case in point: despite positive corporate rhetoric supporting the UN’s work, corporate behavior globally seems pretty much unchanged.

In addition to the UN’s work stands a plethora of CSR initiatives, including corporate-led social responsibility programs and reports, specialized CSR training and management opportunities, NGO efforts to hold companies to account for their commitments, and academic resources. Most major companies now invoke the triple bottom line in reference to their commitments to balancing economic, social, and environmental responsibilities (Faucet 2006). However, despite lofty claims, the language of CSR – e.g. caring, respect, sustainability – is vague and imprecise, creating a void to be filled by powerful corporate interests (Livesey and Kearins 2002, p. 252).

The potential upshot of CSR is that it forces some companies to reconsider their role in society, as well as publicly share more information about their operations than was previously the case. At the same time, however, it is a language controlled largely by the corporate world, shaped by responsibility experts who work with corporations, and has a tendency to obscure some of the difficult social and political questions raised in the corporate context (Livesey 2002, pp. 328–330).

What is more, CSR may simply be another economic “opportunity” for companies to engender consumer loyalty; a form of brand messaging that facilitates corporate expansion into new markets (Fleming and Jones 2013). Today’s corporate leaders understand that they need a different relationship with their critics and have jettisoned adversarial models in favor of strategies that will assist them to “… identify issues, produce and audit reports, conduct ‘dialogues’ with diverse stakeholders throughout the world, and address specific problems” (Conley and Williams 2005, p. 5). The question therefore becomes whether engagement and consultation is legitimately inclusive or simply a form of conversation that serves corporate interests and maintains the status quo (Conley and Williams 2005, p. 5).

In the end, despite the dominance of CSR, there is virtually no definitive information regarding how it can be realized or its overall efficacy in preventing corporate wrongdoing (Tombs and Whyte 2015, pp. 117–127). As a form of self-regulation, CSR is only possible and desirable due to the belief that most corporations are law-abiding and socially responsible, and likely to comply when offered a combination of market incentives and persuasion (‘Tombs and Whyte 2015, p. 67). Furthermore, most CSR initiatives do not focus on the core activities of the limited liability corporation. As Conley and Williams (2005, p. 37) note, “[r]ather than redressing the power imbalance between corporations and civil society, these [CSR] processes may be reinforcing it in subtle but effective ways.”

Fourth, alongside the various CSR initiatives we also see many states throughout the Global North further embracing neoliberal principles – a trend that follows the 2007–2008 global financial crisis (Peck 2010). For instance, despite clear links between the financial crisis and risky and fraudulent securities transactions within the financial sector, the US government responded, not by “getting tough” on corporate crime, but by bailing out to the tune of $700 billion the very institutions responsible for the disaster (Harvey 2010; Tombs 2016). Additionally, as Greg Barak (2012) notes, “some four years after the Wall Street debacle, no senior executives from any of the major financial institutions have been criminally charged, prosecuted or imprisoned for any types of securities fraud.” Perhaps most puzzling is that following the financial crisis many capitalist states adopted a series of austerity measures aimed at “protecting” the economy, for which we can read safeguarding corporations as the economy’s primary wealth-generating mechanism (Fanelli and Evans...
2013). As part of these measures, states have cut spending across the board, including “costly” government regulatory programs and “unnecessary” bureaucratic interventions, leaving us, once again, in a period of “regulatory retreat” (Tombs 2012). Particularly relevant here is that economic downturns are never conducive to “cracking-down” on corporate crime (Slapper and Tombs 1999, p. 177), with governments more concerned with (re)ensuring business-friendly climes. In this respect, the state’s continued dependence on private enterprise raises questions about its desire and ability to discipline corporations (Tombs and Whyte 2009).

**Conclusion: Challenging State “Regimes of Permission”**

This chapter critically examined how corporations and corporate executives can produce so much harm and devastation with relative impunity. Particular attention was paid to the impact of neoliberalism for the regulation and control of corporate crime, and the conditions of modern capitalism that make it possible for corporations to avoid criminal justice scrutiny. In so doing we drew insight from Whyte’s (2014) notion of state “regimes of permission”: the idea that certain social-political-economic conditions – conditions which are only possible through state intervention – make corporate crime both possible and plausible. We canvassed several factors in this regard: that how we define corporate crime matters – it shapes how we think about the nature of the problem and how states should respond through law; that corporate crime is a structural problematic with roots in capitalist notions of sacrifice and the legal structure of the modern corporation; that laws intended to curb corporate offending paradoxically reinforce corporate impunity; and finally, that neoliberalism further entrenched corporate power and created new opportunities for corporations to generate serious harms and crimes while at the same time benefiting from, and building upon, hegemonic beliefs that corporations are inherently good and law-abiding.

Directing our attention to the issues examined in this chapter demands that we think about ways of challenging state “regimes of permission.” Importantly, the formation of neoliberalism (and the continuation of its violence) is not the result of a “retreat” of the state, but of a “transformation” that involved significant changes in how the public and private spheres interact, especially through law (Picciotto 2011, p. 87). Neoliberalism reveals the close linkages between governments and the corporate sector, as both share mutual interest in maximizing economic productivity (Bittle et al. 2018; Michalowski et al. 2010). In light of this, a discussion of the state-corporate symbiosis is an essential element of understanding the limits of controlling corporate crime (Tombs and Whyte 2015). We must therefore abandon the idea that the state polices corporations as traditionally understood (as an independent body that enforces the law) and instead focus on the ways that it intervenes in capitalist markets to ensure their survival and what this means in terms of the state’s unwillingness or inability to control the modern corporation. As Whyte (2014, p. 240) notes, drawing from Gramsci, “… states must always intervene in formally ‘private’ institutions to guarantee their smooth functioning, in ways that seek to stabilize the social order.” The state is therefore first and foremost a capitalist state with a vested interest in maximizing economic activity and cementing capitalism (Mahon 1979; Tombs 2016).

An important factor to consider here is the structure of law and its role in the production of “regimes of permission.” As we noted, the corporation is generally held as a benevolent and positive social actor, and the interests of the corporate elite appear as a good for all of society. One of the reasons for this dangerous illusion is that corporate interests are
reinforced in law, which is often held out as the epitome of justice. The instinct sewn into the fabric of law and weaved into everyday consciousness is to protect key actors in the corporate world and preserve the financial system, even when those being protected are the greatest threats to our health, safety, and well-being. The endgame of the law, therefore, cannot be to prevent corporate crime and hold powerful actors accountable, because too many barriers paint corporate harm as non-criminal accidents that just happen. For this reason, adequately addressing corporate killing requires a restructuring of legal discourse and a reconsideration of the legal enterprise as a whole.

The purpose of this chapter was not to dismiss entirely current forms of regulation, but to acknowledge their limitations. While the current situation seems less than promising in terms of the state’s appetite and capacity to control corporate crime, corporate power is never absolute and is thus always open to contestation and change. In fact, that the law (criminal, regulatory, and administrative) can be critiqued opens the door for more discussion about what needs to be done to address and prevent corporate crime. In moving forward, it is essential for critical scholars to continue to interrogate the legal, political, and social processes of defining corporate crime, as well as those that determine how the state responds (or fails to respond) to such events. In the short and medium terms, this involves reforming the law to better protect workers, consumers, and the environment, and to place accountability where it should be. In the long term, this could mean seeking an alternative system of organizing production that is more just and inclusive. Indeed, viewing corporate crime as a structural problematic that is only possible via the interventionist state helps to reveal a series of contradictions and pressure points that demand alternative ways of addressing the problems.

Undermining the criminal corporation may seem like a daunting task, but positive social change can blossom from all forms and levels of struggle. Most of us as workers, as consumers, and as members of the public are sacrificing under (and for) capitalism, whether we acknowledge it or not. From a transformative perspective, there are ways of disrupting the corporation and how it operates that can have a greater impact on corporate violence, including challenging the power of the corporation to operate as freely as it would otherwise prefer (Tombs 2016). The corporate structure can be undermined by addressing the problematic elements of the corporate form itself (e.g. limited liability) that make corporations more difficult to control and regulate (Tombs and Whyte 2015). On an individual level, consumers can choose to support local cooperatives or businesses which demonstrate more equal and ethical practices; similarly, individuals can vote for and demand change from their representatives to address corporate misconduct.

It is also important to challenge the common understandings of corporations, namely that they are inherently good and wholly beneficial for society. If the seemingly endless list of high-profile corporate disasters shows us anything, it is that corporations can cause widespread and serious harm and will rationally choose to do so if it means generating or securing profits. Therefore, we also consider the abolition of the corporate personhood as a valid alternative means of control (Tombs and Whyte 2015). In a similar vein, different forms of producing and distributing goods and services beyond the corporation are also worth considering. The violent and destructive rules of the game within capitalism can be challenged every day and by everyone by, for example, building and supporting more egalitarian spaces, such as community-based public offerings, cooperatives, community gardens, and more (Tombs 2016; Wolff 2010). Instead of focusing energies on tinkering with current regulatory methods, perhaps the question should be how to address the inherently harmful conditions of capitalism and the very structure of the corporation – the “regimes of permission” that allow them to remain untouched. Without this critical effort, regulatory reforms are likely to be temporary, stopgap solutions at best.
Notes

1 Neoliberalism is generally regarded as a political and economic philosophy emphasizing free market ideals, including government non-intervention in capitalist markets (Thorson 2010).

2 Similar legal rationale emerged shortly thereafter in Canada (see Canadian Dredge and Dock Co. v. The Queen [1985] 1 S.C.R. 662). “Vicarious liability” applies in the United States, wherein a corporation can be held criminally liable for the acts of “its officers, agents or servants who are acting within the scope of their employment and for the benefit of the corporation.” Once mens rea is established, responsibility is “imputed to the corporation itself” (Department of Justice Canada 2002).

3 Individuals remain subject to the normal rules of law. However, the legal requirements for proving intent mean that senior officials within a company are rarely charged or convicted criminally (Gobert 2008).

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