

Encyclopedia of Law & Society: American and Global Perspectives

White-Collar Crime

Contributors: Stuart P. Green

Editors: David S. Clark

Book Title: Encyclopedia of Law & Society: American and Global Perspectives

Chapter Title: "White-Collar Crime"

Pub. Date: 2007

Access Date: December 08, 2014

Publishing Company: Sage Publications, Inc.

City: Thousand Oaks

Print ISBN: 9780761923879

Online ISBN: 9781412952637

DOI: <http://dx.doi.org/10.4135/9781412952637.n725>

Print pages: 1581-1583

©2007 SAGE Publications, Inc. All Rights Reserved.

This PDF has been generated from SAGE knowledge. Please note that the pagination of the online version will vary from the pagination of the print book.

<http://dx.doi.org/10.4135/9781412952637.n725>

Although American sociologists during the midtwentieth century originally defined and used the concept of *white-collar crime*, it has long since entered into a more general public consciousness. Law enforcement officers, prosecutors, and defense attorneys view white-collar crime as a significant category of criminal activity. The subject is taught in most American law schools. The term has appeared in substantive criminal law legislation, and journalists and politicians refer to it regularly. In addition, the phrase and its equivalents are increasingly used outside the United States, both in English and in translation.

As use of the term has proliferated, however, so too has the range of its meanings. While social scientists, in general, have tended to emphasize the social status of the offender, lawyers and legal academics have tended to focus on the nature of the offense. Even within these general camps, however, there is tremendous variation in how people use the term. In fact, it may be that *white-collar crime* is now a general umbrella term invoked as much for polemical and for marketing purposes as for scholarly or analytical ones.

White-Collar Crime in the Law

Since the 1970s, white-collar crime has developed into a standard subject in the curriculum of American law schools. Scores of law school courses are now devoted to the subject, and the instructors of such courses can choose from a significant number of casebooks, treatises, and other materials. Countless “continuing legal education” programs, sponsored by dozens of bar associations, are also devoted to the subject. Most of this curriculum deals with general principles of corporate criminality and a few specific offenses such as mail and wire fraud, perjury, obstruction of justice, conspiracy, and the federal Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961–1968 (2000). Beyond this, there is little consensus. While some courses emphasize the substantive criminal law aspects of white-collar crime, others tend to focus on the procedures and constitutional issues associated [p. 1581 ↓] with its prosecution, particularly in the federal courts. In addition, the specific offenses that are covered, and therefore regarded as white-collar crimes, also vary significantly.

Hundreds of law firms, and thousands of private lawyers throughout the United States and, to a lesser extent, Great Britain, now hold themselves out as specialists in white-collar criminal law. Some of these lawyers emphasize their experience in litigating cases involving individuals and corporations in criminal cases. Others highlight their skill in establishing and administering corporate compliance programs and conducting internal investigations. Almost all claim expertise in dealing with the complex procedural and evidentiary contexts in which many white-collar crime prosecutions occur.

While the concept of white-collar crime plays a major role in defining an area of law practice, pedagogy, and scholarship, it has had a relatively limited currency in substantive criminal law itself. There are four ways in which the term has been used# The first is as an aggravating circumstance relevant to sentencing, the best example of which is the federal SarbanesOxley Act, Pub. L. No. 107-204 (2002). Second, the term has been used, as in Florida, to define a class of victims who are entitled to certain rights. A third use, evident, for example, in Mississippi, is to define the jurisdiction of certain state prosecuting officials. Finally, some statutes have used the term in the creation of funding mechanisms for law enforcement programs and research facilities. For example, federal law created the National Institute of Justice, which it charged with, among other things, developing programs to improve the ability of states and local governments to combat white-collar crime.

The term *white-collar crime* is now increasingly being used outside the United States as well, both in translation into French (*crime en col blanc*), German (*Weißes-Kragen-Kriminalität*), Italian (*criminalità dei colletti bianchi*), Spanish (*crimen blanco del collar*), and various other languages and in English-language commentary, to refer to criminal activity in numerous other countries as well. However, the specific meaning of the term in such contexts remains widely divergent.

Points of Contention in Defining White-Collar Crime

There are three major points of contention concerning the definition of white-collar crime. The first is whether the term should refer only to activity that is actually criminal

or also to other forms of noncriminal “deviance.” Social scientists have tended to use the term broadly to refer to antisocial conduct performed by upper-income white-collar professionals and corporations regardless of whether the law actually treats it as a crime. Lawyers, by contrast, have tended to reserve the term for conduct that actually does constitute a violation of the criminal law.

The second issue is whether the term should refer to conduct engaged in by particular kinds of actors or whether it should refer only to particular kinds of acts. The conception of white-collar crime traditionally favored by social scientists, and originally advanced by Edwin Sutherland (1883–1950), emphasized that crime is not a phenomenon limited solely to the lower classes or caused exclusively by poverty, but is also committed by persons of wealth, “respectability,” and social status. As a result, social scientists have tended to focus on the social status of offenders in determining whether one should regard some act as a white-collar crime. Lawyers have mostly rejected this status-based approach to defining crime and have opted instead for an approach that focuses on a certain group of related offenses.

A third issue, assuming that one follows the “act” rather than “actor” approach, concerns the characteristics that should determine which offenses will be regarded as white-collar crimes. Law enforcement agencies such as the U.S. Department of Justice and the Federal Bureau of Investigation and some social scientists have tended to emphasize factors such as the lack of violence, the goal of obtaining financial gain or business advantage, and the use of deception, guile, breach of trust, or concealment. Some legal academics have dispensed with any detailed identification of characteristics and have simply stipulated that one should regard certain offenses, such as fraud, false statements, perjury, obstruction of justice, bribery, and extortion, as white-collar crimes.

[p. 1582 ↓]

Moral Ambiguity in White-Collar Crime

Another way to think about white-collar crime is in terms of its underlying moral character. Unlike traditional “core” offenses such as murder, rape, and arson, the white-collar crimes tend to cause diffuse harms, and the victims they affect are frequently

hard to identify. White-collar crimes such as insider trading, environmental offenses, obstruction of justice, and bribery, for example, seem to harm (respectively) the market, the environment, the system of justice, and the process of governmental decision making, and often only inchoately and in the aggregate, rather than cause some definite harm to specific, identifiable victims.

Moreover, it is frequently hard to distinguish between certain acts of white-collar criminality and merely aggressive behavior: fraud can be virtually indistinguishable from mere “puffing,” insider trading from “savvy investing,” tax evasion from “tax avoidance,” obstruction of justice from “zealous advocacy,” perjury from “wiliness on the witness stand,” extortion from “hard bargaining,” and so forth. In addition, even when one has unambiguously violated a law, it is unclear whether officials will treat it as a crime or merely as a civil violation. For instance, under statutes such as the Securities Exchange Act of 1934, Sherman Act, Clean Water Act, Bankruptcy Code, Tax Code, False Claims Act, Truth in Lending Act, and Federal Food, Drug and Cosmetic Act, precisely the same conduct can give rise to either criminal or civil penalties, or some combination of the two. Discretion to pursue one or the other lies wholly in the hands of the prosecutor.

Another factor that tends to blur the line between white-collar crime and noncriminal behavior is the difficulty of determining the presence of *mens rea*, or the mental element in crime. For example, if a person gives money to a congressional representative or senator “corruptly” or with “intent to influence,” then his act will be regarded as a bribe. Otherwise, it will be considered a mere legal campaign contribution.

As a result, and notwithstanding the fact that whitecollar crime might actually cause more harm overall to society than more traditional offenses, such offenses are often prosecuted less aggressively, and are viewed as deserving of less serious punishment, than are more traditional crimes.

Stuart P.Green

<http://dx.doi.org/10.4135/9781412952637.n725>

See also

- [Corruption](#)

- [Fraud](#)
- [Punishment and Sentencing Alternatives](#)
- [Social Status](#)
- [Sutherland, Edwin H.](#)
- [White-Collar Crime, Criminology of](#)

Further Readings

Brickey, Kathleen. (2002). *Corporate and White Collar Crime: Cases and Materials* , 3d ed. New York: Aspen.

Edelhertz, Herbert. (1970). *The Nature, Impact and Prosecution of White-Collar Crime* . Washington, DC: National Institute of Law Enforcement and Criminal Justice.

Friedrichs, David O. (2007). *Trusted Criminals: White Collar Crime in Contemporary Society* , 3d ed. Belmont, CA: Thomson/Wadsworth.

Green, Stuart P. (2006). *Lying, Cheating, and Stealing: A Moral Theory of White Collar Crime* . Oxford: Oxford University Press.

Katz, Leo. (1996). *Ill-Gotten Gains: Evasion, Blackmail, Fraud, and Kindred Puzzles of the Law* . Chicago: University of Chicago Press.

Mann, Kenneth. (1985). *Defending White Collar Crime: A Portrait of Attorneys at Work* . New Haven, CT: Yale University Press.

Strader, J. Kelly. (2006). *Understanding White Collar Crime* , 2d ed. Newark, NJ: Matthew Bender.