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“White-Collar Crime”

*The concept and its potential
for the analysis of financial crime*

Abstract

Despite the ubiquity of illegality in today's financial markets and the questions this raises with regard to the social legitimacy of today's financial industry, systematic scrutiny of the phenomenon of financial crime is lacking in the field of sociology. One field of research in which the illegal dimensions of capitalist dynamics have long taken center stage is the field of white-collar crime research. This article makes available to economic sociologists an overview of the most important conceptual insights generated in the white-collar crime literature. In doing so, its aim is to provide economic sociologists with some orientation for future research on financial crime. Building on the insights generated in wcc literature, the article concludes by suggesting a number of promising avenues for future sociological research on the phenomenon of illegality in financial markets.

Keywords: White-collar crime; Financial crime; Economic sociology; Illegality.

ILLEGALITY IS UBIQUITOUS in today's financial markets. After consecutive financial scandals in the 1980s, the 1990s, and the early 2000s, the aftermath of the global financial crisis of 2007–2008 has revealed yet another wave of financial crimes. Predatory lending to disadvantaged borrowers, widespread mis-selling of interest-rate swaps to small and medium enterprises, financial statement fraud related to structured investment products, and the manipulation of key financial benchmarks are only a few of a long list of possible examples. Observers have suggested that crime is more endemic in the financial sector than in any other sector of the economy [Freeman 2010]. Some even argue that financial markets have turned into a de facto “criminal playground” [Michel 2008]. The systemic character of financial crime becomes all the more relevant from an economic sociology perspective if one considers how, in today's highly financialized form of capitalism, the

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experiences of firms, households, and governments, as well as the trajectory of macro-economic dynamics have all become increasingly mediated by relations with financial markets.

Despite the ubiquity of illegal behavior in financial markets and the questions this raises with regard to the functioning and social legitimacy of today's financial industry and the specific form of finance capitalism in which it operates, systematic research on issues of illegality in financial markets is lacking in the field of economic sociology.¹ Although studies on the sociology of financial markets have made great conceptual and theoretical advances in understanding the institutional foundations of financial market dynamics and the *modus operandi* of financial market actors [e.g. Adler and Adler 1984; MacKenzie 2008; Krippner 2011; Knorr Cetina and Preda 2012; Godechot 2015], such research has until now failed to seriously engage with financial market dynamics that fall outside the realm of legality. This failure to systematically study issues of illegality in financial markets represents a significant blind spot in the conceptual and theoretical understandings of capitalist dynamics generated in the field of economic sociology.² Moreover, by refraining from systematically studying illegality in financial markets, economic sociologists forego the opportunity, if not the moral duty, to inform important debates about suitable policy responses to financial crime. There is, therefore, an urgent need for economic sociologists to engage more intensively with issues of illegality in financial markets.

The aim of this article is to provide economic sociologists with some orientation for future research on illegality in the context of financial markets by reviewing the literature on white-collar crime (WCC), a relatively small and greatly neglected field of research in the academic discipline of criminology.³ Situated at the intersection of law, society, and markets, WCC research has produced an invaluable body of knowledge about the individual, organizational, and societal aspects

¹ Notable exceptions are Will, Handelman and Brotherton [2013] and Fligstein and Roehrkasse (2016).

² Following Swedberg [2003: xi], I use the term economic sociology broadly in this article to refer to a field of study in which researchers apply the sociological tradition to economic phenomena in an attempt to explain these.

³ It needs to be emphasized here that the concept of white-collar crime is an Anglo-American one. As Friedrich [2013a] has pointed out, "economic crime" is the favored term among Europeans who study or investigate what is usually referred to as white-collar crime

in the English-speaking world. Conceptualizations of the term "economic crime," however, generally fail to capture one dimension that is at the heart of the white-collar crime concept: i.e., that these crimes are committed by members of the respectable and economically advantaged and privileged segments of society [Friedrichs 2013a: 19-20]. As a result, most of the literature that is subsumed under the label "economic crime" focuses on what could be said to be illegal markets (see Beckert and Wehinger 2013) and the economic activities of organized crime groups operating in the shadows of the underground economy.

of illegality in the business world.⁴ The article traces the origins and evolution of the concept of white-collar crime and identifies several major points of contention in the debate surrounding it. By elaborating on these points of contention, it brings to the fore a number of important conceptual and theoretical insights that bear relevance for sociological research on issues of illegality in financial markets. The article concludes by explicating the way in which these conceptual and theoretical insights direct attention to a number of promising avenues for future research in the field of economic sociology.

White-collar crime: The origins and evolution of a concept

The concept of “white-collar crime,” which has by now migrated out of the realm of academia to become part of public discourse, has a long and contentious history [Friedrichs 2013b; Helmkamp, Ball and Townsend 1996]. The concept has been the subject of a long-standing intellectual debate ever since it was coined by the sociologist Edwin Sutherland (1945-1983) in his 1939 presidential address to the American Sociological Association. In his landmark speech, Sutherland posed a major challenge to the traditional assumptions about criminals and the predominant etiological theories of crime when he introduced the term to refer to the phenomenon of lawbreaking by “respectable” persons in the upper reaches of society. Up to that time, criminologists had focused almost entirely on lower-class “street crime,” and research was characterized by a broad consensus that poverty was the primary cause for crime. The neglect of elite forms of lawbreaking, Sutherland explained, was primarily due to the fact that the crimes committed by the upper class were not represented in the official criminal records that formed the primary source from which criminologists drew their data. According to Sutherland, this distortion in the official criminal records was primarily explained by two facts. First, that “persons of the upper socioeconomic class are more powerful politically and financially and escape arrest and conviction to a greater extent than persons who lack such power” [Sutherland 1983: 6]. Second, when arrested, white-collar offenders are treated in a fundamentally different way by the justice system:

⁴ As a consequence of the American roots and the predominantly Anglo-American practice of the white-collar crime concept, wcc research is heavily skewed towards the

lawbreaking of the business elite in capitalist societies, and specifically in the Anglo-American context.

[They] are not arrested by uniformed policemen, are not tried in criminal courts, and are not committed to prisons; this illegal behavior receives the attention of administrative commissions and of courts operating under civil or equity jurisdiction. For this reason such violations of law are not included in the criminal statistics nor are individual cases brought to the attention of scholars who write the theories of criminal behavior⁵ [ibid.: 6-7].

By introducing the concept of white-collar crime, Sutherland thus brought about a realization that upper-class people commit their own forms of crime. Criminologists' hitherto neglect of elite forms of lawbreaking, he claimed, represented a serious selection bias in the samples from which conventional explanations of criminal behavior were derived [Sutherland 1940]. Hence, Sutherland concluded, criminological theories looking for causal explanations of criminal behavior in poverty or psychopathic and sociopathic conditions statistically associated with poverty were seriously flawed [ibid.: 5].⁶

Although received as potentially representing a paradigmatic shift in the study of crime, Sutherland's argument initially did not find much resonance in the thinking, theory, and research of criminologists [Simpson and Weisburd 2009].⁷ It was not until the 1970s that his ideas would be more fully applied to empirical research. Rosoff, Pontell, and Tillman [2014] explain that the 1970s brought an end to a period of conformity during which big business had been seen as the solution to, rather than a problem for, widely shared prosperity. Social unrest and several major corporate scandals—most notably the Watergate and Lockheed scandals in the United States—brought about a new spirit, one that was similar to the populist, anti-establishment spirit that had prevailed during the Great Depression. Once again the legitimacy of those holding power was questioned and a renewed interest developed in Sutherland's concern with lawbreaking among the rich and powerful [Geis 1992].

The 1970s was also a period in which law enforcement officials became concerned with white-collar crime, giving rise to the creation

⁵ Here it needs to be emphasized that the distinction between civil offenses and criminal offenses is often not inherent to the acts themselves, but rather to the way in which the justice system responds to them. Most white-collar offenses violate both civil and criminal laws. Whether the offenses are prosecuted in civil or criminal courts is often determined by extralegal factors [Coleman 2006].

⁶ As an alternative to existing theories of crime, Sutherland had developed his so-called *theory of differential association*, which posits that values, attitudes, techniques, and motives

for criminal behavior are learned through interaction with others in a certain social group.

⁷ One reason for the initial failure of Sutherland's critique to influence mainstream criminology, Simpson and Weisburd [2009: 4] suggest, is that for many scholars Sutherland's main argument was inextricably intertwined with his attempt to advance his theory of differential association. The failure of Sutherland's theory, then, appears to have contributed to the initial lack of interest in white-collar crime as a concept.

of white-collar crime units in federal and local prosecutorial agencies [Katz 1980]. The decade also saw the first large-scale funding of white-collar crime research by the federal government [Simpson and Weisburd 2009]. It was not until the 1990s, however, that both systemic data and grant money for white-collar crime research became more readily available and that, facilitated by this, empirical work on white-collar crime moved from being primarily qualitative case studies whose authors made little attempt to locate these cases in a broader socioeconomic context to studies that began to pursue the systemic sources of different forms of white-collar crime.⁸

The renewed interest in white-collar crime triggered an academic debate about the need for a reformulation of the concept. When he introduced the concept, Sutherland had emphasized that it was not intended to be definitive but merely to call attention to crimes that were usually neglected by criminologists [Sutherland 1983]. Still, he suggested that white-collar crime could be “defined approximately as a crime committed by a person of respectability and high social status in the course of his occupation” [ibid.: 7]. This somewhat ambiguous “definition” includes three interrelated premises that in subsequent decades came to define the areas of a fierce scholarly debate about the proper parameters for the white-collar crime concept. First, in his empirical work, Sutherland subsumed under his white-collar crime concept a whole range of behaviors that did not violate criminal law statutes but rather included breaches of regulatory and administrative law or that resulted in adverse civil decisions. In doing so, Sutherland’s introduction of the white-collar crime concept posed a challenge not only to criminological theory, but to the very *concept of crime* [Minkes and Minkes 2008]. Second, Sutherland’s definition indicated that the respectability and high social status of its perpetrators should be regarded as a defining characteristic of white-collar crime. Here Sutherland used the term “white-collar” as a metaphor to distinguish the occupational status of those who were employed in office buildings—especially those in managerial and executive positions—from those who worked in factories or were employed in other “blue-collar” jobs [Rosoff, Pontell and Tillman 2014: 3]. Third, white-collar crimes, as the definition suggests, are typically committed in the course of otherwise perfectly legal occupational activities. By locating white-collar crimes in a legitimate occupation, Sutherland’s definition ruled out for selection those crimes committed by organized crime groups and professional

⁸ I thank Robert Tillman for bringing this point to my attention.

criminals, such as con men and other sorts of swindlers. Below, these areas of conceptual skirmishing and the theoretical insights they produced will be discussed in more detail.

Reconsidering the criminality of wcc: The Sutherland-Tappan debate

One controversy raised by Sutherland's introduction of the concept of white-collar crime emerged from his use of the word "crime." Notwithstanding his use of the criminal label, Sutherland subsumed under white-collar crime not only offenses that violated criminal law, but also offenses that were violations of regulatory, administrative, and civil laws. He justified his decision by providing a definition of crime that required two conditions to be fulfilled for an act to be criminal: "legal description of an act as socially injurious and legal provision of a penalty for the act" [Sutherland 1945: 132]. For many scholars, however, especially those in the legal profession, Sutherland's approach was highly problematic. They believed that it was inappropriate to use the "crime" label for many of the acts discussed by Sutherland [Shover and Wright 2001a].

The most prominent amongst those critics was the legally trained sociologist Paul Tappan (1911-1964). In an article published in 1947 in the *American Sociological Review*, entitled *Who is the Criminal?*, Tappan insisted on a strictly legal use of the word crime, because he found perturbing the confusion around the criminal label unleashed by Sutherland. First, Tappan maintained that "crime is an intentional act in violation of the criminal law (statutory and case law), committed without defense or excuse, and penalized by the state as a felony or misdemeanor" [Tappan 1947: 17]. Second, he insisted that the term "crime" should only refer to behaviors that have been adjudicated as such by the courts. In studying the offender, Tappan emphasized, "there can be no presumption that arrested, arraigned, indicted, or prosecuted persons are criminals unless they also be held guilty beyond a reasonable doubt of a particular offense" [ibid.]. Not to rely on the criminal justice system to decide what constitutes a criminal act and what not, he argued, would allow the subjective value judgments of the investigator to dominate social inquiry on the topic [ibid.: 14]. Sutherland, however, fundamentally opposed Tappan's argument and pointed to a differential implementation of the law by the justice system with regard to white-collar criminals [Sutherland 1945: 137].

As Pontell points out, Sutherland emphasized that “if studies were grounded in the well-documented biases of the criminal justice system, that researchers would simply replicate them in their analyses, and lose all claims to science” [Pontell 2005: 759].

In the decades following the Sutherland-Tappan debate, students of white-collar crime have generally adopted one of three approaches. One group of scholars has heeded Tappan’s concerns, and they have confined their studies of white-collar crimes to only those offenses that have been recorded in the criminal records. The most prominent example of such an approach has been the Yale White-Collar Crime Project, which will be discussed in more detail in the next section.

A second group of scholars, mostly trained in the social sciences, has followed Sutherland’s lead and has largely rejected Tappan’s concerns [e.g., Coleman 2006; Geis 1992; Gerber and Jensen 2007; Minkes and Minkes 2008]. Central to the argument of these scholars is the claim that the issue of white-collar crime cannot be studied separately from the distribution of power in society. Minkes and Minkes [2008], for example, maintain that Tappan’s opposition to the inclusion of non-criminal offenses under the white-collar crime label is meaningful only if one is dealing with the operation of the law as it stands; “it ignores the role of power in forming the law and determining, for example, which forms of wrongdoing will be the subject of criminal prosecution and which will be subject instead to administrative and civil sanctions” [ibid.: 11]. In a similar vein, Gerber and Jensen suggest that an indication of who has power at a certain moment in time is reflected in the decision about which acts to encode in criminal law as opposed to civil and administrative law and in the extent to which some laws are enforced more rigorously than others [Gerber and Jensen 2007: xiii]. In this regard, Friedrichs [2013b] has pointed out that, historically, corporate and financial elites have been largely successful in shielding many of their blatantly exploitative practices from being criminalized. Reflecting upon Tappan’s emphasis on the need for adjudication by a criminal court, Gilbert Geis echoes the stance of those who rejected Tappan’s concerns, as he argues that:

Sutherland got much the better of the debate by arguing that it was what the person had actually done in terms of the mandate of the criminal law, not on how the criminal justice system responded to what they had done, that was essential to whether they should be regarded as criminal offenders [Geis 1992: 36].

A third group of scholars has attempted to recognize the legal issues raised by Tappan without compromising on Sutherland’s

endeavor to put the socially harmful acts committed by the upper strata of society on the radar of criminologists. These scholars have proposed alternative concepts based on the notion of “harm.” Typically these concepts are sufficiently broad and flexible to allow for the violations of norms and statutes other than criminal law. Most prominent amongst those is the concept of *elite deviance*, proposed by David Simon and Stanley Eitzen [1990].⁹ An often ventilated concern with such approaches, however, is that there is an absence of clearly formulated public standards for behavior, which leads scholars using deviance approaches to rely on their own values and prejudices to define what sorts of practices are actually deviant [Coleman 1987; Green 1997]. Especially from the perspective of law and legal theory, Green points out, such approaches are highly problematic: “To replace the concept of white-collar crime with the concept of deviant behavior is [...] to blur a distinction that, at least in legal discourse, is foundational” [Green 2007: 12].

Today the debate surrounding the criminality of white-collar crime is far from exhausted [Ruggiero 2007] and continues to show the divergence between legal, social, and political definitions of criminality [Nelken 2007]. Some have suggested that competing definitions of crime be conceptualized along a continuum that extends from a narrow legalistically constrained conception to a very broad one based on human rights [Brown and Chiang 1993]. This continuum, Ruggiero stresses, deserves careful examination “in that subjectivity, social and intellectual identity and political strategy are engrained in the very process which extends the criminal label from clearly defined illegitimate acts to harmful acts” [Ruggiero 2007: 167]. With some risk of oversimplification, however, this continuum can be divided into three sections: on one end are those acts that violate existing criminal law, in the middle are those acts that violate existing civil and regulatory law, and on the other end are those acts that are socially harmful but for which no legal remedy yet exists [Brown and Chiang 1993: 30].¹⁰

⁹ Other examples of concepts that have been proposed are “occupational deviance” [Quinney 1964], “white-collar illegality” [Shapiro 1980], “white-collar lawbreaking” [Reiss and Biderman 1980], and “corporate deviance” [Ermann and Lundman 1982].

¹⁰ Some have suggested other categories that could be added to this. Coleman [2006: 6], for example, points to the fact that many internationally operating organizations operate in the

cracks between different national jurisdictions. It is therefore necessary, he argues, to include internationally agreed upon principles, such as those codified in United Nations documents like the Universal Declaration of Human Rights, the Guidelines for Consumer Protection, and the Draft Codes of Conduct for Transnational Corporations, into our definition of illegal behavior.

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Reconsidering the social status aspect of wcc: Offender- versus offense-based approaches

A second, and related, controversy arising from Sutherland's introduction of the concept centers on his adoption of an offender-based conceptualization of white-collar crime. For Sutherland, and those following his lead in this regard [e.g., Braithwaite 1985; Geis 1992; Coleman 2006; Pontell and Geis 2014; Schlegel 1996; Shover and Wright 2001b], the respectability and high social status of offenders needs to be a defining characteristic of white-collar crime precisely because, as Sutherland emphasized, it directs attention to:

a vast area of criminal behavior which is generally overlooked as criminal behavior, which is seldom brought within the score of the theories of criminal behavior, and which, when included, calls for modification in the usual theories of criminal behavior [Sutherland 1949: 112].

Many, however, have argued that, contrary to Sutherland's beliefs, white-collar crime should be defined in a status-neutral manner and have instead proposed conceptualizations of white-collar crime that focus on the nature, characteristics, and methods of the offenses, rather than the offenders [e.g., Edelhertz 1970; Shapiro 1990; Weisburd *et al.* 1991; Albanese 1996]. Shapiro, for example, argues that the concept of white-collar crime has become:

an imprisoning framework for contemporary scholarship [that] is founded on a spurious correlation that causes sociologists to misunderstand the structural impetus for these offenses [...] they confuse acts with actors, norms with normbreakers, the modus operandi with the operator [Shapiro 1990: 346-347].

Proponents of offense-based conceptualizations generally provide two arguments in favor of reconceptualizing Sutherland's offender-based definition of white-collar crime. The first argument concerns the vagueness of the notion of “high social status and respectability.” Critics of an offender-based definition have suggested that Sutherland primarily included the notion of respectability into his preliminary definition of white-collar crime because it defined the very ability to commit such crimes [Weisburd and Waring 2001]. However, they argue, in contemporary society the relationship between social status and the ability to commit white-collar crimes has significantly changed in two ways, making it problematic to include high social status and respectability in a definition of white-collar crime. First, as Leap [2007] points out, the sharp distinction between the managerial

white-collar and the blue-collar segments of the labor force that existed when Sutherland developed the concept had largely disappeared in most advanced industrialized countries by the end of the twentieth century. No longer are white-collar jobs synonymous with high social status, power, prestige, and respectability [Schlegel 1996; Coleman 1996]. This “democratization” of white-collar jobs and the opportunities that come with them led some scholars to conclude that many of the crimes that Sutherland was hinting at could now just as well be committed by middle-class people [Weisburd *et al.* 1991]. Second, the advent of the computer and modern bureaucracies has put transactions involving large amounts of money in the hands of people who never had access to such sums in the past [Weisburd and Waring 2001: 11]. In contemporary society, it is therefore “arbitrary to distinguish identical behaviors, involving similar people with similar motives, calling one white-collar crime, and the other something else” [Albanese 1996: 89].

A second argument in favor of an offense-based approach holds that it is problematic to include social status in the definition of white-collar crime because doing so rules out the possibility of using social status as an explanatory variable [Benson and Simpson 2009: 7; Green 1997: 14; Shapiro 1990: 347]. Social status, it is argued, is important precisely because it influences access to opportunities for white-collar crime as well as societal reactions to such offenses. By including social status in the definition of white-collar crime, the important question of *how* social status is related to white-collar crime is ruled out [Benson and Simpson 2009].

The first to come up with an offense-based definition of white-collar crime was Herbert Edelhertz, an official at the US Department of Justice. After recognizing Sutherland’s contribution, Edelhertz went on to argue that white-collar crime is “democratic” and need not be committed by persons of high social status. The character of white-collar crime, he argued, “must be found in its *modus operandi* and its objectives rather than in the nature of the offenders” [Edelhertz 1970: 4]. Edelhertz proposed to redefine white-collar crime 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 [ibid.: 3].

Not only did Edelhertz’ offense-based approach become influential with the federal bureaucracy [Coleman 2006: 3], the idea of the need to reconceptualize Sutherland’s offender-based conception of white-collar

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crime was also picked up by other scholars, giving way to two distinct offense-based approaches to white-collar crime: a *legalistic* approach and a *sociological* one.

The *legalistic* version of the offense-based approach uses the legal code as a starting point for defining white-collar crimes. The renewed interest in white-collar crime from the 1970s onwards prompted a number of influential studies on the topic. Perhaps the most influential of those has been the *Yale White-Collar Crime Project*.¹¹ Funded by the National Institute of Justice in the United States and headed by Stant Wheeler, a professor of law and sociology at Yale University, the Yale project has been praised for being the first endeavor to systemically research white-collar crime and, in doing so, to come up with more than just anecdotal evidence [Johnson and Leo 1993]. The Yale researchers began their study by selecting eight specific statutory criminal offenses that were considered to be white-collar crimes.¹² Having designated these offenses, the researchers then turned to studying the criminals that had been convicted for these offenses. They found that, contrary to Sutherland's suggested definition, the offenders in their sample were predominantly middle-class people who enjoyed neither high social status nor extraordinary respectability. One of the conclusions the researchers drew from their findings was that it is not social status that enables offenders to commit white-collar crimes, but rather their specific positions in organizational structures. Organizational opportunities and resources, they argued, are used by perpetrators as a “weapon” to commit white-collar offenses, with the most harmful offenses being those which are most “organizationally complex.” As these “organizational weapons” become ever more sophisticated and ubiquitous, they added, we can expect individuals to use those newly available resources in ever-increasing numbers, leading to illegal gains of formerly unseen magnitude [Wheeler and Rothman 1982; Weisburd *et al.* 1991].

¹¹ The Yale White-Collar Crime Project was first funded in 1976 and ran for well over a decade. It produced numerous research articles, doctoral dissertations, and monographs, the most prominent of which are *Wayward Capitalists: Targets of the Securities and Exchange Commission* by Susan SHAPIRO [1984], *Defending White-Collar Crime: A Portrait of Attorneys at Work* by Kenneth Mann [1985], *Sitting in Judgment: The Sentencing of White-Collar Criminals* by

Wheeler, Mann, and Sarat [1988], and *Crimes of the Middle Classes: White-Collar Offenders in the Federal Courts* by Weisburd, Wheeler, Waring, and Bode [1991]. For an extensive review of the Yale White-Collar Crime Project, see Johnson and Leo [1993].

¹² The eight selected offenses were securities violations, antitrust violations, bribery, bank embezzlement, mail and wire fraud, tax fraud, false claims and statements, and credit- and lending-institutions fraud.

The insights generated by the Yale project motivated two other scholars to re-label white-collar crime as *crimes of specialized access*, which they defined as “a criminal act committed by abusing one’s job or profession to gain specific access to a crime target” [Felson and Boba 2010: 119]. The central idea put forward by these scholars is that legitimate features of the work role provide potential offenders with opportunities to do misdeeds [ibid.: 119]. According to William K. Black, of special concern in this regard are the opportunities to commit crimes available to those at the top of organizational structures. Such *control frauds*—crimes in which “those who control firms or nations use the entity as a means to defraud customers, creditors, shareholders, donors, or the general public” [Black 2005b: 734]—he argues, cause greater financial losses than all other forms of property crimes combined [Black 2005a, 2005b].¹³

The *sociological* version of the offense-based approach suggested by Susan Shapiro [1990] and David Friedrichs [2010] makes a new element the central factor in the definition white-collar crime: the violation of the norms of trust in fiduciary relationships. Indeed, Sutherland himself already suggested that “the varied types of white-collar crimes in business and the professions consist principally of violations of delegated or implied trust” [Sutherland 1940: 3]. In her 1990 article *Collaring the Crime, not the Criminal: Reconsidering the Concept of White-Collar Crime*, Shapiro further builds upon Sutherland’s insight and contends that the violation and manipulation of the norms of trust—of disclosure, disinterestedness, and role competence—are the central elements that define white-collar crime [Shapiro 1990: 350]. Endorsing Shapiro’s claim that the violation of trust is *the* central attribute of white-collar crime, Friedrichs has suggested that it might be better to conceive of white-collar crime as:

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 [Friedrichs 2010: 8].

According to such an approach, white-collar crime research should then focus on the way in which white-collar crime offenders exploit

¹³ In the context of firms, control frauds typically take the form of accounting frauds perpetrated by senior executives. Here one can think of the accounting frauds perpetrated by senior executives at the US energy

firm Enron [Benston and Hartgraves, 2002]. In the context of entire nations, control frauds typically take the form of corruption and kleptocracy amongst senior public officials.

the structural vulnerabilities of trust relationships through deception, self-interest, or outright incompetence [Shapiro 1990: 350]. Especially in the modern world, a rising need to rely on agents and the consequent increased exposure to the risk of their malpractices have rendered these trust relationships much more problematic [Friedrichs 2010: 9; Nelken 2007: 743].

Those clinging to Sutherland’s offender-based conceptualization of white-collar crime have refuted the arguments put forward by advocates of offense-based approaches. They have responded to the critique that socioeconomic status can no longer be an explanatory variable if white-collar crime is defined by the social status of its offenders by emphasizing that there is no need to conceptualize social status as a dichotomous variable [Schlegel 1996: 109; Coleman 2006: 3]. Even if respectability and high social status are part of the definition of white-collar crime, there is still a wide range of variation amongst offenders. They also think the argument fails to stand up to scrutiny and that the vagueness of the notion of “high social status and respectability” justifies a reconceptualization of the concept of white-collar crime. Although they do recognize the vagueness of the notion and subscribe to the idea that there is a need for a more sophisticated operationalization, they maintain that it does not pose a real threat to the conceptual integrity of the offender-based approach [Coleman 1996: 81]. In fact, they argue, offense-based approaches threaten the whole intellectual thrust of the concept of white-collar crime, which for them is to call attention to the crimes of the rich and powerful and the way in which these perpetrators escape punishment [Coleman 2006: 4]. They are especially skeptical towards legalistic versions of offense-based approaches. The law, they argue, “is the product of power, lobbying, whim, and a host of idiosyncratic inputs that often lack logical coherence” [Pontell 2016: 49]. Hence “the unqualified acceptance of legal definitions as the basic elements of criminological enquiry violates a fundamental criterion of science” [Sellin 1938: 31]. In practice, removing the notion of status from the definition of white-collar crime effectively skews examination of offenses downward, causing researchers to miss the crimes of the powerful, who simply sidestep the criminalization process [Benson and Simpson 2009: 12; Pontell 2016: 45; Shover and Wright 2001: 2; Shover and Cullen 2008: 159].

In this regard, advocates of an offender-based conceptualization of white-collar crime have pointed to three ways in which the respectability, high social status, and ultimately the power of white-collar

offenders enables them to prevent their offenses from appearing in official government databases and hence from studies such as the Yale project. First, elites have been extremely successful in shifting the responsibility for dealing with white-collar crimes away from the criminal justice system to specially created regulatory agencies—which are more inclined to negotiate cooperative settlements than to pursue tough criminal sanctions—and to subsequently preventing those agencies from obtaining sufficient resources to enable them to carry out their legislative mandates effectively [Coleman 2006: 236]. Second, the vast economic resources and political influence of elite offenders and the organizations they work for can be employed to escape detection and arrest [ibid.: 236]. Third, even when arrested, elite offenders often enjoy the advantage of a respectable appearance as well as the best legal representation [ibid.]. All in all, the power of elite offenders enables them to decriminalize their deviant practices, hide their illegalities, and obstruct successful prosecution, all of which prevent their offenses from appearing in official government databases [Pontell 2016: 45]. Because of these real-world interactions of law, power, and wealth, advocates of an offender-based approach to white-collar and financial crime maintain that to conceptually separate status from the offense results in an “a priori operational trivialization of white-collar crime” [ibid.].

According to defenders of Sutherland’s initial offender-based approach, the real reasons why some people advocate offense-based definitions are rather sinister: such definitions allow government officials to provide a more convincing public account of their effort to stop white-collar crime, and researchers benefit from the fact that it becomes much easier to obtain data [Coleman 2006: 4; Shover and Wright 2001: 2]. Therefore, they conclude, the most sensible way to proceed is to adhere to Sutherland’s offender-based definition [Braithwaite 1985; Geis 1992].

Some scholars have argued that offender- and offense-based approaches are actually neither contradictory nor mutually exclusive and instead have suggested a reconciliation of the two. For example, while conceding to the critique that, in practice, offense-based approaches have often resulted in studies that do not include the crimes of the powerful, Benson and Simpson [2009] argue that this is more of a practical consequence that reflects a failure on the part of the researcher, rather than a logical consequence of offense-based approaches [ibid.: 13–14]. The key point to keep in mind, they say, is that white-collar crimes are committed using particular techniques. White-collar criminals rely upon certain *modus operandi*. The characteristics central to offender-based

definitions, such as high social status, respectability, and elite occupational positions, are indeed important because, first, they provide offenders with access to opportunities for white-collar crime, and second, because they are related to the seriousness of the offense [Benson and Simpson 2009: 13-15; Johnson and Leo 1993: 89]. For Benson and Simpson, however, this does not justify making these characteristics the defining criteria of white-collar crime and thereby exclude crimes that are similar in nature but are committed by people of low social status. Taking a similar position in the debate, Shover and Hochstetler [2006] distinguish between “ordinary white-collar crimes” and “upperworld white-collar crimes.”

*Reconsidering the occupational aspect of wcc:
The context and organization of white-collar crimes*

Parallel to the debate on offender- versus offense-based approaches to white-collar crime discussed in the previous section, two other areas of conceptual reconsideration of Sutherland’s “approximate” definition came up in the 1970s. Both emerged from Sutherland’s requirement that white-collar crimes are committed in the course of one’s occupation. The first concerned the desire by some scholars, especially those advocating offense-based approaches, to shift conceptual and theoretical emphasis from the social class and individual characteristics of the offender towards the organizational context in which a large portion of white-collar crimes take place. This shift was motivated by the observation that many white-collar crimes were committed in furtherance of otherwise legitimate business operations, rather than for personal benefit. In their influential book *Criminal Behavior Systems: A Typology*, which was first published in 1967, Clinard, Quinney, and Wildeman captured this idea by proposing a distinction between *occupational crime* and *corporate crime*. They defined occupational crime as “offenses committed by individuals for themselves in the course of their occupations” [1994: 173]. Here one can think, for example, of the embezzlement of corporate funds by employees, or the abuse of position by rogue traders in financial firms.¹⁴ Corporate crime, on the other hand, was defined as “offenses

¹⁴ The rogue trading case that has probably received most public and scholarly attention is that of Nick Leeson, a young derivatives trader working at the Tokyo desk of the British investment bank Barings who

lost over a \$1 billion for the firm in an elaborate scheme that he built up over three years (see Kane/DeTrask 1999 for a discussion of the Leeson case).

committed by corporate officials on behalf of their corporations and the offenses of the corporations themselves” [ibid.]. Examples of corporate crime include such illegal practices as price fixing, false advertising, and most forms of accounting fraud. A recent high-profile case that can be subsumed under the corporate crime category is the Volkswagen scandal that erupted earlier this year. The German car manufacturer had its engineers manipulate millions of diesel engines by installing software that would show artificially lowered emissions when the car was at a test rig.

Conceptualizations of white-collar crime that distinguish sharply between occupational and corporate crimes on the basis of who benefits from the illegal act—the individual or the organization—have been adopted by many others following Clinard, Quinney, and Wildeman, [e.g., Friedrichs 2013; Braithwaite 1985]. The principle rationale for distinguishing between organizational crime and occupational crime is based on the belief that most white-collar crimes that are committed within an organizational environment cannot be explained by the personal characteristics of their perpetrators. Instead, it is believed that organizational goals, conditions, structures, dynamics and constraints play a significant role in explaining the onset and course of those crimes [Pearce 2001; Shover and Scroggins 2009; Shover and Wright 2001b]. To put it differently, many white-collar crimes committed by individuals are committed on behalf of the organizations that these individuals work for.¹⁵ With their by now widely accepted dichotomy, Clinard, Quinney, and Wildeman thus shifted the focus of criminological work from the individual and a person’s criminal predispositions towards the corporation and its organizational dynamics, and paved the way for the development of a sociology of organizational crime [Kramer, Michalowski and Kauzlarich 2002].¹⁶

¹⁵ Note that the idea that some crimes are committed on behalf and to the benefit of the organizations is different from the idea mentioned earlier, put forward by Wheeler and Rothman [1982], that the organization can be used as a “weapon to defraud.” In the former case, organizational dynamics are causal to white-collar crimes. In the latter they are merely instrumental to the commission of such crimes.

¹⁶ Closely related but nevertheless distinct from the scholarly concept of corporate crime is the legal concept of *corporate criminal liability*. Unique to the legal system of the United States [Diskant 2008], the legal

provision of corporate criminal liability holds that a corporation, as a legal “person,” can be prosecuted and punished for violations of criminal law deemed to have been committed by the denominated group, rather than by the individuals within it [Geis 1993]. What these concepts have in common, then, is that they focus on the corporation, rather than the individual, as the criminal perpetrator. Geis [ibid.: 23] suggests that corporate crime became a legitimate topic for criminological study largely because of the introduction of the Anglo-American provision of corporate criminal liability.

Today, many scholars have replaced the term *corporate crime* with the term *organizational crime*, allowing for the inclusion of crimes committed on behalf of non-corporate organizations such as governmental agencies, international institutions of governance, and non-governmental organizations. Some [e.g., Clarke 1990; Pearce 2001; Punch 1996], however, opt to cling to a narrow focus on *corporate crime*. They believe that there is something inherently “dirty” in business [Punch 1996] and that treating corporate crime as a subtype of organizational white-collar crime will not do justice to the specifically criminogenic characteristics of the corporate form. As Shover and Scroggins [2009: 277] point out, the idea that corporations have a strong antisocial character had already been expressed at the dawn of the twentieth century by Edward Ross, who characterized them as entities that “transmit the greed of investors, but not their conscience” [1907: 109]. Subsequent research on corporate crime has reaffirmed the central role played by the emphasis on profit maximization in explanations for illegal acts committed by corporate executives [Geis 1973; Cullen, Maakestad and Cavender 1987]. Other rationales for isolating corporate crime, Shover and Scroggins [2009: 277] point out, are the pervasiveness and power of large corporations, the high costs of corporate crime to the larger community, and the difficult control challenges it presents.

Other scholars have focused their attention on forms of white-collar crime that arise from functional interdependencies between corporations and the state. In this regard, Michalowski and Kramer [2006] have introduced the concept of *state-corporate crime* to refer to those forms of organizational crime that occur when one or more institutions of political governance pursue a goal in direct cooperation with one or more institutions of economic production and distribution [Kramer, Michalowski and Kauzlarich 2002]. The concept of state-corporate crime, they explain, is based on the idea that, contrary to popular belief, economic power is inextricably intertwined with political influence:

The institutional arrangements and cognitive frameworks of liberal democracies create an image that economics and politics are, or should be, kept apart by a bright line that separates money from power. This is of course a social fiction. It is, however, an important one because the premise that rich and poor are political equals is the very heart of democracy’s claim to legitimacy [Michalowski and Kramer 2007: 201].¹⁷

¹⁷ For more on the concept of state-corporate crime, see Kramer, Michalowski, and Kauzlarich [2002], and Michalowski and Kramer [2006, 2007].

The benefits of distinguishing between organizational—or corporate—and occupational crime for our understanding of white-collar crime has been widely acknowledged by those studying the topic [e.g., Coleman 1987: 407; Johnson and Leo 1993; Kramer, Michalowski and Kauzlarich 2002; Payne 2013: 28]. Nevertheless, two pitfalls in doing so are mentioned in the literature. First, it has been argued that much scholarly work tries to distinguish between individual and organizational crime on the basis of who benefits—either the individual or the organization—but often fails to fully recognize that in many cases both the individual offender and the organization reap mutual advantage from criminal conduct [Johnson and Leo 1993: 72; Wheeler and Rothman 1982: 1405].

Second, it has been pointed out that the corporate-occupational dichotomy fails to consider the possibility of organizational crime “in which the organization is a vehicle for perpetrating crime against itself” [Pontell 2005: 762-763]. Such hybrid forms of “crime by the corporation *against* the corporation” [Calavita and Pontell 1991: 99] might occur when senior executives turn the principal goal of an organization into the generation of personal profits for top management, despite the negative effect on the health of the organization on the long term. Such schemes typically occur in two stages. First, top management subverts the firm’s legitimate structure and objectives and redirects them towards the firm’s engagement in questionable business practices whose sole purpose is the generation of cash flows. In this stage, accounting fraud is frequently used as “the weapon of choice” to produce fictional profits on the books [Black 2005: 736]. Subsequently, top management uses normal corporate mechanisms, such as dividends, bonuses, stock options, and appreciation in the value of the firm’s stock, to convert fictional corporate profits into real personal profits. Effectively, then, in the second stage, senior executives are *looting* the firm [Akerlof and Romer 1993].

Calavita and Pontell [1991] stress the fact that, contrary to the traditional forms of embezzlement studied by Sutherland [1949] and Cressey [1953] in which individual employees in subordinate positions steal in isolated acts from their employing corporation for personal gain, such looting practices are very much collective in nature and involve complex networks of co-conspirators inside and outside the institution. Hence, they suggest that such practices be referred to as *collective embezzlement*. Furthermore, they suggest that collective embezzlement constitutes the prototypical form of white-collar crime in the contemporary context of finance capitalism [Calavita, Tillman

and Pontell 1997]. When we consider the major financial debacles of the last few decades, this claim seems to bear some truth. The savings and loan crisis of the 1980s, the corporate scandals of the early 2000s, and the wave of frauds in the mortgage industry that contributed in the build-up to the financial crisis of 2007, all show striking similarities indeed to the practices described by Calavita, Pontell, and Tillman.

A second area of conceptual debate related to Sutherland's requirements that white-collar crimes are committed in the course of one's occupation concerns the inclusion in, or exclusion from, analysis of those crimes committed by organized crime groups and organizationally unattached professional criminals. Those who cling to Sutherland's emphasis on the occupational location of white-collar crimes [e.g., Coleman 1987; Green 1997; Felson and Boba 2010], as well as those working in the occupational and organizational crime traditions, usually exclude such crimes from their studies [Shover and Scroggins 2009: 276]. Although Sutherland himself never explicitly compared white-collar and organized crime [Potter and Gaines 1996: 37], he did indeed emphasize the premeditated and organized nature of white-collar crime. As Green points out, Sutherland

believed that white-collar criminals were organized not only by their collusion in their crimes, but also for the control of legislation, selection of administrators, and restriction of appropriation for the enforcement of laws which may affect themselves [Green 1997: 12].

Nevertheless, Sutherland considered white-collar crimes as distinct enough to merit a qualifying label. Potter and Gaines have suggested that what primarily motivated Sutherland to distinguish white-collar crime from organized crime was the difference in the self-perception and the public perception of offenders:

Thieves were thieves and proud of it. The public viewed a professional thief as a criminal. White collar criminals did not view themselves as criminal actors [...] Similarly, the public viewed white-collar criminals primarily as legitimate actors who strayed or made mistakes [Potter and Gaines 1996: 37].

Some scholars [e.g., Calavita and Pontell 1993; Passas and Nelken 1993; Ruggiero 1996], especially those who advocate an offense-based approach to white-collar crime, consider a conceptual distinction between white-collar and organized crime as arbitrary and difficult to sustain for three reasons. First, they recall Sutherland's observation that, like organized crimes, many white-collar crimes are premeditated and organized in nature. They are performed in coordinated

structures which involve not only networks among the perpetrators themselves, but also networks between offenders and accomplices, such as law enforcement officials, politicians, and others in a position to minimize the risk of detection and prosecution [Calavita and Pontell 1993; Calavita, Pontell and Tillman 1997; Ruggiero 1996]. Whether or not the organization appears to be a legitimate business, they argue, is irrelevant: “if a primary goal of the organization is to facilitate illegal transactions for personal profit, it qualifies as organized crime” [Calivata and Pontell 1993: 527].

Second, they point out similarities in the techniques used to perpetrate both forms of crime. The *modus operandi* of much corporate misconduct, Calavita and Pontell [1993: 520] argue, very closely approximates the organized crime model. Both are based on a capitalist ethos of costs and benefits [Nelken 2007: 739; Calavita and Pontell 1993: 527], both often express a cartel-type brand of criminality that aims at establishing market monopolies [Taibbi 2012], and both frequently share the same illegal know-how [Ruggiero 1996: 21].

A third set of arguments is rather empirical in nature and concerns the assertion that the separation of organized crime from white-collar crime “does not reflect the way things are actually happening” [Passas and Nelken 1993: 224]. Regardless of the grounds scholars use to distinguish them conceptually, empirically the distinction between *organizational crime* and *organized crime* is often not tenable [Shover and Scroggins 2009: 276]. For one thing, the legitimacy of organizational goals might shift over time as legitimate businesses gradually convert into criminal ones [Baker and Faulkner 2003; Levi 2008].¹⁸ For another, we are increasingly witnessing the development of symbiotic bonds between legitimate and organized crime organizations.¹⁹ Criminal organizations are no less active in financial markets than are other white-collar criminals [Michel 2008: 388]. Indeed, as Potter and Gaines point out, “finance, investment, capitalization, and credit all matter just as much for organized crime as for McDonalds” [Potter and Gaines 1996: 44-45]. On the other side of the equation, banks have proven time and time again to be willing to turn a blind eye to Know-Your-Customer requirements in order to do business

¹⁸ Those situations in which organizations start out obeying the law but consciously turn to fraud at a later stage have been referred to as “intermediate frauds” [Baker and Faulkner 2003; Levi 2008].

¹⁹ For a typology of the different forms that such symbiotic relationships might

assume, see Passas [2002: 22-25]. The different types identified in the typology are outsourcing, collaboration, co-optation, reciprocity, systemic synergy, funding, legal interactions, and legal actors committing organized crimes.

with organized crime groups. A good example of this is the recent money laundering scandal surrounding the British bank HSBC. The bank was fined a record \$1.9 billion by US authorities in 2012 for failing to comply with anti-money laundering rules, thereby allowing Mexican and Colombian drug cartels to launder hundreds of millions of dollars through the bank's branches.

Moreover, it has been suggested that globalization may be leading to similar forms of structural integration of legitimate and illegitimate business activities [Nelken 2007: 739]. This not only makes regular collaboration between business and organized criminals more possible and more necessary, it also gives rise to forms of *systemic synergy*, in which legal and illegal actors benefit each other as they go about their business independently promoting their interests and objectives [Passas 2002]. These developments are especially observable in the field of global finance. A case in point is the phenomenon of secrecy jurisdictions. Organized crime groups willingly make use of secrecy jurisdictions to launder their criminal proceeds. Once the funds have been laundered and, through multiple intermediary transactions in those secrecy jurisdictions, cleared from all traces of illegality, Western banks and other financial institutions reap the benefits of receiving substantial overseas funds that are, in fact, the proceeds of crime [Palan 2009; Passas 2002].

In light of the above arguments, Ruggiero then argues that “white collar and corporate crime are variants of organized crime” [1996: 21]. Although they, too, emphasize the similarities between corporate and organized crime, Calavita and Pontell are somewhat more restrained in treating crimes committed by corporate actors on par with organized crime. What distinguishes corporate crime from organized crime, they argue, is that in corporate crime the primary goal is the pursuit of corporate interests, whereas in organized crime the purpose of the organization itself is illegal activity for personal gain [Calavita and Pontell 1993: 527]. However, after studying in detail a large number of cases involving collective embezzlement in the savings and loan crisis of the 1980s, they argue that “it becomes apparent that certain forms of fraud by corporate offenders are for all intents and purposes “organized crime” [Calavita and Pontell 1993: 539]. Emphasizing that both corporate white-collar crime and organized crime are perpetrated by continuing enterprises operating in a rational fashion geared towards profit achieved through illegal activities, others [Passas and Nelken 1993; Passas 2002] have suggested replacing both terms with the term *enterprise crime*.

Another form of white-collar crime that falls under the radar of those clinging to traditional categories of white-collar crime concerns what Friedrichs [2010] refers to as *contrepreneurial crimes*. Contrepreneurial crime, he suggests, specifies a spectrum of illegal activities that combine elements of legitimate enterprises with classic scams or cons [Friedrichs 2010]. In financial markets, contrepreneurial crimes can, for example, be found in the form of investment scams and pyramid schemes such as those perpetrated by Bernard Madoff and Allen Stanford.²⁰

Exactly where the line is drawn between contrepreneurial crime, corporate crime, and organized crime is highly consequential for both theoretical and practical reasons. Theoretically, the conceptual distinction between corporate and organized crime has given rise to two distinct branches of research. As a consequence, Ruggiero [1996] explains:

experts of white-collar crime know little about conventional organized crime and vice-versa. This separation is by now strongly established and reproduced. It is by now perpetuated less on the grounds of the diverse nature and characteristics of the two types of crime than by the courtesy of the subdivisions within criminology as an academic discipline [ibid.: 18].

This strict separation not only restrains our theoretical understanding of the causal dynamics of both forms of crime, it has also fueled real-world stereotypes about the relative villainy and moral culpability of organized criminals, on the one hand, and high-status corporate offenders, on the other [Calavita and Pontell 1993: 520; Ruggiero 1996: 18-19]. Such stereotypes, in turn, are highly consequential for the effective control of white-collar crimes [Calavita and Pontell 1993: 521]. Whether specific financial crime schemes are qualified as being the work of a criminal syndicate or whether they are seen merely as deviations from otherwise legitimate corporate operations has significant implications for the legal response to them. Defendants often argue that it is unfair to treat business people as organized criminals. In essence, Calavita and Pontell argue, this is similar to:

suggesting that if certain ethnic groups wear black shirts and white ties and engage in criminal conduct it is all right to call them “racketeers,” but individuals who wear Brooks Brothers suits and white collars and engage in similar conduct ought to be called by a less pejorative name [Calavita and Pontell 1993: 519-520].

²⁰ For detailed discussion of these specific scandals I refer to Lewis [2012] (for the Bernard Madoff scandal) and Wilkinson [2009] (for the Allen Stanford scandal). For a more general discussion of Ponzi schemes I refer to Frankel [2012].

“WHITE-COLLAR CRIME”

In a similar way such stereotypes might adversely affect policy decisions regarding aspects such as corporate governance and market regulation that aim at preventing future financial crimes.

wcc as a heuristic social construct

In 1996, the conceptual debate reached its climax at a workshop organized by the National White-Collar Crime Center and attended by numerous white-collar crime specialists. The sole purpose of the workshop was to formulate a working definition of white-collar crime. Those attending the conference agreed upon a definition of white-collar crime as being:

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 [Helmkamp, Ball and Townsend 1996: 351].

However, like all of its predecessors, this new definition failed to satisfy everyone and was later criticized for its vagueness and multidimensional character.

Today, more than 70 years after the introduction of the wcc concept, there still exists considerable disagreement over the range of misbehaviors that it refers to and doubts about the coherence of the behaviors it includes [Nelken 2007: 738]. Shover and Cullen [2008] have suggested that underlying this conceptual debate is an ideological debate between what they call a “populist perspective” and a “patrician perspective” on white-collar crime. The populist perspective, they explain, has a rather critical edge to it. It highlights issues of power and privilege and locates the offenses in the framework of inequality. It assumes that white-collar criminals, just like conventional street criminals, are rational decision-makers who *choose* to commit their crimes after carefully weighing the potential gains and losses. Moreover, the historical and structural conditions that are believed to account for the aggregate level variation in white-collar crime are explained in terms of hierarchy, inequality, control, and conflict.

The patrician perspective, on the other hand, offers a less politicized and more legal-technical perspective on the subject matter. It explains offenders’ involvement in white-collar crimes in terms of abstract behavioral categories and organizational cultures. Historical and structural conditions accounting for aggregate-level variation in white-collar

crime are thought to emerge without the intervention of power, authority, and agency. Here the patrician perspective points to developments such as changing transaction systems and the growth of fiduciary relationships. Much of the controversy about white-collar crime, the authors argue, can be understood as a conflict between these two paradigms.

The authors further note that the ideological schism between the two approaches is quite institutionalized in the field of academia. The populist perspective, they argue, tends to be exclusively based in departments of sociology and criminal justice at public universities. The patrician perspective, on the other hand, is the dominant approach in schools of business and management, academic units in which many faculty serve as paid consultants to industry. This institutionalized character of the paradigmatic divide in white-collar crime research, they conclude, implies that “the disagreements that plague this area of inquiry are deeply rooted and thus are unlikely to be resolved soon” [Shover and Cullen 2008: 155].

Recognizing the difficulty in pinning down a definition of white-collar crime, some scholars have argued that we should perhaps give up the illusion that the concept of white-collar crime can or should be defined in terms of a precise set of necessary or sufficient characteristics.²¹ Green [2007: 18-20], for example, has suggested that instead of thinking of the concept as a precise classification of offenses or offenders, we would do better to think of the concept as referring to a set of offenses connected by a series of “family resemblances.” Others have suggested that white-collar crime is best thought of as a social construct, a heuristic device, the constituent variables of which occur on a continuum [Potter and Gaines 1996: 35; Friedrichs 2010: 8]. The exact parameters of the construct, they argue should be contingent on the purpose of analysis [ibid.]. The task of researchers would then be to search for interactions along the different dimensions and between the multiple components that make up crime and societal reaction to crime [Schlegel and Weisburd 1994].

This article started from the premise that research in the field of economic sociology needs to engage more intensively with issues of illegality in financial markets. Not only would such engagement contribute greatly to theoretical understandings of capitalist dynamics generated in that field, it also has the potential to enhance our understanding of

²¹ The very question whether there can and should be a definition of white-collar crime was the starting point for the highly influential academic workshop *White Collar*

Crime, Definitional Dilemma: Can and Should there Be a Universal Definition of White Collar Crime?, organized by the National White Collar Crime Center in the US.

structural factors conducive to financial crime, thereby contributing to important debates about suitable policy responses.

The aim of the article has been to provide economic sociologists with some orientation for future research on illegality in financial markets. It did so by presenting an overview of the most important conceptual tools and theoretical insights that have been produced in the wcc literature. In this concluding section of the article, I will build on these insights to suggest several promising avenues for future sociological research on financial crime.

A first such avenue follows from debates in the wcc literature about the discretionary character of the law and its enforcement. From the perspective of economic sociology, this opens up a whole range of questions regarding the social, political, and organizational dynamics that shape the way in which decisions about law enforcement are made, as well as the implications of such decisions for the organization of markets and the experiences of firms active in those markets. What happens in the event that past behavior of financial market participants may have potentially infringed upon the law? How do financial regulatory and law enforcement agencies make decisions regarding the suitable responses to such behaviors and to what extent are such decisions negotiated with and/or contested by market participants? Also, what are the implications of such decisions for financial firms, financial markets, and financial stability? One only needs to consider the infamous case of Arthur Andersen—a large accounting firm that went out of business in the early 2000s after the US Department of Justice prosecuted it for its handling of the auditing of Enron—to see how law enforcement dynamics bear great relevance for the organization of financial markets and the experiences of firms active in those markets.

A second possible avenue for future research by economic sociologists on lawbreaking in finance follows from the idea, put forward in the wcc literature, that a central element of white-collar crimes is the violation of norms of trust in fiduciary relationships. From the perspective of economic sociology, this raises questions with regard to the implications of such violation of trust for the functioning of financial markets. Economic sociologists have for long emphasized the importance of relationships of trust and confidence in making market exchanges possible [e.g. Beckert 2005]. But what happens when a large group of market participants suddenly realizes that their trust has been systematically breached by providers of financial services? In financial markets, this happens, for example, when large accounting scandals are uncovered, as was the case during the burst of the dot.com

bubble in the early 2000s, or when retail investors become aware that they, *en masse*, have been illegally mis-sold improper or unsuitable financial products, as was the case in several industry-wide mis-selling episodes in a number of European countries [see Reurink 2016]. How do investors respond to the betrayal of public trust?²² And how do firms cope with and respond to their being implicated in such scandals? Also, how do state actors step in to restore and safeguard trust in the market? These are questions that appear to become increasingly relevant in today's highly financialized form of capitalism, in which a wide range of social actors with relatively little financial know-how (e.g. households, public institutions, local governments) are pulled into financial markets while, simultaneously, the financial products on offer in these markets are becoming increasingly opaque and complex.

A third possible avenue for future sociological research highlighted by the WCC framework follows from the insight that white-collar crimes, rather than being a result of offenders' pursuit of their personal interest, often appear to be the outcome of organizational features and market dynamics. On the one hand, economic sociologists could study the distinctive structure and organizational dynamics of financial firms, especially today's globally operating multi-purpose banks. Recent journalistic work suggests that these financial conglomerates provide highly precarious working environments in which employees enjoy little job security and in which they are incentivized to fiercely compete with one another to the extent that they find themselves operating in the grey zones of the law in order to achieve the individual targets set by management [Luyendijk 2015]. Economic sociologists could dig deeper into the organizational set-up of these firms to identify organizational dynamics that pose increased risk for financial crime. On the other hand, sociologists could study how broader market dynamics, and especially conditions of hyper-competition in certain segments of today's financial markets, may drive firms to resort to illegal practices as a way of gaining competitive advantage and securing profits. Fligstein and Roehrkasse [2016] have done such an analysis for the US mortgage lending and securitization industry. Future work could investigate other segments of financial markets and make comparisons between markets in different countries.

These suggestions are by no means intended as an exhaustive list of possible avenues that economic sociologists could pursue in future studies on financial crime. They merely serve as examples indicating

²² See HARRINGTON [2009] for an exploration of this question.

that there is a large unexplored terrain for sociological research on issues of illegality in financial markets. The intent of this article is to encourage economic sociologists to explore this terrain and to facilitate such an endeavor by providing them with an overview of the relevant conceptual and theoretical insights generated in the wcc literature.

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Résumé

Alors que l’omniprésence des illégalismes sur les marchés financiers contemporains interroge la légitimité sociale de l’industrie financière, l’examen systématique du crime financier reste à entreprendre en sociologie. Un champ de recherche s’intéresse depuis longtemps aux dimensions illégales des dynamiques capitalistes, celui du crime dit « en col blanc ». Cet article propose une vision d’ensemble des principales avancées conceptuelles caractéristiques de ce domaine de recherche. A partir des principaux acquis des travaux consacrés à la criminalité en col blanc, l’article suggère pour conclure un certain nombre de pistes prometteuses pour la recherche sociologique sur le phénomène des illégalismes sur les marchés financiers.

Mots-clés : Criminalité en col blanc ; Criminalité financière ; Sociologie économique ; Illégalité.

Zusammenfassung

Obwohl die weitverbreiteten, illegalen Handlungsweisen der zeitgenössischen Finanzmärkte die soziale Legitimität der Finanzindustrie hinterfragen, hat die Soziologie die Finanzverbrechen noch nicht einer systematischen Untersuchung unterzogen. Ein Forschungsbereich widmet sich seit langem den illegalen Dimensionen der kapitalistischen Dynamiken, es handelt sich um die Verbrechen der Angestellten. Dieser Beitrag vermittelt einen Überblick über die wichtigsten, konzeptuellen Erkenntnisse dieses Forschungsbereichs. Nach einer Darstellung der Haupterkenntnisse dieser Arbeiten, schließt dieser Aufsatz mit der Beschreibung einiger, vielversprechender Ansätze der soziologischen Forschung bezüglich der illegalen Handlungsweisen der zeitgenössischen Finanzmärkte.

Schlüsselwörter : Wirtschaftskriminalität; Finanzkriminalität; Wirtschaftssoziologie; Illegalität.