
White-Collar Crime

The closing decades of the twentieth century saw dramatic change in the way policy makers and elite academics talk about crime and what should be done about it. In place of the deterministic accounts of its sources that had enjoyed support for decades, they turned to and advanced an interpretation of crime as *choice*. Seen in this way, aggregate-level crime rates are determined by the supply of opportunities for crime and the number of individuals willing to exploit them. As to the further problem of explaining why only some do so, crime-as-choice theory resurrects an answer advanced by philosophers nearly two centuries ago: they choose. As with all choices, criminal ones are said to be preceded by a decision-making process in which individuals assess options and their potential net payoffs, paying attention particularly to potential aversive consequences. The possibility of arrest and punishment presumably is prominent among these. When viewed through the lens of crime-as-choice theory, crime unambiguously is purposeful and calculated action.

Rational-choice theory gained unrivaled dominance not only as explanation for variation in crime but also as justification for a changed emphasis in crime-control practice. It was pointed out that because the so-called root causes identified in some theories of crime supposedly are beyond the reach of meliorative action by the state, a more appropriate focus is policies and practices meant simply to increase the risks of choosing crime (Wilson, 1975). Programs grounded in theories of deterrence and incapacitation took center stage, and the emphasis shifted to initiatives that would increase the odds and severity of punishment. The net cast by the state to ensnare and control

miscreants simultaneously was widened, and its mesh was thinned (Garland, 2001).

A mountain of research and statistical reports can be cited to document these developments, but suffice it to say that across the United States police were given new powers to search out and pursue more aggressively criminal suspects. Sentencing laws were also revamped to provide for mandatory and increasingly severe penalties. The nation witnessed a dramatic increase in arrests and criminal convictions. Three decades of growth in the U.S. prison population, for example, add up to an overall increase of some 500 percent since 1973. In the eyes of some public officials and policy makers, this is an important reason why rates of serious street crime declined substantially in the years bounding arrival of the new millennium.

On the crime-prevention front, in place of broad strategies aimed at reducing poverty and inequality, the new focus became policy initiatives implemented in narrowly circumscribed geographic locales against specific types of crime (Clarke, 1995). In the British Home Office, for example, a stream of studies and publications examined the effects of manipulated situational elements on offenses as diverse as car park crime, household burglary, and theft of natural gas by residential tenants. Among the lessons learned from this research are that simulating occupancy when homes are deserted reduces the odds of household burglary, and improved lighting in public places can lower the incidence of some types of crime. Known as *situational crime prevention*, this approach is said to be applicable to all types of crime (Felson and Clarke, 1998).

As a general theory of crime and crime control, the appeal of rational-choice theory is belief that it explains significant variation in all crimes across time, space, populations, and individuals. Thus far it has been applied principally to street crime and its perpetrators but only sparingly and unenthusiastically to white-collar crime in its immense variety (Braithwaite and Geis, 1982; Shover and Bryant, 1993; Cohen and Simpson, 1997; Weisburd, Waring, and Chayet, 2001). The promised crime-control benefits of the theory, therefore, have yet to be extracted and exploited adequately where it is concerned. The effort is undertaken in the pages that follow.

The project's premisses are few and straightforward. They begin with belief that all criminal decision making makes up a single field of study, and that much of what has been learned in studies of street criminals and their decision making almost certainly is paralleled in white-collar criminal decision making. There are good reasons to believe that white-collar criminals generally behave more rationally than street offenders; the latter routinely choose to offend in hedonistic contexts of street culture where drug consumption and the presence of other males clouds judgment and the ability to calculate beforehand. Many white-collar workers by contrast live and work in worlds that promote, monitor, and reward prudent decision making. They are significantly older to boot and more capable, presumably, of exercising the greater care and caution of persons with some maturity.

It is a mistake, however, to focus interest narrowly on the effects of threat and punishment on decisions by individual offenders. There is the general deterrent effect to consider. When the state looks the other way or responds with apparent indifference to white-collar crime, those tempted to violate the law are emboldened. The moral and educative consequences of state response to white-collar crime merit greater attention as well. Official punishment is not meant to be nor is it a neutral event. It signals to others important lessons about moral values that underpin many criminal laws; citizens take cues about the seriousness of behaviors by observations of how it is treated by state officials. This is one reason many white-collar criminals escape the public condemnation that generally comes from seeing crime as willful choice. Beyond narrow and technocratic policy issues, moreover, application of rational-choice theory to white-collar crime is consistent with lay notions of fairness; currently, materially disadvantaged and disreputable offenders bear the greatest burden of crime control. In light of its astronomical if inestimable costs, systematic application to white-collar crime of a theoretical approach that has gained backing by citizens and policy makers alike for its realistic and hard-nosed interpretation is past due.

As a guide to policy making, the bedrock assumption of rational-choice theory is belief that "when punishment is not only uncertain but altogether improbable, crime rises precipitously" (van den Haag,

1975:70). Expressed as advice to parents, teachers, and legislators alike,

the way to improve behavior is to provide rules, teach precepts, offer good examples, and enforce the law. The answer to bad behavior is to hold people accountable and if necessary to punish them. Simply offering a course on theories of responsibility isn't sufficient. You don't change a [criminal's] behavior by making him take an ethics course. You change it the old fashioned way, by telling him to stop and why; and if he doesn't stop, you force him to stop by the power of the law, if necessary. It's not complicated, but it requires resolute action and tough mindedness. (Bennett, 1992:165)

The call for tough action has been extended to the problem of curbing white-collar crime also:

[W]e believe that some nonviolent, first-time offenders . . . belong in prison. White-collar criminals, those who commit fraud, those who extort or embezzle, and those who conspire or cover up can be just as deserving of punishment as any street predator. And we suspect that most Americans – most people who believe in equal justice under law – agree with us. (Bennett, Dilulio, and Walters, 1996:101)

Before we turn to sketching and examining critically predictions about white-collar crime grounded in rational-choice theory, we briefly review continuing controversy over the crimes of privileged citizens and appropriate policy responses.

WHITE-COLLAR CRIME

It is ironic that the designation *white-collar crime* does not appear in statutes or in state regulations yet has become securely rooted in lay and scholarly lexicons. In everyday parlance, it is understood and used to denote a type of crime and that differs fundamentally from street crime. One way it is different is its obscured and innocuous appearance. Street crimes typically are committed by confronting victims or entering their homes or businesses, but most white-collar crimes are committed by using guile, deceit, or misrepresentation to create and exploit for illicit advantage the appearance of a legitimate transaction. Many have the look and feel of the ordinary. Others are

committed by abusing for illicit purposes the power of organizational position or public office. The crimes committed by white-collar criminals are dissimilar also in the ways they develop and harm others. From the abruptness and violence of some to the slow-to-develop nature and widely diffused harm caused by others, these are diverse crimes. Some are as subtle and obscured from the eyes of onlookers as toxic dumping, but others are as violent as sexual assault. White-collar crime is different also in the backgrounds and characteristics of its perpetrators; the poor and disreputable fodder routinely encountered in police stations and in studies of street crime are seldom in evidence here.

In the United States, interest in white-collar crime dates to the Progressive era of the early twentieth century when the excesses of industrialists and political leaders were the focus of considerable attention by social critics. The early sociologist E. A. Ross was among them and highlighted what has come to be called white-collar crime. Ross (1907) noted that growing social and economic interdependence had produced a level of “mutualism” unknown to earlier generations, and the result was new and changing forms of criminal opportunity. Criminals now could victimize large numbers of citizens in a calculated yet emotionally and geographically detached fashion. Ross dubbed “criminaloids” the new breed of offenders who exploit with impunity these opportunities, and he noted how much they differ in outward appearance from the picture that comes to mind when the topic of crime is raised in conversation. Criminaloids are respectable criminals, and, Ross warned, “every year finds society more vulnerable” to them (1907:37). Likening them to “wolves,” he argued that

the villain most in need of curbing is the respectable, exemplary, trusted personage who, strategically placed at the focus of a spiderweb of fiduciary relations, is able from his office-chair to pick a thousand pockets, poison a thousand sick, pollute a thousand minds, or imperil a thousand lives. It is the [criminaloid] that needs the shackle. (1907:29–30)

Ross fused scholarly objectives with a presentational style akin to muck-raking, but his analysis and call received little attention. Decades passed before white-collar crime again came under critical scrutiny.

CRIMINALS OR CRIMES?

The sociologist Edwin Sutherland is credited with introducing the concept *white-collar crime* in the middle decades of the last century. In scholarly speeches and publications, Sutherland criticized social scientists for the class bias in their near-exclusive focus on crimes of the disadvantaged. He also reported results from his pioneering investigations of white-collar crime (Sutherland, 1940; 1945; 1949; 1983). For Sutherland, white-collar crime is “crime committed by a person of respectability and high social status in the course of his occupation” (Sutherland, 1983:7). Although he at times was ambiguous and inconsistent in his use of concepts, no one disputes that Sutherland regarded the respectable social status of its perpetrators as the defining characteristic of white-collar crime. In the years since he wrote, many have followed his lead in opting for a *criminal-based* definition. Fundamental to this approach is belief that the power and status of its perpetrators is the essential quality of white-collar crime.

Nothing about white-collar crime is free of controversy, however, and the way it is defined is the focus of much of it. In contrast to those who prefer criminal-based definitions, others contend that either there is no analytic advantage to be gained by highlighting offenders’ privileged position or that this is misplaced. They counter with *crime-based* definitions, all of which look to formal characteristics of criminal offenses as the basis for distinguishing white-collar crime from other types. As Edelhertz (1970:3) puts it, for example, a white-collar crime is “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.” In the process of constructing crime-based definitions, the respectable status of those who commit white-collar crime disappears or loses analytic significance. Thus, Edelhertz (1970:4) makes clear his belief that “the character of white-collar crime must be found in its modus operandi and its objectives rather than in the nature of the offenders.” His approach is matched by Shapiro (1990:346), who calls for “collaring the crime, not the criminal.”

The democratic implications of doing so are clear if illogical. When it is defined on the basis of crime characteristics, “white-collar” crime

can be “committed by a bank teller or the head of an institution. The offender can be a high government official with a conflict of interest [or] [h]e can be the destitute beneficiary of a poverty program” (Edelhertz, 1970:4). No longer is white-collar crime the province of only the remote and powerful; now the neighborhood automobile mechanic receives equal billing. Just how democratic the empirical implications of crime-based definitions of white-collar crime can be is made clear in a study carried out by investigators at Yale Law School (Weisburd et al., 1991). They began by drawing a sample of offenders from all persons who were convicted of or who pleaded guilty to any of eight statutorily defined crimes in seven U.S. District Courts in the years 1976–1978. The crimes are: securities fraud; antitrust violations; bribery; bank embezzlement; postal and wire fraud; false claims and statements; credit and lending institution fraud; and tax fraud. These offenses were designated white-collar crimes by investigators, and, by definition, individuals convicted of any of them are white-collar criminals. Subsequent analysis, however, showed that the sample included many offenders of modest financial resources; a substantial proportion were unemployed when they committed their crimes. The presence of many who obviously are not of elite background and status in samples defined on the basis of crime characteristics is one reason some have dubbed white-collar crime as “crimes of the middle classes” (Weisburd et al., 1991).

The democratic implications of crime-based definitions are evident as well in the results of a study of individuals in the United Kingdom who were convicted of selected white-collar offenses: adulteration of food, selling food from unhygienic premises, misleading descriptions of goods, and use of short weights or measures. Information about the defendants gleaned from regulatory and court records caused the investigator to remark that

[e]xamination of the occupational or social status of [these] convicted offenders fails to expose the widespread criminality of elite groups, high status executives or large, multinational corporations, however loosely defined these terms may be. Instead, the offences of butchers, bakers, restaurateurs, porters, manual workers and small businesses are to be found equally, if not more prevalent (Croall, 1992:56).

The investigator notes as well that “[w]hite collar crime . . . cannot automatically be assumed to be the preserve of the rich and powerful. Employees at all levels of the occupational hierarchy have many opportunities to abuse their occupational roles, and both large and small businesses can indulge in many dangerous and deceitful practices” (Croall, 1992:56). Recall, however, that those who employ criminal-based definitions of white-collar crime generally do so with full intent of restricting its meaning to crime committed by the “rich and powerful.”

Regardless of how it is defined, there is no shortage of white-collar crime. For this reason, definitional controversy may not matter much. Future historians looking backward to identify periods of widespread white-collar crime committed with apparent impunity could do worse than single out the present for closer scrutiny. A visit to the Website maintained by any state attorney general in the United States instantly confirms the high level of white-collar crime and official actions to curb it. The same eye-opening experience is produced by examining online administrative and criminal actions initiated by the U.S. Department of Justice, Federal Trade Commission, or Securities and Exchange Commission.

A more old-fashioned search for information on white-collar crime is no less revealing. To illustrate the point, we examined reports of white-collar crime in the nation’s 100 largest newspapers for February 1, 2004, and February 4, 2004. One hundred forty-three news reports about white-collar crime appeared in the newspapers on these two days. Sixty-two (43.4 percent) of the stories mentioned widely publicized national or international cases. Many reported on the criminal trial of entrepreneur, business executive, and television personality Martha Stewart for lying to investigators about an illicit stock sale (*New York Times*, 2003a). Likewise, there was extensive reporting on the international mutual funds scandals that recently had come to light. September 2003 marked the beginning of investigations into this web of crime. Fund companies, it soon became apparent, used improper and criminal tactics to allow insiders or big clients to make quick profits at the expense of small and long-term investors. By early February 2004, the New York state attorney general and the U.S. Securities and Exchange Commission had brought criminal and civil actions

against over half a dozen brokerage firms, fund companies, or individuals. Financial settlements were reached in other cases. On February 4, 2004, newspaper stories reported that a former executive of the Canadian Imperial Bank of Commerce was charged by state and federal authorities with larceny and fraud by helping finance illegal mutual fund trading. Officials charged that he helped others carry out improper trades from 2001 to 2003 in a trading scheme that stole more than \$2 million from two mutual funds (*Washington Post*, 2004a).

Eighty-one news stories recounted incidents of white-collar crime exclusively or primarily in regional newspapers:

A special committee was formed by the University of Colorado to investigate allegations that sex parties were used by the athletic department to lure prospective players. The investigation was launched following allegations from the district attorney and a civil lawsuit filed by one of three women who alleged they were raped during or after a 2001 party for recruits. The Colorado governor demanded answers, and the university's regents scheduled an emergency meeting to discuss the panel process and depositions taken in connection with the civil lawsuit. (*Tacoma News Tribune*, 2004a)

Authorities in Pensacola, Florida uncovered a drug network operating out of an upscale Pensacola bar and various homes, and a prominent Pensacola couple was charged as a result of the investigation. Local prosecutors charged that cocaine was sold to influential members of the community, including a wealthy citizen who serves on the Pensacola Junior College Foundation's board of governors, two attorneys, an insurance agent, the owner of a real estate school, probation officer, teacher, dietician, restaurant manager, barkeep, chef, hair salon owner and a mental health counselor. (*Tampa Tribune*, 2004)

A Boise, Idaho, dentist surrendered to authorities on two misdemeanor charges of sexual exploitation by a medical provider. He was accused of fondling female patients during dental work while they were heavily sedated. Boise police received at least 3 complaints about the dentist since December 1998. The charges were filed in connection with the most recent event that occurred in December 2003. (*Salt Lake Tribune*, 2004)

On March 1, 2004, Runnemede, New Jersey appointed a new police chief. The former chief resigned a week after he was arrested at a local brothel where, authorities say, he was a regular customer. He

was charged with official misconduct and promoting prostitution. (*Philadelphia Daily News*, 2004)

In Tacoma, Washington, a bridge builder was fined \$10,000 for failing to control storm water at a construction site. Uncontrolled water causes erosion and carries pollution downstream, potentially degrading water quality and harming aquatic life. The company was notified of the problem four months earlier, but it failed to correct the situation as required. (*Tacoma News Tribune*, 2004b)

To judge from the number and seriousness of some of the crimes reported by local newspapers, American citizens and, presumably, the citizens of other nations as well live daily with large numbers of white-collar crimes. The majority of them are mundane and do not cause harm or extreme financial loss to large numbers of citizens.

Fraud is one of the most common forms of white-collar crime. Fraud is committed when misrepresentation or deception are used to secure unfair or unlawful gain. It occurs “when a person or business intentionally deceives another with promises of goods, services, or financial benefits that do not exist, were never intended to be provided, or were misrepresented. Typically, victims give money but never receive what they paid for” (U.S. Department of Justice, n.d.:1). Because fraud violates trust, its distinguishing characteristics are a stark contrast to robbery, burglary, and other street crimes. Those who commit these offenses must confront their victims or enter their homes or businesses, but perpetrators of financial violence by means of fraud use staging and talk to create the appearance of a routine transaction.

In organizational complexity and reach, fraud ranges from itinerant vinyl siding scamsters to international banking crimes that can destabilize national economies. The number of Americans who are victimized by fraud is large and greatly exceeds the number victimized by serious street crime (Titus, 2000). A 1991 survey of 1,246 U.S. households found that compared to crimes of burglary, robbery, assault, and theft, “personal fraud . . . appears to be very common” (Titus, Heinzlmann, and Boyle, 1995:65). Subsequently, a national survey found that 36 percent of U.S. households had experienced a fraud victimization in the preceding twelve months (Rebovich, 1999). The Association of Certified Fraud Examiners (2004) estimates that occupational fraud against U.S. employers resulted in losses of \$660 billion in 2004.