Understanding white collar crime

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Chapter one

Conceptualizing white collar crime

White collar crime affects key areas of contemporary life. Financial ‘scandals’ such as the collapse of major banks and pension frauds question the legitimacy of the financial world, and the climate of ‘sleaze’ has become a political issue. Tax and public sector fraud reduces government resources for health, education and welfare. The harmful activities of corporations endanger the safety of workers, consumers and passengers, and have a wider impact on public health and the environment. For example, in the United Kingdom, following widespread concern about the failure to prosecute rail companies following rail crashes, the government has recently announced its intention to introduce a law dealing with ‘corporate killing’ (Guardian 10 May 2000: 4). Although these activities are subject to criminal law and criminal justice, they are not regarded as crime in the same way as burglary, robbery or assault, and they are less likely to prompt calls for tougher policing and punishment. It is not common, for example, to hear demands for ‘zero tolerance’ of fraudsters or antisocial behaviour orders for companies.

These are some of the issues raised by the study of white collar crime. The existence of white collar crime questions the way in which crime is defined, counted and treated by criminal justice agencies. It encompasses a wide
range of harmful activities which are not all widely regarded as criminal, raising questions of how it can be compared with other crimes. The analysis of white collar crime moves beyond the traditional concerns of criminology into wider areas of financial regulation, the environment, occupational health and safety, consumer affairs and food regulation. Can it therefore be incorporated into the study of crime? These and many other questions will be tackled in this book. This first chapter will start by briefly exploring the development of the concept of white collar crime and its status in criminology before turning to questions of how it can be defined, whether it is distinct from other crimes and whether it can be conceptualized as ‘crime’. The chapter will then explore some of the problems involved in researching white collar crime.

White collar crime and criminology

The harmful nature of the activities associated with white collar crime have long been recognized. Chaucer’s The Pardoner’s Tale contains a sermon against avarice (Ruggiero 1996a), and in the Middle Ages traders caught using false scales or adulterating food were excommunicated, pilloried, put in the stocks or banished from towns (O’Keefe 1966; Harvey 1982). The morality of emergent capitalism is discussed in the work of Daniel Defoe, and ‘entrepreneurship’ has often been associated with ‘deviant’ business activities (Ruggiero 1996a). During the nineteenth century laws sought to protect the safety of workers and passengers and the economic interests of ‘honest’ traders and consumers, and to prevent the widespread adulteration of food (Croall 1992). Developments in finance and commerce have continually produced new opportunities for fraud, from the formation of joint stock companies to contemporary frauds using electronic technology and cyberspace. Capitalism itself has been seen as criminogenic - the Dutch criminologist, Bonger, linked crime among the bourgeoisie to the motivating ideologies of capitalism (Bonger 1905, cited in Slapper and Tombs 1999), and Sutherland’s (1949) original identification of white collar crime followed a long tradition of ‘muckraking’ which exposed the harmful activities of US capitalism.

To early criminologists, however, crime was associated with the activities of the lower class offenders who populated courts and prisons. Theory and research sought to identify the ‘causes’ of crime that were assumed to lie in the pathologies of individual offenders and in poverty and deprivation. This was challenged in 1939 by the US criminologist Edwin Sutherland who advanced an alternative thesis:

that persons of the upper socio-economic class engage in much criminal behaviour; that this criminal behaviour differs from the criminal
behaviour of the lower socio-economic class principally in the administra-
tive procedures which are used in dealing with the offenders and that
variations in administrative procedures are not significant from the
point of view of causation of crime.

(Sutherland 1949: 9)

He thereby drew attention to crimes not ‘ordinarily included within the
scope of criminology’ and ‘approximately’ defined white collar crime as ‘a
crime committed by a person of respectability and high social status in the
course of his occupation’ (Sutherland 1949: 9). He specifically associated
the term ‘white collar’ with business managers and executives to distinguish
their offences from the confidence games of the underworld. His research
established that many prominent corporations had been found guilty of
multiple violations of civil and criminal statutes. This made them recidivist
offenders who, he argued, be included in general theories of crime.
This attracted considerable criticism, particularly on the grounds that crim-
inology should look only at activities covered by criminal law (Tappan
1977). Otherwise, argued Tappan, criminologists could define any behav-
avour they disapproved of as crime and undermine the ‘scientific objectivity’
of the discipline. The definition itself raised many problems and this, along
with discussions of whether white collar crime was, indeed, crime, led to
what were characterized as ‘sterile definitional disputes’ (Aubert 1977).

Controversial though the concept was, it challenged many aspects of
 criminology. Its existence questioned the use of official statistics, which
largely excluded it, as objective indicators of crime, and questioned the defi-
nition of crime by drawing attention to equally harmful activities subject to
different laws and procedures. The high status of offenders questioned the
long-standing preoccupation with lower-class offenders and raised important
issues about bias in criminal law, prosecution and punishment. This pre-
ceded the emergence of critical perspectives in criminology from the 1960s
which posed similar questions. To labelling perspectives, no activities were
intrinsically deviant or criminal and the processes that led to activities being
criminalized and to offenders being processed and labelled were themselves
worthy of research. To Marxist perspectives criminal law and its enforce-
ment reflected the interests of the powerful and were a means of controlling
the activities of powerless lower-class offenders; and the harmful activities
of business groups lay largely outside their scope (Pearce 1976). Criminal
law and crime came therefore to be represented as contested categories. This
rendered the concept of white collar crime less problematic and made the
study of how different kinds of crime were subjected to law and the crimi-
nal justice process a valid concern for criminology and an emergent soci-
ology of law (Pearce and Tombs 1998).

These theoretical advances had a considerable impact on the study of
white collar crime. In Britain, where the critical tradition was strongest

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(Punch 1996), research explored the developing use of criminal law against business activities and the respective roles of business groups, enforcers and government (Carson 1971; Paulus 1974 and see Chapter 6). Out of this emerged a distinction between some forms of white collar crime and ‘real’ crime and a different process of law enforcement, which was itself subjected to a considerable volume of research (see Chapter 6). In the USA, research on white collar crime also looked at enforcement decisions and continued Sutherland’s tradition of exposing its extent, particularly following the growth of consumerism and the Watergate scandal. Despite this, however, the subject remained marginal to criminology, and the promise of the critical tradition was not fulfilled. With some exceptions such as Pearce's (1976) work on the ‘crimes of the powerful’, studies in labelling and critical perspectives focused largely on how the activities of criminal justice agencies adversely affected lower-class young offenders rather than ‘looking upwards’ at white collar offenders (Punch 1996). As Weisburd and Schlegel (1992: 352) argue, the concept of white collar crime became somewhat of an ideological or theoretical ‘gadfly’, invoked, often in simplistic terms, to debunk stereotypes about criminality, and it was not translated into ‘substantial theoretical or empirical concern among criminologists about the problem of white collar crime’.

What is often described as ‘mainstream’, ‘administrative’ or ‘establishment’ criminology itself changed focus. The ‘failure’ of rehabilitative methods and strategies associated with the ‘criminological project’ to reduce the volume of crime substantially was recognized by academic criminologists and policy makers as official crime rates continued to rise. Attention turned from the search for the ‘causes’ of or ‘cures’ for crime towards what were argued to be more realistic ways of preventing it and dealing with convicted offenders. An increasing number of victim surveys provided more accurate measures of the incidence and impact of offences on victims along with valuable information about the circumstances in which offences took place. Techniques of situational crime prevention, which targeted these circumstances, came to be seen as a more useful way to reduce crime than attempting to change offenders’ motivations. The focus remained on lower-class crime, with white collar crime and victimization being almost entirely excluded from the growing number of victim surveys and crime prevention initiatives (Croall 1999a, 1999c).

Critical criminology was in turn criticized by the ‘left realist’ perspective for what was seen as a preoccupation with the crimes of the powerful and with criminal law and its enforcement at the expense of the lived ‘reality’ of crime (Lea and Young 1993; Young 1997). Analyses of crime, it was argued, should take account of the ‘square of crime’, which stresses interrelationships between victims, offenders, the public and state agencies. Explanations should recognize the specificity of different kinds of crime, and relative, rather than absolute, deprivation was seen as a contributing factor. This approach,
it was argued, could encompass white collar and conventional crime, although the work of left realists has in turn been criticized for a focus on 'street crime' (Croall 1992). Left realism was also seen to be ill adapted to analysing the more complex problems posed by crimes associated with impersonal organizations and fewer individual victims (Ruggiero 1992; Pearce and Tombs 1998). Other critical strands also questioned the construction of crime and the activities of criminal justice agencies. Feminist perspectives questioned the marginalization of domestic violence in constructions of violent crime and in police priorities, and they also criticized the 'gender blind' nature of criminology, which had failed to account for the gender gap in criminal convictions and the different treatment of women in the criminal justice process. Attention was also drawn to the way in which different racial and minority ethnic groups were subject to criminalization and institutional racism in respect of policing, courts and prisons. Although these approaches did not incorporate analyses of white collar crime, they raised comparable issues.

The relative lack of attention to white collar crime has continued, despite what can be seen as its increasing significance (Croall 1999a). The 1980s and 1990s saw a series of major financial scandals such as the collapse of the Bank of Credit and Commerce International (BCCI), and, in the UK, revelations of the massive frauds on the pensions funds of the Maxwell organization and the collapse of Barings Bank following the activities of the ‘rogue trader’, Nick Leeson. The advent of electronic banking has increased opportunities for fraud, some of them on a global scale, with it being possible to move money around the world in seconds. Major disasters and incidents such as the death of between 3000 and 5000 people in Bhopal in India following the release of methyl isocyanate into the atmosphere, and the disaster at the Chernobyl nuclear power plant, which caused widespread radiation across Europe, drew attention to the significance of corporate responsibility for safety. In the UK, a spate of ‘disasters’, subsequently attributed to faults in organizations, such as the sinking of the Herald of Free Enterprise, and the Clapham and later the Southall and Paddington rail crashes, led to public debate about the prioritization of profits over safety and to the emergence of groups campaigning for the criminal prosecution and punishment of those responsible. There have also been calls for those responsible for crimes perpetrated on behalf of states or political causes, such as the activities of General Pinochet or the ‘ethnic cleansing’ in former Yugoslavia, to be subject to criminal trials. Yet, as Slapper and Tombs (1999: 9) comment in relation to corporate crime:

in what is best understood as a self-perpetuating cycle of omission and ignorance, most standard texts on criminology pay little or no attention to it; most theoretical criminology does not attempt to explain it; most undergraduate courses in criminology or criminal justice marginalise it.
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Often repeated criticisms are that the Oxford Handbook of Criminology (Maguire et al. 1997), which is generally regarded as representing the current state of British criminology, devotes only one out of 32 chapters to white collar crime, and white collar crime has not featured strongly in theoretical texts, major journals such as The British Journal of Criminology, or in the British Criminology Conference until 1999, when a stream was devoted to the ‘Crimes of the Powerful’. White collar crime is not associated with an identifiable ‘school’ of thought, and relatively few British scholars, described by Punch as ‘lone rangers’, have pursued its study (Punch 1996). Although there is more work in the United States, this is still small in comparison to work on other crimes. Nonetheless, as will be seen throughout this book, its critical role is considerable although it remains a highly contested concept. The remainder of this chapter will focus on how to conceptualize white collar crime, starting with problems surrounding its definition.

What is white collar crime?

Sutherland’s ‘approximate’ definition (see p. 2) and the debates surrounding it led to much conceptual and linguistic confusion – as Nelken (1997a: 896) comments, ‘if Sutherland merited a Nobel prize, as Mannheim thought, for pioneering this field of study, he certainly did not deserve it for the clarity or serviceableness of his definition’. The key words and phrases ‘crime’, committed by ‘persons of respectability and high social status’, ‘in the course of’ an ‘occupation’ all lead to problems in determining which activities are to be included. The contentious issue of crime will be dealt with below, and this section will focus on social status and occupation.

One major problem is whether the occupational nature of the activities or the social characteristics of offenders should be the major defining feature. By including both, Sutherland sought to distinguish crimes associated with ‘respectable’ or legitimate occupations from the ‘ordinary’ crimes such as rape or murder of high-status individuals, and from the crimes of those whose occupation could be said to be ‘criminal’ – from what is more generally defined as organized or professional crime. This poses the immediate problem of how ‘high social status’ or ‘respectability’ are to be defined. Where is the line to be drawn in the occupational hierarchy? Although white collar crime is often associated with the crimes of senior management and executives, the term white collar is used to describe all non-manual workers, and any specific form of crime associated with occupations is likely to contain offenders from a wide spectrum of employment levels. Customers and employers can be defrauded by junior or senior sales personnel, and corporate executives, secretaries or porters can sell inside information (Levi 1987a), and people lie, cheat or commit sins of ‘omission’ up and
down the occupational hierarchy (Shapiro 1990). Occupational roles can therefore be abused in similar ways, irrespective of status. Although Sutherland talked of major corporations, small businesses can also be responsible for similar offences. Consumers can be ‘ripped off’ by local corner shops, market stalls or large manufacturers, and environmental pollution or safety offences in the workplace can be associated with ‘cowboy’ operators or large multinational conglomerates (Croall 1992).

Some have consequently argued that the definition of white collar crime should include all crimes committed in the course of occupations and should be redefined as ‘occupational crime’ (Quinney 1977), or it should be based on an abuse of occupational trust (Shapiro 1990). This, however, removes what to many is the major feature of white collar crime – its association with high social status. It also makes the category extremely large, incorporating the ‘perks’, ‘fiddles’ and sabotage usually associated with ‘blue-collar’ occupations; the insider dealing, embezzlement and fraud generally associated with higher-level employees; and offences involving the neglect of safety, health, consumer or environmental regulations associated primarily with companies. On the other hand, it could be argued that to draw a line between higher-status and lower-status employees would be somewhat arbitrary and would preclude exploration of the different range of opportunities available to employees at different levels and the different ways in which their offences are perceived and subject to different kinds of sanctions.

A related problem is how to define ‘respectable’ or ‘legitimate’ occupations. Here, again, Sutherland confuses the characteristics of offenders with the activities concerned (Ruggiero 1996a). It is difficult in practice, argues Ruggiero, to draw a line between a legitimate and an illegitimate business, where, for example, organized criminals use legitimate businesses as a ‘front’, or where the extent of crime in an organization renders it ‘criminal’ – as was the case with the BCCI, which involved legitimate investors, governments and professional criminals (Punch 1996). Many small businesses exist at the margins of legitimacy and illegitimacy – selling legitimate and counterfeit and stolen goods. Looking at examples of activities involving legitimate and illegitimate businesses, often working together, Ruggiero (1996a) argues that corporate, white collar and organized crime are variants of the same form of crime and should be analysed jointly. Although again this would produce an extremely large group of offences, it further illustrates the problems of defining the category by the status of offenders and highlights how the broadly similar activities of different groups of offenders are conceptualized.

A further difficulty of using the status of offenders as a starting point is that it incorporates assumptions that may predetermine research questions and analysis. To academics and general commentators, the key feature of white collar crime is the high status of offenders, which is assumed to lead to its different treatment in the criminal justice process. This can become a
circular argument – if class and status are taken to be the defining point, and offenders are treated differently, this is then explained by the class and status of offenders to the exclusion of any other factor. Class and status are not therefore unimportant, but are perhaps better perceived as related to rather than a key part of the definition.

Are white collar crimes distinct from other crimes?

Defining white collar crime implies that it can be distinguished from what are often, for comparative purposes, described as conventional or ordinary crimes. This, in turn, involves exploring which, if any, characteristics are associated with such a comparison. A number of distinctive features of white collar crime have been identified (Clarke 1990; Croall 1992; Langan 1996), some of which are a direct consequence of the location of offences in occupational roles, whereas others have been more often associated with the class and status of offenders. Although these are useful tools for comparison, it will be seen that it is not easy to draw clear dividing lines between different crime categories and that there are also variations between different kinds of white collar crime.

A number of characteristics are closely related to the occupational nature of offences. Because they take place in the private sphere of the workplace they are relatively invisible and can be concealed more easily because ‘business offenders are legitimately present at the scene’ (Clarke 1990: 21). Because they are committed during the course of an occupation, they involve an abuse of the trust inherent in an occupational role (Shapiro 1990). Offences are made possible by the use of some form of technical or ‘insider’ knowledge, which may be an awareness of how to use organizational routines to conceal offending or may involve the abuse of professional, scientific or financial ‘expertise’. This makes many offences complex, and the extent, duration and details of offending are difficult to determine. Offences may be sins of ‘omission’ or ‘commission’, with a long ‘paper trail’ and cover-ups often being involved. Many are highly organized and involve several participants with differing degrees of responsibility. In many cases, determining who is responsible is difficult because of the diffusion of responsibility in organizations, where responsibility for particular tasks is delegated, enabling participants to ‘blame’ others up or down the hierarchy.

Offences also involve different patterns of victimization, and many offences are characterized as victimless. Some offences, such as the sale of short weight goods or abstracting small amounts of money from a large number of customers’, investors’, or clients’ accounts, lead to small losses to individual victims. Victims may not be aware of any harm, which is also the case with offences such as food adulteration or safety offences. Other kinds of crime affect the ‘public health’ or ‘the environment’ rather than individual
victims and, in other cases, effects are immeasurable and indirect. **Corruption**, for example, involves exchanges of money or favours, in which the ‘criminal’ element is the abuse of trust and the effect is on the legitimacy of institutions such as business, public service or political organizations. This can be contrasted with the immediate, direct and measurable victimization involved in, for example, an assault or robbery.

The ambiguous legal and criminal status of white collar crimes is a further characteristic, which is also related to their treatment in the criminal justice process. In many offences there is an apparent lack of intent, particularly where a diffusion of responsibility is involved, and where, although a regulation may have been broken, the consequences of that violation, such as injury, were not intended. This means that the moral element so important to the definition of crime is absent. Victims’ lack of awareness and the invisibility and complexity of offences make them difficult to detect, and difficulties of attributing responsibility and obtaining evidence also make offences difficult to prosecute. This leads to a relatively low rate of detection and prosecution. In addition, many offenders receive what are seen as lenient sentences, which are also related to the absence of intent, lack of direct victimization and the ambivalent criminal status of offences. Differences in the legal processing of white collar crimes are therefore related to their particular characteristics, although a major issue is how much they are also related to the class and status of offenders.

These features are most often used routinely to compare white collar crimes with other crimes. As will be seen in subsequent chapters, however, such generalized comparisons can be misleading because many of these features are not unique to or shared by all white collar crimes. Some conventional crimes are also invisible, particularly those that take place in the private sphere of the family. Some, like burglary or robbery, involve considerable expertise and can also be highly organized and complex, which makes them similarly difficult to detect. Moreover, successful professional criminals delegate responsibility to minimize the risk of being detected and prosecuted (Ruggiero and South 1995). Not all conventional crime involves immediately harmed victims and those crimes that involve willing exchanges between consenting adults, such as gambling, prostitution or drug offences, are also represented as ‘victimless’ and pose particular problems for detection and prosecution. These and other conventional crimes are also characterized by an ambivalent criminal status and perceptions of the ‘criminality’ of activities vary over time. Intent, so often seen as a major element in criminal liability, is problematic in other forms of crime – those who drive while drunk may not intend to harm others and can see themselves as ‘unlucky’ (Slapper and Tombs 1999). Other, more unambiguously criminal offences are also perceived to be treated leniently – rape cases, for example, have a high rate of attrition leading to low prosecution rates (Lees 1996) – and many sentences are criticized as lenient.
A further problem with broad contrasts is that not all white collar crimes share all these characteristics. Not all offences are equally invisible - some frauds, safety or food offences are immediately detectable. Their location in occupational roles means that most white collar crimes do involve an abuse of occupational trust, but occupational roles vary in the extent to which employees are trusted and offences involve varying degrees of knowledge and expertise. Not all white collar crimes involve complex organization - employees may simply steal money or goods and neglect of regulations may arise from ignorance or incompetence. Patterns of victimization vary, with some having a direct and severe impact, including death, injury and heavy financial losses. Some white collar offences are more unambiguously criminal than others - few would dispute, for example, that serious frauds are crimes, and some offences more clearly involve intent than others. And as will be seen in subsequent chapters, not all white collar crimes enjoy lenient treatment.

No clear dividing line can therefore be drawn between white collar and other crimes, and many of these characteristics would be better seen as representing a series of continua (Nelken 1997a). Nelken, for example, points out that organized crime involves cases of cold-blooded calculation and those cases where it is difficult to distinguish malevolence from incompetence, and also points to a continuum between accidental and deliberate, although for other crimes the criminal sanction is less problematic. Were different kinds of crime to be plotted along a series of continua, it is likely that many white collar crimes would cluster at one end, with many conventional crimes at the other. Broad comparisons often draw on extreme examples - thus the invisibility, lack of intent, diffuse victimization and complexity of a major pollution incident may be compared with the visibility, intent, direct victimization and simplicity of a mugging.

These kinds of considerations also suggest that different characteristics are in themselves subject to social construction. Although a drunken driver does not necessarily intend to kill or injure, most would now accept that taking such a risk is morally wrong, and the law incorporates notions of recklessness and negligence. Although neglecting safety regulations similarly involves recklessness about the consequences, it is not generally regarded as morally wrong (Slapper and Tombs 1999). The complexity of offences can also be overstated - many, argue Slapper and Tombs, are simple acts of omission or commission but are made more complex by legal procedures (Slapper and Tombs 1999). Categories of crime are also socially constructed - it has been seen, for example, that the distinction between organized and white collar crime rests in part on a conception of the ‘respectableness’ of offenders. Although some white collar crime involves death and injury, it is not normally related to violent crime, which is more often constructed around public, interpersonal violence. This is, in turn, distinguished from the legitimate ‘force’ of state agencies, although the dividing line between
this and an abuse of the occupational roles of police or military personnel is a narrow one. Constructions of violence also omit the physical harms associated with the neglect of safety or health regulations, which could well be defined as *institutional violence* (Wells 1993; Levi 1997) in the same way as is ‘institutional racism’. The above discussion also indicates that there are many variations in the category of white collar crime, which will be explored below.

**Varieties of white collar crime**

The enormous range of activities encompassed by the category of white collar crime has inevitably led to attempts to divide it into subcategories, to provide researchers with a manageable group of offences and enable comparisons between offences. In practice, research has tended to focus on specific groups of activities, often legally defined, such as fraud or safety, environmental or consumer offences. The status of offenders continues to be an important feature of these definitions, with some referring to *elite crime* or crimes of the powerful, and to corporate and *state crime*. Some activities can be seen as largely motivated by financial gain, whereas others intentionally or otherwise cause physical harms. Thus, some people distinguish financial white collar crimes from others. Some studies have focused on specific industries such as the chemicals (Pearce and Tombs 1998) or pharmaceutical industry (Braithwaite 1984), or on particular occupational groups such as specific professions. This can lead to a proliferation of overlapping and often confusing definitions and categorizations. Many people now accept that a broad distinction can be drawn between offences primarily motivated by individual monetary gain and those that are more directly related to the survival or profitability of organizations, although in this respect, as in so many other respects, the characteristics of offenders are also important.

The distinction between occupational and *organizational crime* points to some major contrasts. Broadly speaking, occupational crime, a typical example of which is embezzlement, involves offenders, either individually or in groups, engaging in illegal or rule-breaking activities for personal gain at the expense of consumers, clients or employers. Organizational crime, on the other hand, a typical example of which is the neglect of safety regulations, does not involve personal gain, but may be seen as being ‘for the good of’ the organization by enhancing profitability or efficiency. Whereas occupational crime more obviously involves intent and individual responsibility, organizational crime illustrates the diffusion of responsibility. Where an employee neglects or violates a regulation they can claim that it is ultimately the organization’s responsibility to ensure that regulations are complied with. This distinction parallels others. As will be seen in later chapters, there are particular legal problems associated with corporate liability and, in
general terms, organizational crime fits less easily within a construction of crime centred on notions of individual guilt and responsibility (Wells 1993; Slapper and Tombs 1999). Organizational crimes are therefore often perceived to be less ‘criminal’ than those of individuals, and patterns of victimization are less direct, whereas individual offences may attract stronger public reaction and heavier sentences. This can be further related to differences in the interests threatened by offences – Pearce (1976), for example, distinguishes between crimes that threaten the interests of capital, such as fraud, and those that can be interpreted as being in the course of capitalist activity.

This distinction, while useful, cannot be overdrawn (Slapper and Tombs 1999) and cross-cuts other commonly used categories. Organizational crime is often equated with corporate crime, although the former term is arguably more appropriate because regulations can be violated in public and voluntary organizations as well as in corporations. The term ‘state crime’ is often used to describe offences in state organizations, although some of these may be carried out for individual gratification – police officers may, for example, accept favours or break the rules to benefit themselves. Where such activities are for the perceived benefit of the state or one of its agencies, however, they can be seen as state organized. Political crime similarly involves politicians accepting favours for their individual economic benefit or career advancement, or can be perceived to be in the interests of the party or government. Crimes of professional occupations such as doctors, lawyers or accountants can also be motivated by personal gain, such as embezzlement or prescriptions frauds, or can be for the benefit of the organization which employs the professionals. Financial crimes such as frauds are often seen as individual but can also be organizational – in the recent cases of pensions ‘misselling’ in the United Kingdom, company policies lay behind the actions of individual sales personnel. In addition, many individual offences could be seen as organizationally induced (Punch 1996; Pearce and Tombs 1998). Perks, fiddles and neglecting regulations that can be seen as cumbersome and slowing down the pace of work may be undertaken to keep up with production schedules or to secure a ‘fair day’s pay’ (Ditton 1977; Mars 1982).

As Punch (1996: 57) points out, ‘organisations may create climates where collective deviance is an acceptable answer to perceived institutional dilemmas, and where organisational culture, resources and facilities are intrinsic to the development of the deviance’.

Some attempts to categorize offences retain elements of the status of offenders and many argue that the term white collar crime is intrinsically related to the characteristics of offenders and should therefore be restricted to occupational crime. Slapper and Tombs (1999: 14), for example, argue that the phrase white collar crime should be restricted to crimes by the ‘individually rich or powerful which are committed in the furtherance of their own interests often against corporations or organisations for or within
which they are working’. Punch directs his attention to ‘organizational deviance’, encompassing both organizational and occupational offences, which he associates with ‘influential people who utilize their power or resources for ends which some other people define as illicit, and then, not infrequently, employ that power or those resources to protect themselves from the consequences of social control’ (Punch 1996: 57). Many different definitions are therefore used in practice.

**Is white collar crime, crime?**

A final and crucial question to be addressed in relation to the definition of white collar crime is whether or not it should include only legally defined ‘crimes’ and legally convicted offenders. Sutherland’s original inclusion of activities subject to civil and administrative laws raised the question of how the harmful activities of different groups of offenders were treated differently by law and criminal justice, but was widely criticized as threatening the objectivity of criminology. This led to many debates centred around the theme ‘is white collar crime, crime?’ Although this question becomes less problematic once the socially constructed nature of crime is acknowledged, any consideration of which activities are to be included must nonetheless take into account the significance of law and criminal law. Adopting a legal definition of crime may be seen as overly restrictive, but including activities not subject to criminal law continues to attract criticisms of political and moral subjectivity (Slapper and Tombs 1999).

Debates about whether white collar crime is crime reflect a conflict between legal and social representations of crime (Nelken 1997a; Slapper and Tombs 1999). Criticisms from writers such as Tappan (1977) represented a strictly legal approach in which the criminal law is the starting point for criminological analysis. Sutherland (1949), however, argued that non-criminal forms of law also result in judgements of fault and liability and are followed by the imposition of a penalty; thus the difference lies in procedures rather than in the ‘wrongful’ nature of activities. Later critical approaches to criminal law have also pointed to the absence of any clear-cut criteria distinguishing ‘crimes’ from other ‘wrongs’ or criminal from public law (Lacey 1995). In criminal law a distinction is made between activities that are regarded as mala in se, wrong in themselves, and those that are regarded as mala prohibita, subject to prohibition. For the latter, the criminal law is justified as being the most efficient way of securing compliance with protective regulations, and violations are often seen as ‘technical’ rather than ‘criminal’ offences. As argued above, however, such violations could be constructed as morally wrong and perceptions of activities as ‘criminal’ may change over time. As Nelken (1997a: 901) points out, ‘the topic of white collar crime thus illustrates the possibility of divergence between legal,
social and political definitions of criminality - but in so doing it reminds us of the artificiality of all definitions of crime’.

If criminal law need not be the starting point for the definition of white collar crime, what should be? Including a long list of harms inevitably leads to accusations of bias, such as those attracted by attempts by early critical criminologists to include activities such as economic exploitation (Schwendinger and Schwendinger 1970) or the manufacture and sale of tobacco products (Simon and Eitzen 1993). One way of overcoming this problem is to restrict the category to all violations of law but to include non-criminal violations. This recognizes that there is a difference between activities proscribed by some form of law and a wider range of harms not yet subject to law (Pearce and Tombs 1998). It also allows the inclusion of cases involving clearly ‘wrongful’ activities, which have not been subject to criminal prosecution but have involved legal judgements of fault and responsibility. In these cases the failure to use the criminal law against evident and legally established ‘wrongdoing’ becomes an issue for exploration. Such an approach also recognizes the potential significance of criminalization - as Slapper and Tombs (1999: 4) argue, there are ‘persuasive arguments that it matters both practically and ideologically whether something is defined as a crime or a civil offence’. Although such an approach nevertheless leads to accusations of bias, these can be mitigated by presenting sufficient information about activities from widely credited sources and not relying on unsubstantiated allegations (Pearce and Tombs 1998). Before reaching a conclusion on this, and other definitional issues, some of the difficulties of researching white collar crime will be outlined.

Researching white collar crime

In part, the relative neglect of research into areas of white collar crime is related to its exclusion from those offences most readily associated with the ‘crime problem’ for which research funding is easier to obtain. It is also a difficult area to investigate. The invisibility and complexity that make it difficult to detect also make it difficult to research. The low rate of prosecutions means that there are fewer and more unrepresentative cases to study, and the absence of direct victimization renders victim surveys less appropriate. This leads to a tendency to rely on disparate and often less reliable forms of data and to go beyond the kinds of studies most often associated with criminology.

The starting point for much research on crime, for example, is data such as official statistics, crime surveys and court records, most of which exclude white collar crime. Official statistics are largely based on police records, but many white collar crimes are not dealt with by the police. Details about specific offences such as fraud are often not sufficient to determine which
offences are white collar, and details of many organizational offences, often counted as summary offences, are sparse. Statistics from the enforcement agencies that do deal with white collar crime are less widely available, do not always provide detailed information on prosecutions, convictions or sentences and may not distinguish between what are described as 'incidents' or 'complaints' and offences. In Britain, as in many other countries, white collar crimes are not part of victim surveys such as the British Crime Survey (BCS), and few victim surveys have covered this area (Croall 1999a).

Other criminological research relies on interviews or ethnographic work with offenders, which is particularly difficult for white collar crime. This is largely because of problems of gaining access to offenders which, although also a problem with ordinary crimes, is exacerbated in the case of white collar offenders. As Slapper and Tombs (1999) point out, the 'powerless' are less able to resist research than the 'powerful'. Managers or business executives may also find it easier to obfuscate and conceal the 'truth' from researchers (Punch 1996). These points are well illustrated by Punch (1996: 43), who asks: 'do you approach senior executives of major corporations and say you are interested in bribery, corruption, industrial espionage, fraud and manipulation of accounts to hoodwink external auditors, and would be quite willing to undertake research for them within their companies?' He goes on to point out that:

even if one could get inside, then the practical dilemmas of researching these issues may be almost intractable because managerial 'deviants' are likely to be clever, conspiratorial, and secretive, their activities will be concealed behind walls or locked doors and they will not only be unwilling to co-operate . . . but will simply deny that any nefarious practices take place at all.

Although covert research could overcome some of these difficulties, this too is limited because of the private and concealed nature of activities (Punch 1996). Difficulties of obtaining access to higher levels of management have meant that much research on occupational deviance has been restricted to lower level employees (Davies and Jupp 1999). Moreover, as Nelken (1997a: 901) points out, because of the political distaste felt for 'crimes of the powerful', there are few attempts to 'appreciate' their activities.

Despite these difficulties, some useful research has been carried out in companies (Braithwaite 1984; Tombs 1995). It is also easier to gain access to enforcers, and studies of their policies, practices and attitudes have formed a major stream of research, particularly in Britain (see Chapter 6). These may also yield useful details of offences and offenders and, although the length of court hearings can prohibit research, so too can observation of cases in court and work with court records (Croall 1988; Levi and Pithouse 1992). Interviews with judges and sentencers have also been a valuable source of information about the sentencing process (Wheeler et al. 1988).
Major scandals and incidents lead to the formation of victim groups, official reports and independent investigations and serious investigative journalism - all of which can provide valuable insights if used with caution (Nelken 1997a).

A further difficulty is that many areas of white collar crime involve moving away from fields of study usually associated with criminology, such as criminal law, sociology or psychology, into areas as diverse as financial management, industrial relations, management and business studies, the environment, food policy, environmental health and consumer protection, disasters and crisis management or studies of social movements (Slapper and Tombs 1999). Apart from the problem that criminologists may not be experts in these fields, these fields are characterized by their own discourses, which do not include a focus on ‘crime’. As Punch (1996: 43) comments in relation to management and business studies in the USA, issues of business ethics are seen as ‘soft’ – ‘the social organization of management studies does not usually lend itself to critical, penetrating, cross-disciplinary studies of business practice that might also illuminate the darker side of that practice. The dirty side is largely ignored’.

The absence of widely available material and accessible sources has led to a reliance on secondary rather than primary sources of information, on mass media reports and case studies involving major ‘scandals’. Other sources include the autobiographies of major offenders, the production of which can provide, as Levi (1987a) comments, a lucrative pastime or alternative employment. They are, however, like the autobiographies of organized criminals, necessarily subjective and can be read as justifications for the offenders’ activities. Moreover, newspaper accounts may be of dubious accuracy (Nelken 1997a) and information may not be verifiable. They cannot give information about trends - an apparent increase in media reports may be a response to a ‘moral panic’ and signify increased concern and reporting rather than an increasing incidence of offending (Nelken 1997a). It may be difficult to generalize from case studies, which may not be typical - cases involving major ‘scandals’ or large companies may divert attention from the mundane cases that are more typical (Croall 1988; Slapper and Tombs 1999). This is particularly the case because so many examples of and research on white collar crime originate from North America rather than Europe.

Despite all these problems, considerable innovative research has been carried out and subsequent chapters will refer to this. Moreover, some information is now more widely available - the growth of the Internet has made newspaper archives easier to access and many enforcement and government agencies include enforcement information on websites. However, full use of these sources requires a knowledge of where to look and an initial definition of interest. There is also still a need to develop more innovative research methods for the study of white collar crime (Davies and Jupp 1999).
Concluding comments

White collar crime is therefore a complex area to conceptualize. It remains on the sidelines of criminology and poses analytical, definitional and research problems. Many of the issues surrounding its definition and its relationship to other crimes remain unresolved and affect estimates of its extent, explorations of its nature and impact and approaches to its analysis. White collar crime asks major questions about the definition of crime, the role of class status and power in criminalization and law enforcement and the scope of criminology. All of these issues will recur throughout subsequent chapters of this book. Indeed, these problems are seen as intrinsic to the analysis of white collar crime and its status in criminology. Nelken (1997a), for example, organizes his contribution to the Oxford Handbook around seven kinds of ambiguity, drawing on Aubert's comment that:

for purposes of theoretical analysis it is of prime importance to develop and apply concepts which preserve and emphasise the ambiguous nature of white collar crimes and not to solve the problem by classifying them as either crimes or not crimes. Their controversial nature is exactly what makes them so interesting from a sociological point of view.

(Aubert 1977: 93)

The many difficulties surrounding the concept of white collar crime have nonetheless led to arguments that it is outdated and redundant and that its study should be disaggregated into the separate spheres of occupational or corporate crime or some other category. There are, however, persuasive arguments for retaining the term white collar crime, which forms the title and focus of this book. In part this is because it is widely recognized and has a public and academic resonance. In arguing, for example, that white collar, corporate and organizational crime are variants of the same kind of crime, Ruggiero asks whether one definition should encompass them all. He resists this temptation and chooses to ‘utilise the traditional definitions, both because they make these forms of offending more easily identifiable by readers and to avoid adding to the existing terminological confusion’ (Ruggiero 1996a: x). This echoes Braithwaite’s earlier argument that ‘the concept is shared and understood by ordinary folk as more meaningful than occupational crime, corporate deviance, commercial offences, economic crime or any competing concept’ (Braithwaite 1985a: 3).

For the purposes of this book, it is intended to adopt an inclusive definition in which white collar crime is conceptualized as an ‘abuse of a legitimate occupational role which is regulated by law’ (Croall 1992: 9). White collar crime is used as an umbrella term encompassing both occupational and organizational crime, although the distinction will form a major part of subsequent chapters. It is intended to be inclusive, including activities of employees across the occupational hierarchy along with many harmful and illegal
activities that are not at present regulated by criminal law, although this remains an important reference point. This avoids the narrowness of referring only to criminal law at the same time as avoiding the subjectivity of ignoring law entirely. Although the class and status of offenders are not part of this definition, analysis will seek to establish their significance. The notion of a legitimate occupational role is retained while recognizing the blurred boundaries with illegitimate occupations.

Adopting an inclusive definition of the subject means that its scope is extremely broad, and that it includes activities ranging from the crimes of individual employees and small businesses, through those of managers, executives and owners of companies, to corporate crime and crimes of governments and states, such as war crimes or the state-organized terrorism alleged to have been involved in the bombing of the Pan American airliner over Lockerbie, recently subject to a criminal trial. As will be seen in Chapter 2, some offences are global and transnational, spanning territorial and jurisdictional boundaries, whereas others are primarily local, taking place in a variety of different markets. Some lie on the borderline between what are more generally seen as professional or organized crimes. A text of this length cannot hope to fully detail and analyse all these forms of crime and, accordingly, the focus of this book is selective. As its primary focus is British, the focus will be on British research. However, this must be seen in an increasingly global context and, where relevant, material and analyses from other countries will be drawn on. In common with much of the literature on white collar and corporate crime, the book will largely restrict itself to financial and commercial crimes and those of private corporations and businesses, although reference will be made to offences in public sector organizations and the importance of the growing area of state and state-organized crime, which raise very similar issues, is also recognized.

The book will cover many of the key issues identified in this chapter. Chapter 2 will look at the problems of ‘counting’ and rendering more visible the extent and nature of white collar crime and will look at some of its major forms. Chapters 3 and 4 will explore issues surrounding offenders and patterns of victimization, and Chapter 5 will look at the different ways in which white collar crime has been explained and analysed. Chapters 6 and 7 will explore how white collar crimes are regulated and subjected to law and the criminal justice process and to the role of class, status and power. Chapter 8 will return to some of the questions posed in this chapter in relation to the utility of the concept and its continuing significance for criminology.

Further reading

The concept of white collar crime has been extensively written about and a good collection of classic and contemporary writings can be found in
Conceptualizing white collar crime