# 11

# Crimes of the Powerful

## *Theories of White-Collar Crime*

Edwin H. Sutherland
1883–1950
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Author of White-Collar Crime Theory

In 1979, Jeffery Reiman published his influential book, *The Rich Get Richer and the Poor Get Prison.* This volume was not only an indictment of how street offenders are processed by the criminal justice system but also an exposé of the failure of the state to control the harms perpetrated by the powerful. In a chapter titled "A Crime by Any Other Name," Reiman illuminated how corporate practices endanger the health of workers and the public. Much like looking in a "carnival mirror," however, these acts are distorted and not treated as crimes. Rather, while corporations neglect workplace safety and place toxic chemicals into our environment—actions that injure, sicken, and kill thousands annually—the criminal justice system focuses its attention and condemnation exclusively on "typical" individual offenders. This inequality must be changed. It is time, urged Reiman, "*to let the crime fit the harm and the punishment fit the crime*" (1979, p. 195, emphasis in original).

Beyond the specific claims made, Reiman's book is important because it reflects a way of thinking that emerged in the 1970s. Crimes of the powerful—or what are known as "white-collar crimes"—had been largely ignored since the inception of criminology. In 1968, for example, the President's Commission on Law Enforcement and Administration of Justice devoted only 5 pages—in a volume of 814 pages—to a section on "'White-Collar Offenders' and Business Crime." The Commission concluded

that "the public tends to be indifferent to business crime or even to sympathize with the offenders who have been caught" (1968, p. 158). But a few years later, it was as though scholars had awoken from a criminological hibernation and suddenly become aware of the crimes in the upperworld. Within a few short years, a spate of books appeared carrying titles such as *Crimes of the Powerful* (Pearce, 1976), *"Illegal But Not Criminal": Business Crime in America* (Conklin, 1977), *Corporate Crime* (Clinard & Yeager, 1980), *Corporate Crime in the Pharmaceutical Industry* (Braithwaite, 1984), *Wayward Capitalists* (Shapiro, 1984), and *The Criminal Elite* (Coleman, 1985). Scores of articles also were published during this period.

These works tended to embody three core themes. First, they claimed that a fundamental hypocrisy stained the American justice system. The ideal of equal justice before the law was a sham. Money and power allowed great crimes to be committed and, indeed, committed with impunity. Second, they claimed that the costs of the crimes of the powerful far outweigh the costs of the crimes of the poor. A single fraud could cost millions of dollars; exposing workers or the public to chemical toxins could silently sicken or kill thousands. Third, they claimed that the only way to stop these harms was to use criminal sanctions to bring law and order to the upperworld. In particular, send corporate executives—or corrupt politicians and shady physicians—to jail, and their shenanigans would soon stop.

When such a fresh way of seeing the world sweeps across criminology, it signals that a changed social context has caused numerous scholars to reshape how they interpret reality and what they believe merits study. As might be anticipated, this focus on the crimes of the powerful represented another rejection of mainstream criminology, which had been preoccupied with offenders located in city streets and not in corporate suites. Indeed, a key to the appeal of critical criminology at this time was a willingness to speak truth to power. In particular, it involved unmasking how structures of inequality in the United States were implicated in criminal conduct. In Chapters 7 through 10, we examined perspectives that questioned the existing status quo in America—whether this was racial, class, or gender inequality. In contrast to mainstream criminology, they argued that power was central to any understanding of the origins and efforts to label and control criminal behavior.

As seen in Chapters 7 through 10, the scholars who invented labeling, conflict, critical, and feminist theories in the 1970s and beyond were schooled in the sixties and early seventies. They witnessed extensive social turmoil—a context we described previously (e.g., assassinations, urban insurgencies, crackdowns on Vietnam War protests) (see, e.g., Brokaw, 2007; Collins, 2009; Gitlin, 1989; Patterson, 1996). These events triggered so-called new criminologies that sought to infuse the criminological enterprise with an appreciation for power and conflict. Those who turned their attention to white-collar crime at this time also were of this generation; they were impacted by the events of the day. Their particular concern was with how power placed the advantaged in the position to use unlawful means to pursue profit with no risk of going to prison.

There were, however, two special features of this era that were especially influential in pulling scholars into the study of white-collar crime specifically. First, the civil rights movement placed a great emphasis on the need to institute equal justice before the law.

In the South, the lynching of African Americans and the acquittal of Whites who murdered Blacks were especially symbolic of this injustice (Oshinsky, 1996). In 1968, the year in which Martin Luther King, Jr., and Robert Kennedy were shot to death, Richard Nixon assumed the presidency, his campaign fueled in part by the bold promise to restore "law and order" to America. This rhetoric was pregnant with a racially tinged appeal to White Americans—the so-called moral majority—that Nixon would use the criminal justice system to crack down on urban unrest and Black crime. This was the beginning of the "war on crime" that would legitimize a 40-year policy of mass incarceration.

But a fundamental hypocrisy, which was not lost on scholars, marked Nixon's trumpeting of the need for "law and order" in the nation's streets: Corruption was rampant at the highest levels of his administration. In a remarkable development, Vice President Spiro Agnew was forced to resign when it was revealed that he accepted kickbacks from contractors not only when governor of Maryland but also during his vice presidency. On October 10, 1973, he resigned his office, pleading no contest to charges of tax evasion (Patterson, 1996). Questions also arose about Nixon's own failure to pay taxes on improvements to his properties made by the government. Nixon responded: "I have never profited . . . from public service. . . . I have never obstructed justice. . . . I am not a crook" (quoted in Patterson, 1996, p. 776). Shortly thereafter, the Watergate scandal unfolded.

On June 17, 1972, five men were caught at 2:30 in the morning burglarizing the Democratic National Committee's headquarters, then located on the sixth floor of the Watergate Hotel and Office Building in Washington, D.C. They were attempting to replace a malfunctioning tap on a telephone that had been surreptitiously installed 3 weeks earlier. Investigations eventually traced the scandal to the president's staff, many of whom were subsequently convicted and imprisoned. These included John Mitchell, the nation's attorney general. Nixon was revealed to be deeply involved in covering up the break-in, including ordering the CIA to thwart the FBI's probe into the affair. In an event that stunned the nation, Nixon resigned the presidency on August 9, 1974. He was the first president to do so. Gerald Ford, who replaced Spiro Agnew when he stepped down, ascended to the presidency. In a controversial decision that seemed to place the former president above the law, Ford pardoned Nixon, ostensibly in an effort to heal the nation (Patterson, 1996; Watergate.Info, 2010).

Second, during this time, the consumer and environmental movements also were growing stronger. Activists—the most noteworthy being Ralph Nader—systematically documented the ways in which corporations rigged bids to inflate prices, defrauded consumers with false claims, sold products that were unsafe (e.g., automobiles like the Ford Pinto), and wantonly polluted the nation's air and water. Instances of business malfeasance were frequently seen on news programs such as *60 Minutes.* Americans now regularly watched reporters such as Mike Wallace elicit from executives denials of wrongdoing, only to turn around and show internal documents or hidden videotapes revealing untoward practices. In 1972, state attorneys general defined consumer fraud as a major concern (Benson & Cullen, 1998). And when Jimmy Carter was elected president, his attorney general, Griffin Bell, would comment in 1977 that white-collar crime would be his "number 1 priority" (Cullen, Link, & Polanzi, 1982). "Increasing numbers of Americans," observed Stephen Yoder (1979, p. 40) at this time, "have become aware that crime exists in the suites of many corporations just as it exists in the streets of their cities and suburbs."

Following World War II, the United States had become an economic powerhouse and a land filled with, in James Patterson's (1996) words, "great expectations." But as corruption and malfeasance were uncovered, these expectations were dashed. Confidence in corporations and in government plummeted. Indeed, mistrust of those in power grew so pervasive that commentators spoke of a "confidence gap" or "legitimacy crisis" (see, e.g., Lipset & Schneider, 1983). For example, in 1966, the confidence in those "running major companies" was 55%; 5 years later in 1971, it had dropped to just 27%. These and similar figures prompted Lipset and Schneider (1983) to conclude that "the period from 1965 to 1975 . . . was one of enormous growth in anti-business feelings" (p. 31). Such negative opinions remain in place today (Cullen, Hartman, & Jonson, 2009).

In this context, commentators came to talk about a "social movement against white-collar crime" (Katz, 1980; see also Cullen, Cavender, Maakestad, & Benson, 2006). Criminologists were part of this campaign. They mistrusted those who wielded influence—suspicious that they would use any means necessary to stay in office and to make profits. Similar to many other Americans, they were outraged by the Watergate scandal and repeated revelations of corporate wrongdoing. These cases demonstrated a crass willingness to abuse positions of trust and power to visit harms on the unsuspecting and the unprotected. Still worse, these upperworld lawbreakers often perpetrated their offenses behind the breastplate of righteousness—hypocritically preaching law and order while sneakily breaking the law with impunity. "The rich get richer and the poor get prison," Reiman's slogan, for many criminologists seemed to capture the essence of American justice. These inequities moved many scholars, in criminology and in other disciplines (e.g., law, business), to turn their attention to white-collar crime.

Scholars thus embarked on three lines of inquiry. First, to show the dimensions and costs of this criminality, some scholars wrote textbooks or compiled collections of readings conveying the outrageous misconduct of those wearing white collars (see, e.g., Ermann & Lundman, 1978; Friedrichs, 1996; Hills, 1987; Rosoff, Pontell, & Tillman, 2007). Most Americans are now aware of the enormous economic costs that can extend from even a single white-collar crime. Bernard Madoff's Ponzi scheme is alleged to have cost unsuspecting investors $65 billion. Over the past decades, one major scandal after another has occurred: insider trading on Wall Street, the savings and loan debacle, and the Enron fraud—to name but the most prominent. But what criminologists—and others—also sought to detail is the extensive *violence* perpetrated by corporations. Such entities not only unlawfully take money but also sicken, injure, and kill thousands of Americans annually. They have been documented to ignore safety standards in the workplace, to knowingly expose employees to lethal toxins (e.g., asbestos), to market unsafe products, and to dangerously pollute the air and water—so much so that whole communities have been devastated if not abandoned (see, e.g., Braithwaite, 1984; Brodeur, 1985; Brown, 1979; Cherniak, 1986; Frank, 1985; Mintz, 1985; Mokhiber, 1988; Nader, 1965; Peacock, 2003). It is estimated that the physical costs of white-collar crime rival or surpass those of street crime (Cullen et al., 2006). It is a form of criminality, scholars maintained, that should not be ignored.

Second, other scholars explored the difficult issue of how white-collar crime should be controlled (Benson & Cullen, 1998; Braithwaite, 1985; Cullen, Maakestad, & Cavender, 1987; Hochstedler, 1984; Simpson, 2002; Vaughan, 1983). The critical debate hinged on whether to use the criminal law to sanction upperworld offenders, especially when corporations were the lawbreakers. Historically, corporations that harmed people were either sued in civil court or regulated by government agencies. Scholars faulted these remedies for being ineffective (corporations continued to harm) and for being unjust (why should a burglar be sent to prison but not an executive who fixes prices?). Although the capacity of the criminal law to deter upperworld wrongdoing remains in question, most criminologists argued in favor of broadening its use and of imprisoning corporate leaders. It is instructive that today it is no longer uncommon for white-collar offenders, such as Bernard Madoff or the Enron executive Jeffrey Skilling, to receive lengthy prison terms (see Benson & Cullen, 1998; Cullen et al., 2006; Cullen et al., 2009).

Third, although less plentiful, scholars developed theories of white-collar crime. One approach was to use existing theories of crime to explain upperworld offending. If a perspective is a "general theory," it should explain all crime, regardless of the collar an offender is wearing. An alternative approach was to recognize that white-collar crime often occurs in a unique setting: as part of a legitimate occupation situated in a corporation or other organization. Crimes may be committed not only for personal gain—as in street offenses—but also to advance corporate profits and interests. Scholars argued that a "specific theory" is required to take into account these special circumstances.

The focus of this chapter is on *theories of white-collar crime.* Both specific theories and, where appropriate, general theories will be discussed. The chapter starts by exploring the pathbreaking work of Edwin H. Sutherland, the "father of white-collar crime." We then proceed to examine current thinking about white-collar crime in four sections: (1) organizational culture theory; (2) theories of organizational strain and opportunity; (3) the decision to offend, including neutralization theory and rational choice theory; and (4) state-corporate crime theory. We end by exploring the implications of theories for controlling white-collar crime.

## The Discovery of White-Collar Crime: Edwin H. Sutherland

White-collar crime was "discovered" by Edwin H. Sutherland in the sense that he demanded that scholars pay attention to crimes committed in society's higher echelons. In this section, we thus start by discussing a historic address in which Sutherland used the concept of white-collar crime to criticize then-customary ways of viewing and explaining criminal behavior. We also explore the reasons why Sutherland had the insight and courage to be the scholar in his generation to focus on upperworld crime and its injurious consequences. Next, we explore why Sutherland's unique definition of white-collar crime proved controversial, and how the conceptual definition embraced

by criminologists today has important theoretical implications. Finally, we consider Sutherland's use of differential association theory to explain white-collar crime. In so doing, he argued that competing perspectives were flawed because they attributed offending to poverty or traits said to cause poverty (e.g., feeblemindedness). By contrast, Sutherland claimed that differential association was a general theory because it could account for the crimes of rich and poor alike.

## *THE PHILADELPHIA ADDRESS*

"The term 'white-collar crime,'" observes Gilbert Geis (2007),

> entered the English language on a cold, blustery winter evening in Philadelphia two days after Christmas in the year 1939, at which time the United States was suffering from the pangs of a wrenching decade-long economic depression, a period that poet W. H. Auden described as "a low, dishonest decade." (p. 1)

On Wednesday, December 27, Edwin Sutherland rose to deliver a presidential address to a joint meeting of the American Economic Association, whose president Jacob Viner had just concluded his presentation, and of the American Sociological Society. Sutherland, a faculty member at Indiana University, was president of the ASS. (The organization would change its name to the American Sociological Association so as to sport the less embarrassing acronym of ASA!) His address would be published shortly thereafter—February 1940—in the *American Sociological Review,* giving us an important record whose pages we will quote here.

In 1949, Sutherland would follow up his Philadelphia address with his classic book, *White Collar Crime* (oddly not using a hyphen to link White and Collar). Due to Dryden Press's fears that companies would file law suits for being called criminals, Sutherland deleted corporate names in this volume. The "uncut version" of this book, with the names restored, was issued in 1983 under the editorship of Gilbert Geis and Colin Goff; we cite this edition in this chapter (for accounts of Sutherland, see Gaylord & Galliher, 1988; Geis, 2007, 2010; Geis & Goff, 1983, 1986; Mutchnick, Martin, & Austin, 2009; Sheptycki, 2010; Snodgrass, 1972).

By the time Sutherland arrived in Philadelphia in 1939, he had been assiduously collecting news clippings on wayward conduct by professionals (doctors, lawyers), politicians, and those in the business world for more than a decade (Geis & Goff, 1983). An audience of economists and sociologists provided the perfect opportunity to share his findings on what he called "white-collar criminality." He began his Philadelphia address this way:

> This paper is concerned with crime in relation to business. The economists are well acquainted with business methods but not accustomed to consider them from the point of view of crime; many sociologists are well acquainted with crime but not accustomed to consider it as expressed in business. This paper is an attempt to integrate these two bodies of knowledge. (1940, p. 1)

Sutherland then proceeded to clarify his intent by noting that he was undertaking a "comparison of crime in the upper or white-collar class, composed of respectable or at least respected business and professional men, and crime in the lower classes composed of persons of low socioeconomic status" (p. 1). In short, he wished to explore lawlessness among those with high status who, in his day, wore "white collars."

Sutherland was quick to claim that his illumination of white-collar crime "was for the purpose of developing the theories of criminal behavior, not for the purpose of muckraking or of reforming anything except criminology" (p. 1). Writing in the first part of the 20th century, Muckrakers, such as Ida Tarbell, Upton Sinclair, Lincoln Steffens, and Charles Russell, authored exposés of political corruption and of the ways in which powerful captains in industry (the so-called robber barons) immorally preyed on workers and the public. They succeeded, according to Harvey Swados (1962, p. 9), in revealing "the underside of American capitalism." Upton Sinclair's (1906) *The Jungle,* which disclosed the unsanitary practices and deprave working conditions of the meat-packing industry in Chicago, is perhaps the most well-known example today of this brand of investigative reporting. These crusaders earned the disparaging name of "muckrakers" from President Teddy Roosevelt. Although a former supporter, he was angered by their attacks on political allies in the U.S. Senate and feared that the public might come to hate big business (Brady, 1989). In an April 14, 1906, speech at the Gridiron Club in Washington, D.C., Roosevelt criticized them for their negativity, doing so by referring to a passage from *Pilgrim's Progress:*

> In Bunyan's "Pilgrim Progress" you may recall the description of the Man with the Muck Rake, the man, who could look no way but downward with the muck rake in his hand; who was offered a celestial crown for his muck rake, but would neither look up nor regard the crown he was offered, but continued to rake to himself the filth of the floor. . . . Yet he also typifies the man who in this life consistently refuses to see aught that is lofty; and fixes his eyes with solemn intentness only on that which is vile and debasing. Now it is very necessary that we should not flinch from seeing what is vile and debasing. There is filth on the floor, and it must be scraped up with the muck rake; and there are times and places where this service is the most needed of all the services that can be performed. But the man who never does anything else, who never thinks or speaks or writes, save of his feats with the muck rake, speedily becomes, not a help but one of the most potent forces for evil. (Quoted in The Big Apple, 2010, p. 5; see also Brady, 1989; Swados, 1962)

In his Philadelphia speech, Sutherland's denial that he was engaged in muckraking was partially true (although, as we will see shortly, not totally forthcoming). He had criminological reasons for probing the wayward conduct of the rich and powerful. Unlike Shaw and McKay, who had focused mainly on immigrant youths in socially disorganized inner-city neighborhoods, Sutherland had long been fascinated with different kinds of offenders. His life history *The Professional Thief* (1937) is one notable example familiar to criminologists even today. But as Snodgrass (1972, p. 227) points out, Sutherland's "forays into business crime and professional stealing are only the most obvious and well-known examples. He also kept files and in some instances

wrote on such esoteric subjects as lynching, bandits and outlaws, Indian-land frauds, circus grifting, kidnapping, smuggling and piracy" (p. 227). Sutherland's scholarly concern was whether a proposed theory of crime could account for diverse offenses. If not, then its claim for being a general theory was falsified. He believed that his theory, differential association theory, could explain varied crime types: They were all learned behavior (see Chapter 3).

Sutherland had a particular dislike for theories that explained crime by some sort of individual defect or pathology (Snodgrass, 1972; see also Laub & Sampson, 1991). White-collar crime, he felt, proved especially problematic for explanations based on crime as a lower-class phenomenon that linked offending to poverty or to "personal and social characteristics statistically associated with poverty, including feeblemindedness, psychopathic deviations, slum neighborhoods, and 'deteriorated' families" (1940, p. 1). Obviously, robber barons, shady physicians, and political bosses were not feebleminded and did not live in the zone in transition! And because they did not, then existing theories were hopelessly class-biased and wrong. As Sutherland (1940) poignantly asserted:

> The thesis of this paper is that the conception and explanations of crime which have just been described are misleading and incorrect, that crime is in fact not closely correlated with poverty or with psychopathic and sociopathic conditions associated with poverty, and that an adequate explanation of criminal behavior must proceed along quite different lines. The conventional explanations are invalid principally because they are derived from biased samples. The samples are biased in that they have not included vast areas of criminal behavior of persons not in the lower class. One of these neglected areas is the criminal behavior of business and professional men, which will be analyzed in this paper. (p. 2)

Other reasons existed for Sutherland to claim that his concerns were strictly criminological. If Sutherland had openly embraced a reformist muckraking position, he might have damaged, as president of the ASS, sociology's attempt to be seen as a real science and as a worthy discipline within academia. Further, professors in that day were vulnerable to political attack. For example, learning that Sutherland had challenged his criticism of parole boards, J. Edgar Hoover, the legendary director of the FBI, mandated that the agency would have "no contact" with Sutherland, including a refusal to send him FBI crime statistics (Geis, 2007). Earlier, E. A. Ross, a critic of the robber barons, was fired from Stanford University due to his "dangerous socialism" (Geis, 2007, p. 13).

Still, it is generally agreed that Sutherland was being disingenuous when he asserted in Philadelphia that his interest in exposing white-collar criminality was mere value-free science untainted by any dislike of those who exploited their high positions of trust to victimize (Geis, 2007; Geis & Goff, 1983; Snodgrass, 1972). Indeed, Sutherland's address manifested a tone of restrained anger. He chose language—"crooks" and "rackets"—intended to knock "respectable" lawbreakers off their pedestals by equating them with customary lower-class criminals.

Sutherland's (1940) disdain for upperworld offenders was apparent when he noted early in his Philadelphia address that the "'robber barons' of the last half of the

nineteenth century were white-collar criminals, *as practically everyone now agrees*" (p. 2, emphasis added). "Present-day white-collar criminals," he continued, are merely "more suave and deceptive than the 'robber barons'" (p. 2). Their lawlessness was widespread. "White-collar criminality," Sutherland pointed out, "can be found in every occupation, as can be discovered readily in casual conversation with a representative of an occupation by asking him, 'What crooked practices are found in your occupation?'" (p. 2). In fact, said Sutherland, these schemes "are what Al Capone called 'the legitimate rackets'" (p. 3)—a disparaging comparison we imagine he made with some delight! He catalogued some of the illegal ventures that are "found in abundance in the business world" (p. 3):

> White-collar criminality in business is expressed most frequently in the form of misrepresentation in financial statements of corporations, manipulation in the stock exchange, commercial bribery, bribery of public officials directly or indirectly in order to secure favorable contracts and legislation, misrepresentation in advertising and salesmanship, embezzlement and misapplication of funds, short weights and measures and misgrading of commodities, tax frauds, misapplication of funds in receiverships and bankruptcies. (pp. 2–3)

Sutherland also sought to deflect any rejoinder that upperworld illegalities were mere peccadilloes that caused little damage. In a statement that future scholars would repeat in their own words many times (Cullen et al., 2006), he claimed that the "financial cost of white-collar crime is probably several times as great as the financial cost of all the crimes which are customarily regarded as the 'crime problem'" (pp. 4–5). A single offense, such as embezzlement by a bank official, or scheme, such as a financial fraud on investors, could procure hundreds of thousands, if not millions, of dollars. Among other examples, Sutherland made note of Swedish financier Ivar Kreuger, whose empire based on a pyramid or Ponzi scheme (giving 43% in returns to large investors) collapsed in the Great Depression, leading him to take his life in 1932 (Ivar Kreuger, 2010). "Public enemies numbered one to six secured $130,000 by burglary and robbery in 1938," Sutherland observed, "while the sum stolen by Krueger [*sic*] is estimated at $250,000,000, or nearly two thousand times as much" (p. 5).

There was, however, a more pernicious consequence when the advantaged offended. "The financial costs of white-collar crime, great as it is," said Sutherland, "it less important than the damage to social relations. White-collar crimes violate trust and therefore create mistrust, which lowers social morale and produces social disorganization on a large scale" (p. 5). By contrast, he asserted, "other crimes produce relatively little effect on social institutions or social organization" (p. 5). Subsequent scholars would call this the "social cost" of white-collar crime.

## *BECOMING THE FATHER OF WHITE-COLLAR CRIME*

Why did Sutherland play such a prominent role in discovering "white-collar crime" in the sense of defining it and making it an object of criminological study? Why would

he be the criminologist of his generation to earn the enduring legacy as the "father of white-collar crime"? Although speculative, scholars suspect that the answer to this question of "why Sutherland" lies in his early biography (Geis, 2007; Geis & Goff, 1983; Snodgrass, 1972). As Geis and Goff (1983, p. xx) note, the "emotional roots" of his views on white-collar criminality "lie deep in the midwestern soil of Sutherland's early home life."

On August 13, 1888, in Gibbon, Nebraska, "Edwin Hardin" was the third of seven children born into a family headed by an authoritarian, religious father. The father, George Sutherland, earned his divinity degree and would teach at and head colleges in Kansas and Nebraska, including Grand Island College, a conservative Baptist school from which Sutherland graduated in 1904. A yearbook photo shows Sutherland, who played fullback on the football team, "in uniform, looking suitably fierce and formidable" (Geis, 2007, p. 27). "The Sutherland parents, especially his father," as Snodgrass (1972, p. 221) notes, "were religious fundamentalists and followed all the austere and strict practices of the Baptist faith." Edwin, it is reported, rejected this fundamentalism and its acetic lifestyle, coming to enjoy activities such as smoking, bridge, golf, movies, and the like (Snodgrass, 1972). Still, his early experiences likely had two enduring influences on him that shaped his view of the upperworld.

First, as Geis (2007, p. 28) points out, "Sutherland undoubtedly absorbed in his youth the doctrine of the populist movement, which enjoyed particularly strong support in Nebraska." The state's Populist Party was founded in 1890 and would dominate Nebraska politics throughout most of Sutherland's formative years (Nebraskastudies.org, 2010). This movement sought to extend rights and protections to workers and farmers. It also was worried that powerful corporations would so consolidate their wealth and power as to threaten "the democratic control of industry" (Geis, 2007, p. 29). These populist sentiments were central to his view of corporate immorality. According to Snodgrass (1972):

> His theory of white collar crime was embedded in a generally hostile view of businessmen and business enterprises, particularly the modern, large-scale, monopolistic corporations. His dominant concern was with the concentration of industry, the power of which accrued as a result of the concentration, and the impact of these corporations on the economic system and the traditional social order. It was his view that the massive concentration of industry had occurred through criminal action, specifically the violation of anti-trust laws. (p. 269)

Second, by all accounts, Sutherland possessed unquestioned personal and professional integrity—traits that can be traced to his Baptist fundamentalist upbringing. This was a case, according to Snodgrass (1972, pp. 227–228), of Sutherland's father exerting "a primary differential association that most delinquents and criminals in Chicago never had." He carried with him into adulthood an "obsession with honesty," and "could not understand why all men did not reflect Cooley's altruistic primary ideals of love, loyalty, commitment, and honesty" (Snodgrass, 1972, p. 227). Sutherland had a particular repugnance for the hypocrisy of white-collar criminals who committed their offenses behind a veneer of respectability.

It appears that he preferred traditional criminals, including "Chic Conwell," the alias Sutherland (1937) gave to his professional thief, Broadway Jones. After working with Jones on *The Professional Thief,* Sutherland befriended him; they would correspond and visit in the upcoming years (Snodgrass, 1972). Indeed, in her critique of cultural deviance theory—the name she used for Sutherland's differential association approach—Kornhauser (1978) argued that the "strand of populist sentiment" in his work caused him to lose his "ethical neutrality" (p. 201). She claimed that Sutherland described the "slum boys who become delinquent" as "nice friendly lads, available for indoctrination in the delinquent subculture" but "the rich who violate antitrust laws, fraudulently advertise their products, and engage in many other wicked deeds" as an "abomination" (p. 201). She believed that "these sentiments . . . are a luxury affordable only by professors who, in the safety of their studies, are immune to the consequences of grimy-collar crime" (p. 201).

This final comment was a bit of a cheap shot that might be excused because Kornhauser was writing at a time when scholars were only beginning to demonstrate the devastating impacts of upperworld criminality. But Kornhauser was likely correct in concluding that Sutherland's sympathy extended only to poor, and not to rich, lawbreakers. Writing in the 1940s, Sutherland was fighting to puncture the pervasive class-biased stereotype of criminals as exclusively poor. He wished to scrape away the mask of respectability that allowed prominent community members to attend church on Sundays and engage in predatory business practices the rest of the week—with none of their neighbors the wiser. To accomplish this transformation in consciousness, he used the strategy of equating white-collar criminals with those typically seen as criminals. His point was that, in the end, white-collar crime, like street crime, is merely crime, and that its purveyors, like street criminals, are merely criminals. And once this equivalence is understood, then the special sin of upperworld offenders is revealed: They do not own up to being the criminals that they truly are.

Thus, in *The Professional Thief,* published 2 years prior to his Philadelphia address, Sutherland had noted that "many business and professional men engage in predatory activities that are logically the same as the activities of the professional thief" (1937, p. 207). In particular, white-collar and professional thievery both are organized and at times skilled illegal activities that, similar to any occupation, provide a livelihood. If there is a key difference, it is the extra level of dishonesty—the hypocrisy—that marks upperworld lawbreakers. White-collar offenders persist in denying their guilty mind—in denying that that they are in fact "criminal" (Benson, 1985; Conklin, 1977). "As a result," concluded Snodgrass (1972), "Sutherland seemed to have greater respect for the professional thief, and for the conventional offender, who openly acknowledged their criminality, than for the white collar criminal who deceived both the public and himself" (p. 269).

## *DEFINING WHITE-COLLAR CRIME*

*Who Is a White-Collar Offender?* In the uncut edition of his 1949 book, *White Collar Crime,* Sutherland (1983) asserted that "white collar crime may be defined

approximately as a crime committed by a person of respectability and high social status in the course of his occupation" (p. 7). Somewhat oddly—in the sense that the statement is made but left unexplained—he said that the "concept is not intended to be definitive" (p. 7). Rather, he merely wished to "call attention to crimes which are not ordinarily included within the scope of criminology" (p. 7). He made it clear, however, that white-collar crime covered only offenses that are a "part of occupational procedures." Other illegalities that high-status citizens engage in were thus excluded, such as "most cases of murder, intoxication, or adultery" (p. 7).

White-collar crime thus had two essential elements. The first was the *offender element:* The offender had to be of high status. The second was the *offense element:* The offense had to be occupationally based. The value of this conceptualization is that Sutherland sensitized scholars to a realm of lawlessness that heretofore had been largely ignored: crimes in which the rich and powerful use their occupational positions to accrue more wealth and power. But the Sutherland approach to defining white-collar crime—which we tend to favor—is open to criticism. Let us take, for example, the crime of embezzlement. At first blush, this might seem like a prototypical white-collar illegality. The situation is complicated, however, if we compare an embezzlement by a bank clerk making $20,000 a year to an embezzlement by a bank executive making $500,000 a year. Critics would contend that these are the same crimes: Both, after all, are embezzlements. Those in the Sutherland camp would counter that this argument misses the essential point of the concept of white-collar crime: The *offender element*—the high status—is what makes the construct meaningful. Thus, the executive's embezzlement differs qualitatively from the clerk's; it does not involve petty pilfering of a cashier drawer but rather swindling bundles of money under a cloak of trust and secrecy. To be direct, there is no solution to this debate. The important consideration is to know which definition of white-collar crime—with or without the offender element—a scholar is using.

Indeed, when empirical studies are examined carefully, an important discovery is made: A number of crimes that seem as though they qualify as white-collar—in the sense that they are not customary street crimes (e.g., robbery, burglary)—are in fact committed by lower-status offenders, some of whom are unemployed. Take, for example, an important study on white-collar criminal careers by Weisburd and Waring (2001). Defining white-collar crime as economic offenses that are achieved through "some combination of fraud, deception, or collusion," they examined involvement in these eight federal crimes: "antitrust offenses, securities fraud, mail and wire fraud, false claims and statements, credit and lending institution fraud, bank embezzlement, income tax fraud, and bribery" (2001, p. 12). Were these acts committed by the kind of high status offenders that Sutherland had in mind? Apparently not. Thus, two thirds of the offenders did not own or were not an officer in a business. By our calculations, nearly three fourths lacked a college degree, more than three fifths had more economic liabilities than assets, and about 45% were not employed steadily. Further, for those who were arrested for more than one offense, few (15.1%) committed only white-collar crimes. Indeed, Weisburd and Waring (2001) drew the following conclusion:

> *Many white-collar crimes do not require established occupational position or elite social status for their commission.* The skills needed for many of these crimes are minimal.

> Lending and credit card institution fraud may be committed by anyone who fills out a loan form in a bank, while tax fraud may be committed by anyone who completes (or fails to complete) an Internal Revenue Service form. Mail frauds sometimes require little more than a phone or postage stamps. (p. 89, emphasis added)

Weisburd and Waring clearly are focusing on an important domain of crime: illegalities that may have grown more plentiful in America's postindustrial financial and service economy. But to call all these frauds and schemes "white collar" is to rob the term of the very meaning Sutherland gave to it. Alas, there is no criminological high court that decides how terms can be used. In the end, scholars are free to use the construct as they wish. It is thus a case of buyer—or, in this case, reader—beware.

Again, when reading any academic work, it is essential to know how the concept of white-collar crime is defined and what offenders are pulled under its umbrella. Most noteworthy, the theoretical implications of this definitional decision are potentially enormous. Recall that Sutherland focused on high status occupational offenders because he wished to show that bad traits, typically associated with poverty, did not cause all crime. But if a broad definition of white-collar is used—one that might include irregularly employed workers without college degrees—then theories touting bad individual traits might find empirical support as an explanation of white-collar crime. This very debate has erupted over whether Gottfredson and Hirschi's low self-control theory, which we covered in Chapter 6, is an adequate theory of white-collar crime. Using a broad definition that includes lower-status offenders, Gottfredson and Hirschi claim that their "general theory" is up to the task: As with other lawbreakers, those committing white-collar crimes have low self-control..

Critics point out, however, that this perspective offers an inadequate account for the kind of upperworld white-collar offending described by Sutherland (see also Simpson & Piquero, 2002). To rise into managerial positions where opportunities for these crimes exist, people have to display considerable self-control—not low self-control—first in education (getting good grades, completing college) and then on the job (showing up every day, performing well). It is unlikely that they could manifest the generality of deviance typical of those with low self-control—that is, engage in wayward acts analogous to crime (e.g., drug use)—and remain on an upward career trajectory. Further, because they are similar to other business practices, some white-collar crimes require self-control: the ability to plan and administer an illegal financial scheme, such as price-fixing, over time (see Friedrichs & Schwartz, 2008). It remains to be seen whether individual traits, such as self-control or perhaps risk-taking preferences, distinguish which white-collar officials do and do not break the law. The chief point here, however, is that how white-collar crime is defined and which kinds of people are allowed into the sample will stack the deck more in favor of some theories than others (see also Stadler, 2010).

*What Is a White-Collar Crime?* Crime is behavior that violates the criminal law—plain and simple. But as Sutherland understood, what counts as a *crime* for the rich and powerful is anything but plain and simple. Is it a crime, for example, for a corporation to knowingly market a product that, when used, results in a consumer's death?

In 1978, three teenage girls—two sisters and a visiting cousin—were killed due to a fiery crash of their Ford Pinto. The Pinto had a well-known history of fires following rear-end collisions (Dowie, 1977). The car's gas tank was placed only 6 inches from the back bumper, which, when impacted, would push forward and risk being punctured by bolts on the differential housing. Gas would leak, including into the passenger compartment, and an explosive fire would ensue. A local prosecutor in Elkhart, Indiana, Michael Cosentino, believed that Ford was responsible for the girls' deaths; their vehicle had burst into flames when struck from behind by a van. However, no homicide statute declaring corporate criminal liability for marketing a dangerous product existed. Instead, Cosentino innovatively used Indiana's reckless homicide statute to prosecute the company.

But Ford protested that this law was intended for individuals who had, for example, a finger to pull a trigger—not for a company selling a legal product. Ford also argued that as a federally regulated entity that did not violate any federal safety standards in manufacturing the Pinto, it was unconstitutional to then try to use state criminal law against it. Under the Supremacy Clause of the U.S. Constitution, said Ford, federal regulatory control "preempted" or precluded any criminal action by individual states. In the end, Cosentino experienced success and failure. He won the important battle to bring Ford to trial under this criminal statute, establishing that the sale of defective products can expose companies to criminal sanctions, including for violent crimes such as homicide. However, faced with difficult legal technicalities and a formidable opponent with deep pockets, he failed to earn Ford's conviction on the reckless homicide charges (Cullen et al., 2006).

In his Philadelphia address and subsequent *White Collar Crime,* Sutherland faced this very kind of issue. Even if a company or its officials injure others financially or physically, is it a crime? As noted, if controlled at all, many business harms traditionally were dealt with by two other legal systems: civil suits in which private citizens ask for damages and regulatory agencies in which government agents impose and enforce standards. Sutherland's response to this conundrum—misconduct that might be a crime but historically was not treated as such—was twofold. At issue, he understood, was the very boundary of criminology. What would count as the discipline's subject matter?

First, Sutherland noted that upperworld offenders avoid criminal penalties because they have the power to shape what laws are passed and to whom they are applied. In short, they make sure that their harms are not explicitly outlawed or, if so, are dealt with by the civil and regulatory systems—not prosecuted as crimes with the possibility of imprisonment. "Because of their social status," he observed, "they have a loud voice in determining what goes into the statutes and how the criminal law as it affects themselves is implemented and administered" (1940, p. 8). Second, the key standard for whether an act is a crime is not whether the person is formally convicted of a crime—as some of his critics contended (Tappan, 1947; see also Orland, 1980). To accept this approach, criminology would be beholden to the capacity of the rich and powerful to avoid criminal liability. Sutherland had an ingenious solution: "convictability rather actual conviction should be the criterion of criminality" (p. 6). Thus, regardless of what behaviors are prosecuted, it is the fact that an act is *potentially punishable* under the criminal law that makes it a crime.

Sutherland subsequently relied on this definition in *White Collar Crime,* a volume in which he studied the criminality of "the 70 largest manufacturing, mining, and mercantile corporations" over the lives of the companies, which was about 45 years (1983, p. 13). Recall that his 1949 book was reissued in 1983 with the names of corporations, excluded due fears of lawsuits, restored; this volume will be cited here. He examined the number of "decisions" finding wrongdoing against corporations rendered by civil courts, criminal courts, regulatory agencies, and in settled cases (for a complete explanation, see Sutherland, 1983, p. 15). Again, this measure of *corporate crime* can be criticized for using decisions in which criminal liability was not proven. Still, Sutherland's statistics surely grossly underestimated the extent of illegalities because many criminal acts never come to the attention of victims, the prosecutors, or regulatory officials.

Sutherland discovered that the 70 corporations had 980 decisions, meaning that they averaged 14 illegal acts apiece. Nearly all companies, 97.1%, had two or more adverse decisions. Citing these results, he concluded that the "criminality of the corporations, like that of professional thieves, is persistent: a large proportion of the offenders are recidivists" (1983, p. 227). "None of the official procedures used on businessmen for violating the law," he continued, "has been very effective in rehabilitating them or in deterring other businessmen from similar behavior" (p. 227). Even if his analysis were restricted to criminal convictions, noted Sutherland, it would reveal that 60% of the sample had been convicted, averaging four convictions each. "In many states," he poignantly asserted, "persons with four convictions are defined by statute to be 'habitual criminals'" (p. 23). Notably, subsequent studies have reached similar results (see, in particular, Clinard & Yeager, 1980).

Sutherland's choice of language was purposeful. He wished to debunk the myth that high social status or respectability insulated against criminal involvement. In his view, the labels applied to street offenders from city slums were equally appropriate for the persistent offenders who occupied corporate suites. They broke the law with regularity and thus earned the stigma of "recidivist" and "habitual offender." Snodgrass (1972) notes that Sutherland even titled a chapter in an early draft of *White Collar Crime* as "The Corporation as a Born Criminal" (p. 268). As quoted in Snodgrass (1972), Sutherland justified his selection of the term "Born Criminal"—made famous, of course, by Cesare Lombroso—in this way:

> The analysis which is presented below shows that approximately half of these corporations were criminal in origin and may, therefore, be called "born criminals," not in the Lombrosian sense of inheritance of criminality, but in the sense of overt behavior with intent to violate the law either in their conception and organization or in their behavior immediately after origin. (p. 268, fn. 67)

## *EXPLAINING WHITE-COLLAR CRIME*

To reiterate, Sutherland had three purposes for inventing the concept, and writing about the reality of, white-collar crime. First, inspired by a concealed reformist or muckraking orientation, he wanted to bring the crimes of the rich and powerful within

the scope of criminology. He wanted fellow scholars to focus on upperworld criminality—to show that these offenders were no better than more customary offenders and worthy of the same kind of stigma and punishment. Second, he wanted to debunk theories that pathologized offenders by focusing on individual traits supposedly associated with the poor. The very existence of white-collar offenders falsified these class-biased frameworks. It was difficult to argue that feeblemindedness was the key cause of crime when faced with a white-collar offender who attended Harvard University and was the chief of a major corporation. Third, Sutherland wanted to use this opportunity to trumpet his own approach to the study of crime, which favored developing a systematic *general theory* whose principles were sufficiently broad as to explain all forms of crime. This general perspective, of course, was his theory of differential association, which was discussed previously in Chapter 3 on the Chicago school of criminology. We now turn to Sutherland's explanation of white-collar crime.

"The people of the business world," Sutherland maintained, "are probably more criminalistic in this sense than are the people of the slums" (quoted in Snodgrass, 1972, p. 268). How can this be? After all, said Sutherland (1983), people in white-collar occupations come "from 'good homes' and 'good neighborhoods'" and do not have any "official records as juvenile delinquents" (p. 245). But when they enter the business or professional world, they are increasingly isolated from the conventional society of their upbringing. Old ways of thinking—old morals—are replaced by newly learned ways of doing things. That is, they experience differential association with white-collar workers who school them in the definitions of the situation and techniques that make illegal schemes possible. Indeed, newly on the job, "a young man with idealism and thoughtfulness for others is inducted into white-collar crime" (p. 245). He (they were virtually all males in Sutherland's day) either is ordered by managers or learns from coworkers to engage in unethical practices. He is taught an ideology that justifies breaking the law—"phrases such as 'We are not in business for our health,' 'Business is business,' and 'No business was ever built on the beatitudes'" (p. 245). Stated more theoretically:

> The hypothesis which is here suggested . . . is that white-collar criminality, just as other systematic criminality, is learned; that it is learned in direct or indirect association with those who already practice the behavior; and that those who learn this criminal behavior are segregated from frequent and intimate contacts with law-abiding behavior. Whether a person becomes a criminal or not is determined largely by the comparative frequency and intimacy of his contacts with the two types of behavior. This may be called the process of differential association. (Sutherland, 1940, pp. 10–11)

Recall that the Chicago school argued that criminal traditions, including those in the business world, emerge and are transmitted in those sectors of society that are *socially disorganized.* At these sectors, conventional institutions are weak (e.g., broken families) whereas organization for crime grows strong (e.g., juvenile gangs, adult rackets). Shaw and McKay argued that the zone in transition was a socially disorganized area in which criminal traditions were firmly entrenched and

transmitted. Youngsters raised in these neighborhoods thus were likely to differentially associate with and learn criminal values and techniques. Importantly, Sutherland made the same argument about the upperworld. This sector of America, he asserted, also was socially disorganized: The forces organized against crime were weak, whereas the forces organized for crime were strong. The theoretical principle was the same for crimes of the rich and the poor; it was just the content that differed.

Thus, Sutherland identified at least four reasons why the forces aligned to fight white-collar crime are weak. First, due to their respectability and high social status in the community, the public—at least in Sutherland's day—do not think of businesspeople and professionals as "criminal." Accordingly, they do not rise up and call for the enforcement of the law against white-collar waywardness. Second, prevailing laissez-fair capitalist ideology, which Sutherland (1983) termed "anomie," provided a general justification for not intervening in business practices. As he noted, planning to regulate injurious conduct is condemned by business officials as "communistic" (p. 255). Third, business uses its influence to disrupt attempts to control it. This power is seen in its capacity to divert the criminal law from sanctioning untoward upperworld behavior. There also is "fraternization" between business officials and political elites, which undermines officials' motivation to stop illegal conduct (p. 256). Fourth, the potential victims of white-collar crime are, in comparison with their victimizers, weak. "Consumers, investors, and stockholders," observed Sutherland (1940), "are unorganized, lack technical knowledge, and cannot protect themselves" (p. 9). In fact, said Sutherland, "it is like stealing candy from a baby" (p. 9).

By contrast, white-collar crime is "organized crime." Sutherland (1983) argued that "corporate behavior is like the behavior of a mob" (p. 235). Beyond taking action to disorganize the public and potential enforcers (courts, regulatory agencies), business enterprises are organized for crime. Sutherland identified four important features of this criminal organization. First, companies develop, support, and transmit to new employees a criminal culture. This culture involves contempt for government and regulators, the valuing of illegal practices that neutralizes conscience and any feelings of shame, and rationalizations designed to redefine illegal acts as not truly criminal. Second, companies conspire both internally and with other companies to plan and carry out illegal acts (e.g., falsely advertise, fix prices). Third, the corporate veil of companies allows perpetrators of white-collar crime to remain anonymous and for criminal responsibility to be diffused across diverse officials in the organization. Assigning criminal liability to specific individuals thus is difficult, if not impossible. Finally, the rational nature of companies—after all, the purpose of business is to make profits—encourages the amoral selection of illegal practices that can be done secretly and that victimize the weak (i.e., consumers unaware of their victimization and who lack the resources to fight back). Business rationality is not used simply to foster "technological efficiency" but increasingly is aimed "at the manipulation of people by advertising, salesmanship, propaganda, and lobbies," leading companies to embrace "a truly Machiavellian ideology and policy." In the end, said Sutherland (1983), his analysis "justifies the conclusion that the violations of law by corporations are deliberate and organized crimes" (p. 239).

In sum, starting with his Philadelphia address, Sutherland had a defining influence on criminology. As Geis and Goff (1983) note, his introduction of the concept of white-collar crime "altered the study of crime throughout the world in fundamental ways by focusing attention upon a form of lawbreaking that had previously been ignored by criminological scholars" (p. ix). Scholars' interest in white-collar crime was modest, if not low, following World War II and until the turmoil of the 1960s and 1970s sensitized them to how social injustice and crime allowed the "rich to get richer the poor to get prison." As criminologists rediscovered Sutherland, they increasingly explored the causes and developed theories of white-collar crime. We turn next to the fruits of these scholars' labors.

## Organizational Culture

An enduring legacy of Edwin Sutherland's approach to white-collar crime is to sensitize us to how the culture within a legitimate company can be criminogenic and transmitted to workers. Subsequent scholars have examined the sources and nature of this culture. A criminal culture consists of definitions that permit or encourage lawbreaking generally or in specific situations. In essence, criminal definitions tell workers either that it is "okay to ignore all these stupid laws" or "okay to break this one law" (e.g., okay to fix prices or to ignore this safety standard). They also might encourage negligent behavior by telling workers that certain risks—whether financial or health-related—are "not that bad" and should be ignored. In this section, we consider three theoretical perspectives that are in the Sutherland tradition.

### *UNETHICAL CULTURES*

Along with Sutherland and a few other scholars (e.g., Gilbert Geis), Marshall Clinard played a defining role in shaping the study of white-collar crime. As Clinard (1952) noted, he was first alerted to this area by Sutherland when he was a graduate student at the University of Chicago. Although not a rigidly devout apostle, Clinard's perspective on upperworld criminality was heavily influenced by Sutherland. In particular, during his career, Clinard would focus on how differential association with varying ethical climates within corporations was a major cause of white-collar crime.

In his classic *The Black Market,* Clinard (1952) explored violations of regulations issued by the Office of Price Administration (OPA) during World War II. Price limits on rents and on scarce foods and consumer goods were imposed to prevent inflation (which would have made the war more costly). Rationing also was instituted to ensure that all citizens would have equitable access to products (e.g., meat, sugar, shoes, gasoline). With the nation's security hanging in the balance, it might have been expected that patriotism would result in universal compliance with these wartime regulations. This was not the case. Instead, Clinard reported that businesses widely and systematically violated these OPA rules. For example, to receive an allotment of beef whose prices were controlled, a wholesaler seeking illegal profits would require a store

to take an under-weighted shipment, pay a kickback, or purchase an unregulated product (e.g., sausage) at an inflated price.

Clinard (1952) argued that OPA price violations reflected not "gangster and shady elements in business" (p. 293) but industry-wide practices; the barrel, not a few apples in the barrel, was rotten. Some of these fraudulent schemes were used prior to the war in other contexts; some were newly invented to circumvent the price controls imposed by the OPA. Given the "extensiveness of the black market and the kinds of violations," Clinard concluded that the illegality was due "primarily to subcultural transmission" (p. 299). Techniques for committing OPA illegalities were learned in conversation with other businesspeople. Definitions favorable to violating the laws were reinforced in the business community. Thus, government regulations were dismissed as "stupid," law violators did not lose status among other business executives, and a consensus existed that those in the industry would not "tattle" or snitch on one another (pp. 304–307). As Clinard (1952) asserted in language that Sutherland could have voiced:

> Most black market violations appear to have their origin in behavior learned in association from others, unethical and illegal practices conveyed in the trade as part of a definition of the situation and rationalizations to support these violations of law being similarly transmitted by this differential association. (pp. 298–299)

In 1980, with Peter Yeager, Clinard authored another classic study, *Corporate Crime.* Although not duplicating the methods used by Sutherland, this study replicated the thrust of *White Collar Crime.* For the years 1975 and 1976, Clinard and Yeager examined the illegality of 477 of the largest publicly owned manufacturing corporations in the United States. They recorded the number of criminal, civil, and administrative actions against these companies by 25 federal agencies. They realized that their measure did not take into account the large number of illegal acts that were not detected. Even so, they found that three fifths (60.1%) of the corporations had at least one action initiated against them and that the sample of firms averaged 2.7 federal cases of violation. Most stunningly, the analysis revealed that only 8% of the companies accounted for 52% of all violations, with these high-rate offenders averaging 23.5 infractions each (Clinard & Yeager, 1980, p. 116). We will return to this last finding shortly.

In *Corporate Crime,* Clinard and Yeager (1980) considered how corporate organization facilitated lawlessness. A key component of their perspective was the "culture of the corporation" (p. 58). Two factors made the internal culture a pivotal cause of illegal behavior. First, this culture is replete with "corporate defenses to law violations" (p. 68). These are beliefs or "rationalizations" that define why the laws regulating companies can be obeyed selectively. These include, for example, a belief that the free enterprise system makes any government regulation illegitimate. Another such defense is that an illegal act is permissible if it brings profits. And still another is that regulations are too complex to follow and that infractions are errors of omission. In a later section, we revisit these rationalizations or techniques of neutralization.

Second, corporations are well designed to "indoctrinate" their members into this culture. Employees occupy roles in which they are rewarded for embracing the

"corporate mind" (p. 66). This structural location exposes workers to strong socialization pressures. They tend to be isolated from competing views of the world that might challenge their unethical beliefs. As Clinard and Yeager (1980) observed, "they tend to associate almost exclusively with persons who are pro-business, politically conservative, and generally opposed to government regulation" (p. 68). This isolation is enhanced by job transfers to new geographic locations and by overwork whereby the corporation becomes the dominant priority in a person's life. In this situation, "co-workers and higher-ups become 'significant others' in the individual's work and social life" (p. 63).

In a key insight, Clinard and Yeager noted that not all corporate cultures are the same; they vary in their support of unethical practices (see also Victor & Cullen, 1988). Recall that their empirical data support this conclusion. Some corporations—about 40%—had no violations in the 2-year window they examined. By contrast, an 8% minority of firms engaged regularly in illegal conduct. What distinguishes criminal from noncriminal corporations? Why do some companies have unethical cultures whereas others do not?

Clinard addressed this question with what might be referred to as a *managerial theory of corporate culture* in his 1983 book, *Corporate Ethics and Crime: The Role of Middle Management.* Based on interviews with 64 retired middle managers from Fortune 500 companies, Clinard (1983, p. 89) distilled a central conclusion: The culture or "ethical tone" of a company is heavily influenced by the orientation of top-level management, especially the chief executive officer (the CEO). Although corporate traditions exist, they are dynamic and will change if inconsistent with the views of high-level executives. CEOs promoted from within the firm due to professional or technical expertise are less likely to sponsor unethical practices. On the other hand, "financially oriented" CEOs—outsiders hired to produce profits—are likely to create a climate conducive to lawbreaking. The scandalous actions of Wall Street financial firms that led to the implosion of the worldwide economy in 2008 comprise but one example lending support to this proposition (see, e.g., Lewis, 2010).

## OPPOSITIONAL CULTURES

"The theory of reintegrative shaming," observed Braithwaite (1989), "is unlike other theories of crime in the literature, with the notable exception of differential association, in that it does not exclude white collar crime from that which is to be explained" (p. 124). In Chapter 7, we reviewed shaming theory, noting Braithwaite's central thesis that reintegrative shaming lessened, whereas stigmatizing shaming increased, criminal behavior. Braithwaite, however, also is a major white-collar crime scholar, raised in criminology when the field was sensitized to upperworld criminality. He was prompted to conduct important studies, for example, of illegalities in the pharmaceutical and coal mining industries (Braithwaite, 1984, 1985). Not surprisingly, he understood the need for his theory to explain crimes of rich and poor.

As noted, an important source of white-collar crime is that cultures within organizations support it. According to Braithwaite, these cultures flourish for two

reasons. The first reason, emphasized by many other scholars, is that illegal behaviors in the business world have been shamed only infrequently. When harmful acts are not morally rebuked—when moral standards are not defined and reinforced—criminal cultures can persist unimpeded. The second reason, unique to Braithwaite's perspective, is that efforts undertaken to shame and control untoward practices might have the unanticipated consequences of strengthening cultural values supportive of lawlessness. The core proposition is that *stigmatizing shaming fosters an oppositional subculture supportive of white-collar crime.*

Braithwaite (1985, 2002) has written extensively on the complexities of regulating corporate behavior. From firsthand observation, he is hardly naïve about the need to impose punitive sanctions, including criminal penalties, on recalcitrant companies and their executives. He has learned, however, that punitive sanctions that stigmatize frequently backfire among businesspeople already mistrustful of state regulation. When an adversarial approach is taken that seeks to stigmatize and humiliate, businesspeople are likely to respond with defiance (see also Sherman, 1993). They embrace the technique of neutralization of "condemning the condemners," seeing those imposing standards on them as unfair and illegitimate (Braithwaite, 1989, p. 127; see also Sykes & Matza, 1957). Stigmatized business officials, both within a company and across an industry, are also likely to bond with one another, thus creating solidarity and differential association supportive of illegal practices. Sharing oppositional views, they can form an "organized subculture of resistance that advocates contesting all enforcement actions" and "consistently challenging and litigating the legitimacy of the government to enforce the law" (p. 129).

Similar to responses to street crime, Braithwaite (2002) favors a more restorative approach that has a better chance to move firms to fix problems and reduce harms. Thus, reintegrative shaming would involve punishing "in a way that maintains dignity and mutual respect between enforcer and offender. Where possible, punishment should be executed without labeling people as irresponsible, untrustworthy outcasts, but instead inviting the offender to accept the justice of the punishment" (1989, pp. 131–132). Adopting the style of effective parenting, regulators should engage in warm but restrictive interventions. The preferred strategy is to secure compliance to stop illegal, harmful practices by appealing to offenders' moral side and *persuading them to stop the shamed behavior.* Persuasion is most effective when it is backed up by the threat of harsher penalties, including criminal sanctions (Braithwaite, 1985). According to Braithwaite, this approach has the potential to undermine the formation of oppositional cultures and to create a collective response in an industry to avoid fraudulent and injurious practices. Similar to Clinard, Braithwaite thus sees organizational criminal cultures as created and as potentially open to reform.

## THE NORMALIZATION OF DEVIANCE

On January 28, 1986, the Space Shuttle *Challenger,* carrying a crew of seven, including New Hampshire teacher Christa McAuliffe, exploded 73 seconds after takeoff. The catastrophe was caused by the failure of an O-ring, a rubber-like seal on a

joint on the Solid Rocket Boosters. In cold temperatures, the O-ring would potentially harden and not be able to prevent hot propellant gasses from igniting into a flame that could penetrate a tank containing liquid hydrogen and oxygen—all with lethal consequences. On the morning of the *Challenger* tragedy, the temperature reached only 36 degrees Fahrenheit, an unprecedented low for a launch from the John F. Kennedy Space Center in Cape Canaveral, Florida. Despite this knowledge of the O-ring dangers, NASA and Morton Thiokol, the manufacturer of the Solid Rocket Boosters, nonetheless chose to send *Challenger* into space (Vaughan, 1996).

In retrospect, observers—including a presidential commission investigating the incident—were appalled by the launch decision because it was "perfectly clear" that known, unacceptable risks were taken. Some commentators regard this decision as a crime (Kramer, 1992). How could anyone put seven lives in jeopardy when the O-ring faced the imminent prospect of lethal failure? In her remarkable account of the catastrophe, *The Challenger Launch Decision,* Diane Vaughan (1996) suggests two answers to this question: the standard theory of *amoral calculation* and her theory of *the normalization of deviance.*

When America's space program was initiated, it was administered as a scientific project in which cultural norms of technology and safety were preeminent. Well funded, there were few pressures for the program to prove its worth or to make money. By the 1980s, however, spacecraft hurtling into space had become commonplace, and NASA had to compete with other government agencies and priorities for funding. The space shuttle program was thus designed to employ reusable craft, such as *Challenger,* that could be launched frequently enough to be cost effective (i.e., by carrying private, military, and scientific payloads into space). This reconceptualization of missions—from space exploration to commercial enterprise—placed NASA under pressure to meet launch deadlines so as to remain politically viable (Kramer, 1992). According to Vaughan (1996), "Congress and the White House established goals and made resource decisions that transformed the R&D space agency into a quasi-competitive business operation, complete with repeating production cycles, deadlines, and cost and efficiency goals" (p. 389). The agency's technical, scientific culture thus increasingly was rivaled, if not supplanted, by a "culture of production" (p. 196).

In this context the standard criminological theory is that NASA and Morton Thiokol made the joint *amoral calculation* to launch *Challenger.* NASA could not afford further delays, whereas Morton Thiokol did not wish to disappoint its benefactor. In preflight deliberations, Morton Thiokol engineers expressed safety concerns but were overruled by upper-level management who approved the launch—presumably to please NASA officials who also were aware of the potential risks. According to Vaughan (1996), the "conventional explanation" argues that "production pressures caused managers to suppress information about O-ring hazards, knowingly violating safety regulations in order to stick to the launch schedule" (p. xii).

In her exhaustive study, however, Vaughan (1996) presents a more nuanced explanation. To be sure, the culture of production circumscribed those in the space program, penetrated the preexisting technical-professional culture, and created performance pressures. Within this contextual reality, work groups functioned to deal with a host of problematic technical issues in ways that would not unduly cause the

shuttle program to fall off schedule. The O-ring problem was not new. But similar to other risks, the work group incrementally defined the growing hazard as manageable. Each time a difficulty with the O-rings emerged, it was analyzed and the associated risk was judged by the work group to be acceptable. According to Vaughan (1996), the record reveals "an incremental descent into poor judgment. It was typified by a pattern in which signals of potential danger—information that the booster joints were not operating as predicted—were repeatedly normalized by managers and engineers" (p. xiii).

Importantly, the "normalization of deviance"—the emergence of a worldview that neutralizes perceptions of danger—is a cultural set of beliefs and norms that guides decision making. Thus, when NASA and Morton Thiokol officials consulted in a conference call, their decision to launch *Challenger* did not suddenly disregard protocols and amorally calculate to risk the lives of seven crew members so as to avoid the inconvenience of another flight delay. Rather, the personnel followed work-group norms that led them to depreciate the risk of O-ring failure. "It was not amorally calculating managers violating rules that were responsible for the tragedy," concluded Vaughan (1996, p. 386). "It was conformity." According to Vaughan (1996):

> As a result, the decisions from 1977 through 1985 that analysts and the public defined as deviant after the *Challenger* tragedy were, to those in the work group making the technical decisions, normal within the cultural belief systems in which their actions were embedded. Continuing to recommend launch in the FRR [Flight Readiness Review] despite problems with the joint was not deviant; in their view, their conduct was culturally approved and conforming. (p. 236)

Vaughan (1996) sees her work as an investigation of the "sociology of mistake" (p. xiv). But it also might be envisioned as illuminating the sociology of corporate criminal negligence. There are, of course, many instances in which managers knowingly engage in fraudulent activity (e.g., price-fixing) and in marketing defective products. But what Vaughan has ingeniously uncovered is the process whereby managers and employees evolve ways of making decisions that unknowingly lead them, step by step over time, to deny that a hazard exists. This normalization of risk or deviance allows dangerous products to be marketed or not recalled promptly; it also can allow for risky financial practices that place investors in jeopardy of bankruptcy. The key point is that corporate cultures are complex and can facilitate illegal practices in diverse ways.

## Organizational Strain and Opportunity

Businesses are goal-directed economic enterprises that seek to stay in business (avoid failure) and to increase market share and profits (meet rising expectations). Constant pressures to meet goals are often an everyday reality within many corporate environments. As Yeager and Simpson (2009) note, it is not surprising that "perhaps the most

popular explanation for corporate offending is strain" (p. 357; see also Croall, 1992). Theorists have long recognized, however, that structurally induced strain can be adapted to in various ways. Using unlawful means requires access to criminogenic opportunities (Cloward, 1959; Cloward & Ohlin, 1960; Cullen, 1984). "Strain provides the motive for offending (the arousal of behavior)," Yeager and Simpson (2009, p. 337) observe, but corporate "offending will not occur absent opportunity and choice." Strain and opportunity thus are frequently seen as two intersecting factors that foster involvement in white-collar crime.

## *STRAIN AND ANOMIE*

Traditionally, strain theory has been viewed as an explanation of lower-class crime and delinquency (see Chapter 4). To be more precise, it is a theory of individuals' transition to adulthood. Those thwarted in their quest for upward mobility—those denied a piece of the American dream—are most likely to offend. Because goal blockage is most pervasive in the lower echelons of society, poor youngsters are at risk of delinquency and, in turn, of adult offending.

As scholars realized, however, strain theory also has relevance for explaining the criminality of individuals who have made the transition successfully into adulthood but then enter a new social domain—corporate America—where expectations for goal achievement do not wane but intensify. As individuals, they are under performance pressures to meet goals or be denied mobility within the company. They may experience relative deprivation compared to other employees who are rising more rapidly up the corporate ladder (Passas, 2010). Pressures to deviate thus may be both acute and chronic.

Further, firms themselves exist in a competitive environment where they "are exposed to culturally approved goals" and "experience blocked opportunities" (Vaughan, 1997, p. 99). There is some evidence that financial difficulties are related to corporate violations (Shover & Scroggins, 2009; Yeager & Simpson, 2009). "Although the data are somewhat mixed," conclude Agnew, Piquero, and Cullen (2009),

> studies suggest that corporate crime is more common in for-profit companies, companies with relatively low profits, companies with declining profits, companies in depressed industries, and companies suffering from other types of financial problems (e.g., low sales relative to assets, small or negative differences between assets and liabilities, perceived threats from competitors). (p. 39)

This tendency, however, should not obscure that scandals frequently occur in firms, such as Enron and Goldman Sachs, where corporate earnings are skyrocketing. Executives, whose bonuses depend on stockholder returns, can exert inordinate pressure on underlings to produce ever-rising profits. At a broader level, this intense emphasis on economic success can generate not only strain but also—as Merton would predict—anomie. As may be recalled from Chapter 4, anomie is a condition where the norms regulating the use of legitimate methods to achieve goals are

weakened or rendered ineffectual. In this circumstance, as Messner and Rosenfeld (2001) have noted, individuals are free to use the technically most expedient means to achieve desired ends. In the business world, this might involve defrauding clients or scrimping on costly worker safety conditions.

Notably, scholars have argued that anomie is rampant in many business organizations (Cohen, 1995; Passas, 2010; Vaughan, 1997; see also Waring, Weisburd, & Chayet, 1995). In this model, goal attainment becomes preeminent and there is a lack of concern for legitimate means. The ethical climate within the organization thus comes to emphasize, in Cohen's (1995) words, "instrumentalism," "individualism," "minimal interpersonal responsibility," an "emphasis on efficiency" and "cost control," and a "lack of concern for employees" (p. 196; see also Messner & Rosenfeld, 2001). Little attention is paid to business ethics and legal compliance. In this context, "criminal business practices" result (Cohen, 1995, p. 196).

## *CRIMINOGENIC OPPORTUNITIES*

As will be explored more fully in Chapter 13, for a criminal event to occur, the opportunity to carry out the act must be present. This observation—no opportunity, no crime—might seem rather trite. But when taken seriously, it means that understanding crime requires studying in detail the nature of criminogenic opportunities. In this regard, Michael Benson and Sally Simpson (2009) have developed "an opportunity perspective" for the explanation of white-collar crime. Their insights illuminate the distinctive nature of upperworld opportunities.

Most generally, a criminal opportunity involves two components (again, see Chapter 13). First, there must be an *attractive target.* This might be a person to rob, property to steal, or someone's life savings to pilfer. Second, there must be an *absence of capable guardianship.* This might be a burly companion on a nightly walk, an alarm system on a house, or an accountant supervising one's funds. When there is an attractive target and no guardianship, a criminal opportunity exists.

With street crime, offenders must employ certain techniques to gain access to attractive targets and to avoid guardianship. Let us take burglary as an example. As Benson and Simpson (2009) note, burglars often have to use physical means to gain entry to a residence (e.g., kick in a door), have to be in a place where they have no legal right to be, have direct contact with a victim's living quarters, and commit their crime at a specific time and location. Burglary thus requires a certain physicality, nerve to enter a strange place, and risk of detection (someone could call the police or see and identify the offender).

By contrast, white-collar offenders typically have three very distinct properties. As Benson and Simpson (2009) explain, "(1) the offender has *legitimate access* to the location in which the crime is committed, (2) the offender is *spatially separated* from the victim, and (3) the offender's actions have a *superficial appearance of legitimacy*" (p. 80, emphasis in original). Let us take price-fixing as an example. An executive breaks down no doors but simply sits in an office or meets over lunch. When consumers pay inflated prices for the produce whose prices are rigged, the executive never sees these victims. And the scheme is undertaken behind the cloak of a respectable business firm.

The key point is that legitimate businesses—whether corporations or perhaps the office of a physician—provide access to vulnerable targets. Because the victimization occurs in the course of seemingly legitimate business activity, it is often undetected. In fact, in a complex society, the public is in a position where its members must trust that their money is not being swindled, that products are not being falsely advertised, that safety regulations are being followed, and that they are being billed for services actually provided. In many cases, however, citizens have little protection against the abuse of trust. As repeated scandals—small and large—show, white-collar officials have many ways to deceive the public. Behind closed doors, they can conspire to rig prices, manipulate financial statements, sell stocks soon to be worthless, set up Ponzi schemes, choose to ignore environmental standards, and so on. With the organization as a shield, they can conceal these illegal activities that often are difficult to distinguish from regular business activity (Benson & Simpson, 2009).

As Shover and Hochstetler (2006) have observed, the upperworld is filled with many temptations to profit by stepping outside the law. They call these temptations "lure," which they define as "arrangements or situations that turn heads. Like tinsel to a child, it draws attention" (p. 27). Lure becomes a criminal opportunity "in the absence of credible oversight" (p. 28). Their views thus capture the core components of opportunity: an attractive target and no guardianship. But an important reality is present in the concept of "lure": that the motivation to engage in a profitable white-collar crime might be produced by the presence of temptation. As has been said, in the case of white-collar crime, the opportunity may make the criminal.

In fact, the very nature of a capitalist system that expands, creates new industries, and offers innovative financial services may produce not only wealth and social improvement but a host of fresh and luring criminal opportunities (see, e.g., Calavita, Pontell, & Tillman, 1997; Jesilow, Pontell, & Geis, 1993). In his 1907 *Sin and Society,* sociologist E. A. Ross made this very point. "The sinful heart is ever the same," said Ross, "but the sin changes in quality as society develops" (p. 3). Trust in others is unavoidable in modern society. As Ross noted, "I let the meat trust butcher my pig, the oil trust mould my candles, the sugar trust boil my sorghum, the coal trust chop my wood, the barb wire company split my rails" (p. 3). The difficulty, however, was that such trust created criminal opportunities that businesspeople exploit. "The sinister opportunities presented in this webbed social life have been seized unhesitatingly, because such treasons have not yet become infamous" (pp. 6–7). According to Ross, the public was unaware of these new varieties of sins because they were committed at a long distance, anonymously, and behind the appearance of respectability. "The modern high-power dealer of woe," observed Ross, "wears immaculate linen, carries a silk hat and a lighted cigar, sins with a calm countenance and a serene soul, leagues or months from the evil he causes. Upon his gentlemanly presence the eventual blood and tears do not obtrude themselves" (pp. 10–11).

## Deciding to Offend

Because many white-collar crimes are committed in organizational settings, scholars have—as we have seen—focused on how the cultural and structural contexts of

companies are criminogenic. Other scholars, however, have focused less on this causal "background" and more on the "foreground" of white-collar crime. That is, when upperworld officials decide to offend, what are they thinking? Insights into the proximate origins of white-collar illegality tend to fall into two theoretical categories: techniques of neutralization theory and rational choice theory. These perspectives are reviewed below.

## *DENYING THE GUILTY MIND*

Sutherland confronted the conundrum of how respectable people—many presumably raised in wholesome surroundings and churchgoers as adults—can nonetheless victimize others in the course of their white-collar occupations. How can they overcome their conventional respectability and, in Benson's (1985) phrasing, "deny their guilty minds"? In part, he noted that they learn "rationalizations" or criminal definitions that justify such offending in particular situations. To them, robbing someone on the street would be a "crime" and morally unthinkable, but robbing consumers by fixing prices is merely a "necessary business practice" that "everyone in the industry does." In *The Black Market,* Clinard (1952) echoed this insight and later called these definitions "corporate defenses to law violations" (Clinard & Yeager, 1980, p. 68). As might be recalled from Chapter 5, the more general statement of this perspective can be found in Sykes and Matza's theory of techniques of neutralization.

Donald Cressey (1950, 1953) applied Sutherland's views on "rationalizations" or definitions of the situation favorable to crime in his classic study of bank embezzlement (see also Jonson & Geis, 2010). Based on interviews with incarcerated embezzlers, Cressey argued that three factors intersected to enable respectable people to take "other people's money." These are sometimes called the "fraud triangle" (Jonson & Geis, 2010, p. 225). In essence, he developed an integrated theory that took into account motivation, opportunity, and decision making.

First, they had to face a "non-sharable problem" such as worries over unpaid gambling debts or excessive family expenses. Embezzlers, noted Cressey (1950), had a high incidence of "'wine, women and wagering'" (p. 743). Because they held respected positions in the community, money problems stemming from disrespected activities had to be kept secret. To ask for help risked tarnishing one's good reputation. Second, those having a non-sharable problem had to hold a position of financial trust and perceive that they could exploit the opportunity before them to pilfer funds. According to Cressey (1950), the embezzlers often told him that at a certain point, "'it occurred to me' or 'it dawned on me' that the entrusted funds could be used for such and such purpose" (p. 743). Third, embezzlers had to overcome the "contradictory ideas in regards to criminality on the one hand and in regard to integrity, honesty and morality on the other" (p. 743). Here, they had to invoke "verbalizations" or "rationalizations" that defined the violation of trust not as a crime but as something else—such as only "borrowing" money that would be paid back paid back at a later date. As Cressey (1950) observed:

> It is because of an ability to hypothesize reactions which will not consistently and severely condemn his criminal behavior that the trusted person takes the role of what *we* have called the "trust violator." *He* often does not think of himself as playing that role, but instead thinks of himself as playing another role, such as that of a special kind of borrower or businessman. (p. 843, emphasis in original)

Shover and Hunter (in press) argue that the class status of white-collar offenders equips them with "cultural capital" that can be drawn on to deny a guilty mind. These offenders have "a level of verbal creativity and adroitness that enables them to argue self-interested interpretations of their fall from grace." They "deny criminal intent or that the acts were harmful," impute "malice and unworthy motives" to their accusers, assert that the "evidence that convicted them was false or misunderstood," and complain that they are "only 'technically guilty' or were hamstrung by circumstances that caused them to make mistakes that later would be labeled a 'crime'" (Shover & Hunter, in press). These "accounts" are efforts to deal with the stigma of a criminal conviction (Benson, 1985). But presumably they also are verbalizations that could be invoked prior to and during the commission of white-collar crimes. In this sense, the cultural capital of members of the upperworld supplies them with the verbal ability to neutralize guilt and to offend while maintaining outwardly, if not inwardly, the appearance of respectability.

The accounts or neutralizations used to justify white-collar crimes are not idiosyncratic—invented anew by each offender—but rather are patterned and repeated frequently (Shover & Hunter, in press). Verbalizations excusing the violation of financial trust voiced by Cressey's embezzlers in the 1950s could just as easily be heard today. This finding suggests that justifications for offending are deeply rooted in America's economic arrangements and corresponding cultural beliefs. As Benson and Simpson (2009) noted, the

> world of business is imbued with a set of values and ideologies that can be used to define illegal behavior in favorable terms. . . . The availability of these norms and customs . . . enable[s] potential white-collar offenders to interpret their criminal intentions and behavior in non-criminal terms. (p. 141)

For example, capitalism promotes a strong belief in free enterprise that can be used to define government regulation as illegitimate interference. Ignoring regulations thus may be justified—a guilty mind neutralized—by invoking the excuse that government controls were unfairly stifling the businessperson's right to make a profit.

Notably, the theory of techniques of neutralization has been used frequently in explanations of various white-collar crimes (Benson & Simpson, 2009; Shover & Hunter, in press). One example is found in Paul Jesilow, Henry Pontell, and Gilbert Geis's investigation of physician Medicaid fraud, *Prescription for Profit.* Jesilow et al. (1993) detail the structural conditions that created rampant opportunities for doctors to defraud the government. In essence, physicians were placed in positions of professional and financial trust. They were paid by the government to provide medical services to the needy. The Medicaid program, initiated in 1965, assumed that doctors

would prescribe the appropriate services to patients and then invoice the government for the fee established by program guidelines. But with virtually no regulation or chance of detection, this fee-for-service arrangement created ubiquitous opportunities for fraud:

> Because doctors are reimbursed a fixed amount for each procedure, they can earn additional income by charging for a more expensive procedure than the one performed, double-billing for services, pingponging (sending patients back for unnecessary visits), family ganging (examining all members of the family on one visit), churning (mandating unnecessary visits), and prolonging treatment. (Jesilow et al., 1993, pp. 7–8)

Still, how could they succumb to this lure and engage in practices that were a gross violation of their professional ethics, not to mention the law? The answer was their ability to use techniques of neutralization. Jesilow et al. interviewed 42 physicians apprehended for Medicaid fraud. "To hear them tell it," Jesilow and colleagues reported, "they were innocent sacrificial lambs led to the slaughter because of perfidy, stupid laws, bureaucratic nonsense, and incompetent bookkeepers" (p. 148). All employed at least one of Sykes and Matza's (1957) techniques of neutralization (see Chapter 5). A common justification, "denial of a victim," was that they bilked Medicaid because they were not being paid what the service cost them to deliver. Another justification, "denial of injury," was that they were providing needed care that Medicaid would not permit. These beliefs were so pervasive that Jesilow et al. wondered if they comprised a "subculture of medical delinquency" (p. 175). Doctors could access these subcultural beliefs and employ them as "professional justification in lieu of defining their activities as deviant, illegal, or criminal" (p. 175).

## *WHITE-COLLAR CRIME AS A RATIONAL CHOICE*

Business activity involves making profits—engaging in activities in which the benefits outweigh the costs. Rationality is rewarded with wealth; irrationality is punished, at times with bankruptcy. Thus, if any offenders' decisions should be guided by rational choice, it should be those in the business community. In fact, one explanation for why upperworld criminality flourishes is that the potential profits are high and, due to weak enforcement and the secrecy organizations provide, the costs are low. This perspective would also predict that managers who perceive offending to be profitable should be more likely to break the law. There is, however, a counterargument. To be sure, choices are made, but are they rational? Competing criminological theories argue that, beyond sheer profitability, many other factors shape the decision to offend. These might include social bonds, self-control, the strength of criminal versus conventional values, exposure to strain, and so on. The broader theory of rational choice is discussed in detail in Chapter 13. Here we are concerned with its applicability to white-collar crime.

In this regard, the most systematic perspective is Raymond Paternoster and Sally Simpson's (1993) *rational choice theory of corporate crime* (see also Paternoster &

Simpson, 1996; Simpson, Piquero, & Paternoster, 2002). They are interested in explaining the willingness of employees to commit crimes on behalf of the corporation. The key to this decision to offend is not the objective costs and benefits that might accrue but the *perceived utility* of the act. In this model, offenders use perceptions of what will occur to calculate whether a crime has utility (whether the benefits outweigh the costs).

Crass rational choice theories examine only the perceived certainty and severity of formal sanctions (e.g., penalties from regulatory agencies or criminal courts). As Paternoster and Simpson understand, however, two other kinds of costs also might shape the perceived utility of a corporate crime. One category is perceived informal sanctions. These might include costs to the company in terms of negative publicity or costs to the individual in terms of negative reactions from friends and family members. Another category is internally imposed sanctions, in particular the loss of self-respect that might be feared if laws were broken.

In deciding to offend, a corporate official thus must judge potential formal, informal, and self-imposed costs. But people do not arrive at a point of decision as empty vessels devoid of all morality. Variation in people's morality thus further shapes the criminal choice. If held strongly, moral beliefs can override perceived utility; some people will not do what they think is wrong. Other moral beliefs, however, are akin to situational ethics. They are "moral rules-in-use" that define "the acceptability of *particular* conduct within a *particular* context" (Paternoster & Simpson, 1993, p. 45, emphasis in original). These are definitions of the situation, or techniques of neutralization, that might justify illegal acts under some circumstances. Related to this point, the moral constraint of a regulation further depends on the "*perceived sense of the legitimacy of the rules and rule enforcers*" (p. 45, emphasis in original). Laws seen as unfair are less binding.

Beyond sanctions and controls, corporate managers must consider two other factors: the costs of complying with the law and benefits of not complying. This assessment then must be weighed against other legitimate options that might be available in the corporation or its environment for resolving a given problem. If lawful alternatives are closed off or seem too costly, the decision to offend gains in utility. Further, if officials have offended in the past, they may manifest behavioral stability. Even in the upperworld, it may be that in line with past "criminological research" on street criminals, "the best predictor of future offending is past offending" (Paternoster & Simpson, 1993, p. 47).

Paternoster and Simpson thus predict that corporate crime will be more likely when managers (1) perceive that formal and informal sanctions will be weak, (2) do not experience a loss of self-respect, (3) lack a strong morality or have internalized situational rules-in-use that justify the act, (4) view rules as unfair, (5) judge both the benefits of noncompliance and the costs of compliance as high, and (6) have broken the law in the past. Their tests of this model, mainly using vignettes to probe factors that affect managerial decisions, have produced supportive results (Paternoster & Simpson, 1996; Simpson et al., 2002; Smith, Simpson, & Huang, 2007). The question is the relative importance of "rationality"—assessments of costs and benefits—versus other factors. Morality appears to be the strongest predictor of the willingness to

offend. Other individual traits, such as the desire for control, might shape perceptions of sanction effects and independently influence corporate crime decision making (Piquero, Exum, & Simpson, 2005). Most important, a strict rational choice model decontextualizes potential offenders. They occupy positions that are enmeshed in an ongoing corporate entity that has a history and habits, standard operating procedures, work group cultures, and a changing external environment. Perceptions of utility matter, but they are likely to be contingent on a host of contextual factors (Simpson et al., 2002).

## State-Corporate Crime

At 8:00 a.m. on September 3, 1991, a fast-spreading fire broke out at Imperial Food Products, Inc., a chicken-processing plant in Hamlet, North Carolina. The fire erupted when a hydraulic line above a vat of grease burst, spraying flammable liquid into the 400-degree oil in the vat. The plant had no sprinklers, no windows, and few doors. Most egregiously, a metal fire exit door, later found to have dents in it from workers desperately seeking escape, had been padlocked shut on the orders of Emmett Roe, the company's owner. A truck also had been parked a few inches from the door, making it impassable. The owner's intent was to prevent workers who were pilfering chicken parts from sneaking out of the plant undetected. Of 90 workers, 24 died and 56 were injured. A snack-company employee servicing the vending machines also perished. Years later, another worker died from complications stemming from injuries on that day (Aulette & Michalowski, 1993; Cullen et al., 2006; Wright, Cullen, & Blankenship, 1995).

At first blush, identifying the white-collar criminal seems easy: Emmett Roe, due perhaps to rational choice and criminal values, decided to close off a fire exit to save a few chicken parts. Roe was duly indicted on 25 counts of involuntary manslaughter and, in a plea agreement, received a 19-year, 11-month sentence. He would be released after serving 4 and 1/2 years (Cullen et al., 2006). Justice was done—or was it? According to Ronald Kramer and Raymond Michalowski, this social construction of the deaths at the plant as an individual owner making a bad decision obscures the true nature of the offense (see also Aulette & Michalowski, 1992). In their view, this is an example of a *state-corporate crime* (Kramer, Michalowski, & Kauzlarich, 2003).

According to Kramer et al. (2003), a state-corporate crime "is defined as criminal acts that occur when one or more institutions of political governance pursue a goal in direct cooperation with one or more institutions of production and distribution" (p. 263). Essentially, Kramer and Michalowski are seeking to sensitize criminologists to the political economy of crime in the United States. The state and corporations are inextricably intertwined. Corporations are legal creations allowed to exist by the state; they also generate wealth and use their power to influence state policies. Although exceptions exist—such as when a Wall Street–banking scandal is disclosed—the state and corporate America share interests and ideology. Often in secretive ways, they do one another's bidding.

Kramer and Michalowski have distinguished two types of state-corporate crime. Both types involve the "coincidence of goal attainment, availability and perceived

attractiveness of illegitimate means, and an absence of effective social control" (Kramer, 1992, p. 239; see also Dallier, 2011). First, *state-initiated corporate crime* "occurs when corporations, employed by the government, engage in organizational deviance at the direction of, or with the tacit approval of, the government" (Kramer et al., 2003, p. 271). Kramer's (1992) analysis of the Space Shuttle *Challenger* (discussed above) falls into this category (see also Vaughan, 1996). In his view, for a host of political and economic reasons, NASA was under intense pressure to attain the goal of regular, on-schedule space shuttle launches. Without Morton Thiokol's cooperation, however, the *Challenger* launch would have been cancelled. Wishing to please NASA, the company ignored internal engineering data on the potentially lethal risk of an O-ring malfunction in cold weather. Morton Thiokol managers approved the launch, and NASA proceeded to send *Challenger* into space. No external controls existed to ensure that this state-corporate decision was safe. Seven crew members perished as a result.

Second, *state-facilitated corporate crime* "occurs when government regulatory institutions fail to restrain deviant business activities, either because of direct collusion between business and government or because they adhere to shared goals whose attainment would be hampered by aggressive regulation" (Kramer et al., 2003, pp. 271–272). According to Kramer and Michalowski, the deadly fire at the Imperial Food Products plant qualifies as a state-facilitated corporate crime. To be sure, Emmett Roe was criminally negligent in padlocking the fire exit. But focusing on him misses the larger contextual reality that created this criminal opportunity and event. Roe was misguided, but he surely had no intent to visit harm on his employees. More telling, he would never have been allowed to chain the door shut if the state, in this case North Carolina, had properly enforced safety standards. To create a so-called favorable business climate—so as to attract companies—North Carolina embraced a policy of weak regulation. The plant building, which was more than 100 years old, had not been inspected by the state's Occupational Safety and Health Administration in 11 years (Cullen et al., 2006). More shocking, shortly before the fire, the North Carolina agency "had returned nearly a half million dollars in unspent OSHA money to the federal government" (Kramer et al., 2003, p. 277). In short, the state was equally, if not more, complicit than Emmett Roe in failing to prevent the fire and in placing corporate profits above worker safety and the potential harm to human life.

The unique contribution of Kramer and Michalowski's theory of state-corporate crime is that it forces consideration of the ways in which the state and corporations intersect to create criminal motivations and opportunities. As the most powerful actors in American society, their partnership in crime can produce inordinate harm with virtual impunity.

## Consequences of White-Collar Crime Theory: Policy Implications

Perhaps the clearest lesson that can be drawn from existing theories is that reducing crime in the upperworld poses a daunting, if not insurmountable, challenge. As we

have seen, unlike most street offenders, white-collar criminals occupy respected positions in society and often work within powerful companies. This corporate veil offers them secrecy and the ability to conceal their waywardness. In fact, their criminal acts frequently are intermingled with legitimate economic conduct—so much so that the two are indistinguishable to potential victims. In some firms, lawbreaking is supported by corporate customs (or habits). Deviant practices can become normalized so that participants fail to appreciate the recklessness of their decisions. Criminal cultures also prevail; these beliefs can be accessed to neutralize guilt or other moral restraints. The state at times conspires with corporations to ensure that regulations are weak or only weakly enforced. The use of criminal sanctions against executives historically has been limited. Much as Sutherland learned more than seven decades ago, when scholars peek into virtually any industry or profession, instances of unlawful behavior are easily detected.

Still, two approaches to combating white-collar crime are possible and have, in fact, been used to varying degrees. First, Sutherland—and E. A. Ross before him—warned that upperworld lawlessness flourished because society was disorganized. They were arguing that whereas white-collar offenders were organized for crime, American society was not organized against this form of illegality. The disorganization was due in part to public ignorance of the true effects of white-collar offenses and in part to the ability of powerful interests to use their influence to deflect efforts to control their conduct. However, the movement against white-collar crime that emerged in the 1970s has substantially altered this balance of power. Existing polling data are clear in showing that the public mistrusts executives, especially those from "big business," and is willing to punish them with the criminal law (Cullen et al., 2009). Further, the use of criminal sanctions against corporations and professionals has grown meaningfully in recent decades (Benson & Cullen, 1998; Cullen et al., 2006; Liederbach, Cullen, Sundt, & Geis, 2001). If nothing else, society is more positioned to uncover and fight revelations of white-collar crime when they emerge. State officials seeming to be too cozy with such offenders even risk being turned out of office. For this reason, officials are willing to send those found to have abused their trust—Bernard Madoff and Jeffrey Skilling are prime examples—to prison for much, if not all, of the remainder of their lives (see Cullen et al., 1987).

Second, there is a difference of opinion among scholars as to the extent to which criminal sanctions—especially those focused on corporate executives rather than simply their firms—can deter white-collar offending (Cullen et al., 1987; Simpson, 2002). Regardless, a general consensus exists that, similar to street crime, imposing harsh criminal sanctions is limited as a crime control strategy. Criminological theorists thus have urged that companies be persuaded or forced to engage in self-regulation (Braithwaite, 1985; Simpson, 2002). The focus should be on company managers taking steps both to change conditions that motivate offending and to close off criminal opportunities (Benson & Simpson, 2009). Such strategies might include management training in business ethics, the appointment of a compliance officer and staff to ensure that regulations are followed, opening lines of communication so that

unacceptable risks or practices can be reported to upper-level executives, and the use of stricter accounting procedures to ensure that financial misconduct is not possible (Simpson, 2002).

## Conclusion

Beginning with his 1939 Philadelphia address, Edwin Sutherland challenged criminology in two ways. First, he urged scholars to examine how conventional images of criminals were internalized not only by the public but also by the criminologists themselves. In Sutherland's view, criminology was fundamentally class biased. By studying offenders primarily in disorganized inner-city neighborhoods, scholars implicitly affirmed that crime was the exclusive province of the disadvantaged. In coining the concept of "white-collar crime," however, Sutherland dramatically revealed this vision of the crime problem to be false. Unfortunately, this message that crime existed at all levels of society largely fell on deaf ears until the events of the 1960s and early 1970s transformed criminologists' consciousness. A new generation of scholars, sensitized by prevailing events to social injustice, rediscovered Sutherland and revitalized the investigation of upperworld criminality. Since that time, repeated scandals—with enormous costs to American society—have regularly transpired and reinforced the need for criminologists to unravel the causes of, and expose the inordinate damage done by, the crimes of the powerful.

Second, having established the existence of white-collar crime, Sutherland upped the ante on what must be explained for a perspective to quality as a *general theory of crime.* As Braithwaite (1989) has noted, there is "nothing wrong with having a theory of a subset of crime, so long as a theory of rape, for example, is described as a theory of rape rather than as a general theory of crime" (p. 124). But scholars have tended to claim for their framework the status of a general theory even though they "adopt a class-biased conception of crime that excludes white collar offenses" (Braithwaite, 1989, p. 124). In Sutherland's aftermath, it is clear that any claim of theoretical generality will be scrutinized to see whether the perspective can provide an adequate explanation of crime in corporate suites and not just city streets. This task is particularly problematic for trait theories that attribute crime to pathological individual characteristics that are predicted to produce both crime and social failure (e.g., low self-control). The social Darwinism inherent in these perspectives cannot simultaneously account for how flawed people, who are predicted to fail at school and in the workplace, can rise into the upperworld where white-collar crimes take place.

In short, Sutherland—and the scholars who have followed in his footsteps—have cautioned criminologists not to take the concept of "crime" for granted. To be sure, investigating the crimes of the powerful is a daunting challenge because these offenders are often talented at concealing their criminality and do not welcome scholars snooping around and asking them to self-report on their waywardness.

Regardless, the components of a more systematic integrated theory of white-collar crime are emerging. As Yeager and Simpson (2009) note, it is generally agreed that white-collar offending is "caused by a confluence of motive, opportunity, choice, and constraint (lack of control)" (p. 338; see also Coleman, 1992; Friedrichs, 2010). Future research thus will profit from probing the specific content of these factors, their relative importance, and the ways in which they interact to foster upperworld crime.