

# WHITE-COLLAR CRIME RECONSIDERED

*Edited by Kip Schlegel & David Weisburd*



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Northeastern University Press

B O S T O N

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## • A C K N O W L E D G M E N T S •

Because this volume arose from a conference, it clearly could not exist without those who recognized the value of such a gathering. The individual most deserving of credit in this regard is Felice Levine, at that time the program director for the Law and Social Science Program of the National Science Foundation. It was her willingness to support this conference that paved the way for the meeting and for the additional support.

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Special thanks are given to three scholars who took part in the Sutherland Conference and who have given much to the field: Karl Schuessler, emeritus professor of sociology at Indiana University; Marshall Clinard, emeritus professor of sociology at the University of Wisconsin; and Albert Cohen, emeritus professor of sociology at the University of Connecticut. Each of these individuals had connection to Edwin Sutherland as colleague or student and provided a valuable historical perspective to the conference. More importantly, each is a true scholar, offering us all very important role models.

Finally, thanks go to Deborah Kops at Northeastern University

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• P R E F A C E •

The essays that appear in this volume were delivered at a conference on white-collar crime held at Indiana University in May of 1990. Though the conference marked the five decades since Edwin Sutherland coined the term in 1939, the purpose was not to regurgitate the scholarship since Sutherland. Rather, the intent was to convene the leading scholars in the field to present new research and insights on white-collar crime, broadly defined.

Rather than ask these individuals to write on predetermined topics within some artificial parameters, we felt that the conference would produce the most interesting work if the contributors were left free to present their ideas and research on topics that were of the most interest to them. As such, the scope of the essays is quite broad, and consequently, difficult to structure or organize in an orderly way for presentation to the public. Nonetheless, for the sake of order we have tried to divide the essays into logical sections.

The first essay, by the editors, serves as an introduction, grounding the essays in the previous research conducted in the field. Unlike much of the recent literature that begins with the call to eliminate the term "white-collar crime" for its lack of definitional rigor, we argue that the value of the term lies precisely in the conceptual obscurity that surrounds it. From that obscurity comes variegated perspectives and insights, not only on white-collar crime, but more importantly, on crime generally.

This introduction is followed by five essays on theory and definition. The first two provide readers with a "progress report" of the evolution of the definition (Geis) and theory (Coleman) since Sutherland originated the term. At the same time, both these distinguished authors offer their own views on where we have gone and where we may want to head in the future. Having, we hope, brought the reader up to speed, the next three chapters (by John Braithwaite, Stanton Wheeler, and Diane Vaughan) provide new theoretical insights into white-collar crime. John Braithwaite and Stanton Wheeler direct their attention to individual motivation for white-collar crime, while Diane Vaughan's essay explores the important linkages between organizational forces and individual choices in organizational misconduct.

These chapters are followed by two essays on white-collar victimization. The essay by Paul Jesilow, Esther Klempner, and Victoria Chiao provides new research on the process of reporting consumer and major frauds. Michael Levi's essay gives an international flavor by presenting findings on the victimization of white-collar crimes in Great Britain.

We move from here to several essays that deal with enforcement issues. Pontell and Calavita's piece on crimes in the savings and loan industry and Ronald Kramer's essay on the space shuttle *Challenger's* explosion offer captivating case studies as well as insights on issues involving social control. Nancy Reichman's essay on the role of compliance in the regulation of securities activities provides an important glimpse at an area largely untraversed—self-regulation. The chapter by Benson, Cullen, and Maakestad takes a different perspective on enforcement by empirically testing the relationship between community factors and enforcement practices in white-collar crime.

From enforcement we move to sanctioning. Sally Simpson's essay provides an interesting account of how executives and managers view corporate-crime deterrence and corporate control policies. Exploring issues relating to the sentencing of organizations, Steven Walt and William Laufer present a model of corporate incapacitative sanctions, designed to reflect the punitive nature of incapacitative strategies provided to offenders in human form. Finally, as Sutherland himself observed, most white-collar offenders are handled not by criminal law, but by civil law, often through punitive damages awarded in tort. Kenneth Mann provides an interesting discussion

of the punitive nature of the civil remedy and its applicability to white-collar crime. The book concludes with a final chapter by the editors, which offers some thoughts on the future direction of research in this area.

The essays presented here entail research and insights by individuals from around the world and from a variety of disciplines. The myriad perspectives contained in this volume epitomize the tremendous interest in white-collar crime and its control. More importantly, they demonstrate a body of knowledge with a depth increasingly commensurate to its breadth.



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WHITE-COLLAR  
**CRIME**  
RECONSIDERED



# White-Collar Crime

## *The Parallax View*

KIP SCHLEGEL

DAVID WEISBURD

A little more than half a century ago, Edwin Sutherland stood before a gathering of the American Sociological Society to impress upon that group the need to expand the boundaries of the study of crime to include the criminal acts of respectable individuals in the course of their occupations. He labeled these crimes, for the apparent lack of a better name, "white-collar crimes," and thus was born a term soon to become an established part of the vernacular of criminology. Yet, as Geis notes (chapter 1) perhaps no other term has engendered as much debate and confusion. Since 1939 the scholarship on white-collar crime has largely reflected the parallax nature of the subject. Perhaps out of dissatisfaction with the slow progress to date, much of the most recent scholarship has sounded the call to bring order and focus to the term. Those who focus on offender-based definitions stress the referents of social class, power, status, and respectability, while those who emphasize offense-based definitions tend to reject such concerns in favor of characteristics of the act (for example, the use of guile, concealment, fraud, trust, and the like). Others have focused their attention on organizational crime (usually corporate) as the subject most worthy of study. Such efforts have moved the study of white-collar crime in useful directions. However, the by-product of such attempts, perhaps by intent, is to fracture the original concept into fragments of ideas that become increasingly more difficult to put back together in any meaningful or coherent way.

We take a somewhat different perspective in this chapter, and indeed, in the arrangement of this book. First, we suggest (in what we believe to be the Sutherland tradition) that such efforts to bring order to the term "white-collar crime" are tantamount to reifying what is better left as an abstract idea. In arguing the case for abstraction, we believe that the most valuable approach to the study of white-collar crime is not to take the path of isolating unique factors that make up white-collar crime, but rather to search for the interactions along the different dimensions and between the multiple components that make up crime and societal reactions to crime. The intent of this chapter, then, is to link some of the scholarship on white-collar crime, including the research presented in this volume, as it relates to such dimensions of crime as criminal behavior (both individual and organizational); victimization; and guardianship, which includes both the legal structures and their enforcers. These dimensions of crime are obviously subjective and open to debate and are not the only ways we may conceptualize crime. What is important is that we view white-collar crime not from one single perspective (for example, the offense, offender, legal structure), but from a series of reference points, ideally as they work in interaction with one another.

Second, we hold the premise that the knowledge we search for is not merely the knowledge of white-collar crime, but of crime generally. In spite of the obvious relevance of this point, it seems that one result of the definitional and operational debate has been to turn the study of white-collar crime into an end in itself, this being achieved by turning white-collar crime into some "thing" in itself. We suggest here a different perspective—not because we believe that there is little of importance in white-collar crime, quite the opposite. Rather, we believe that attention to white-collar crime will best be served in the future by studying the similarities and differences between white-collar crimes and those referred to as "common crimes." Thus, where possible in this chapter, we try to link the research to our broader understanding of crime generally.

## White-Collar Crime and Criminal Behavior

### Individual Motivation

As Geis (and others) have noted, Sutherland himself was unclear about what he meant by white-collar crime. The ambiguity was

enhanced by his own definition, which included terms such as "respectability," "high social status," and "occupation" (Sutherland, 1949, p. 9), and the subsequent focus of his research and writings, which centered on the legal violations by corporations, interspersed with occasional descriptions of rather mundane frauds by, sociologically speaking, uninteresting folks (Sutherland, 1983). It is clear, however, that for Sutherland the offender characteristics of respectability and high social status had little relevance as causal factors in explaining criminal behavior. The significance of an offender's respectability or high social status lies primarily in the refutation of existing theories that look to the causes of crime in poverty and social disorganization. For Sutherland, the fact that an offender is respectable, or of high social status, or employed is no more important in explaining crime than is poverty or unemployment in explaining the crimes of others.

This is not to suggest, however, that these factors have no relevance in understanding crime. One's respectability, occupational position, or access to wealth and power leads to and creates opportunity structures for crime that can be unique in and of themselves, or that may have corollaries to or spinoffs from what are often called common crimes.

In addition to the creation of unique opportunity structures for crime, one's social status or position also has relevance in understanding what Sutherland termed the "differential implementation" of the law. This will be discussed in greater detail later, but its importance to crime is certain. First, as Sutherland so clearly pointed out in his research, the avenues available to the white-collar offender through the civil and administrative remedies allow such offenders to escape the traditional stigma of the criminal sanction, even though the harm of their actions is often as great or greater than the offenses normally trapped by the machinations of the criminal law. Yet, the differential implementation of the law seems applicable to Sutherland's own general theory of crime as well, despite his claim that the "variations in administrative procedures are not significant from the point of view of causation of crime" (1983, p. 7). If the direction of one's motives, drives, rationalizations, and attitudes stem from the perception one has of the legal code as being favorable or unfavorable, then both the content and the process of that legal code would appear to have some bearing on what one learns about the opportunity structures for both law-breaking and law-abiding behavior. The research in white-collar



crime appears to be heading, at least implicitly, in this direction. Of interest here is not only how the structure and process of the law pertaining to white-collar crimes affect or influence actions of white-collar offenders, but also how the differential application of the law affects the way others with less power and privilege construct their own attitudes, rationalizations, and so on, about their behavior.

Braithwaite's essay (chapter 3) is especially important in light of these concerns. First, he challenges Sutherland's proposition that social status plays no role in causative accounts of criminal behavior. He argues that inequality in wealth and power "is relevant to the explanation of both crime in the streets and crime in the suites." Drawing from opportunity theories of crime, Braithwaite contends that "inequality causes crimes of poverty motivated by need for goods for use" and at the same time produces "crimes of wealth motivated by greed enabled by goods for exchange." Furthermore, Braithwaite notes that factors such as economic inequality, inequality in political power, racism, ageism, and patriarchy produce inequalitarian societies that are structurally humiliating for citizens, particularly those without power. This structural humiliation in turn leads those in impoverished conditions to feel increasingly powerless and exploited, while lending to the wealthy a view that power and exploitation are legitimate. Both conditions engender crime.

The etiological literature to date suggests the complexity inherent in studying white-collar crime. Much of the literature refers to conditions of offenders in dichotomous terms. Offenders are either poor or wealthy, powerless or powerful, and so on. Crimes committed by the poor tend to be portrayed as simple, if not brutish; the crimes of the powerful are portrayed as intricate and exploitive. Yet, as we all know, there is a wide spectrum comprising both offenders and offenses. Surprisingly, the literature is just now beginning to explore the factors "white-collariness" is said to comprise. One recent contribution in this regard is the work of Weisburd, Wheeler, Waring, and Bode (1991). Their research suggests that many of the offenders whose actions fit the legal categories of white-collar crime can best be described as falling into the "broad middle of society." They add with regard to the offenses:

Although they differ systematically from common-crime offenses, the white-collar crimes committed by those we