**When Personal Rational Decision-making Fails: Examining the Psychological Limits of Criminal Punishment as a Successful Deterrent for White-Collar Offenders**

# Abstract

Recent decades have seen headline stories about high-profile, large-scale white-collar crimes, such as Bernie Madoff’s Ponzi scheme and the Enron Corporation scandal. These crimes, considered the pinnacle of white-collar offenses, caused considerable harm to organizations, individuals, and society, and warrant closer study. The article describes a specific subset of white-collar offenders, members of an elite who abuse their positions, and presents theoretical explanations for white-collar offending, together with associated psychological, personality, and cognitive traits that impair rational decision-making. In this context, it is questionable whether imposing lengthy prison sentences for white-collar crimes achieves the aims of deterrence or preventing reoffending. While punishment is often justified, in some cases, at least, therapeutic intervention could be effective in helping white-collar offenders tackle the root causes of their behaviors and reduce the likelihood of reoffending.

**Keywords:** white-collar crimes, white-collar offenders, criminal punishment, deterrence, recidivism, irrational decision-making

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# Introduction

Recent decades have seen headline stories about high-profile, large-scale white-collar crimes, including Bernard Madoff’s Ponzi scheme, the Enron Corporation scandal, and illegal stock manipulation by Jordan Ross Belfort. While these high-profile cases can be considered as the pinnacle of white-collar crime, smaller scale white-collar offenses are on the rise. A report by Syracuse University’s Transactional Records Access Clearinghouse (TRAC) showed that in 2018, over 400 new claims of white-collar crime were brought to the Department of Justice in the month of October alone (TRAC, 2018). Wjust United States$$1es it causes to organizationswhite-collar crime also harms individuals and sIn response, there have been calls to increase the severity of punishment of white-collar offenses (Holtfreter et al., 2008) as a deterrent to potential offenders. However, opinions vary as to the best way to deter and punish white-collar offenses.

This paper discusses whether expectations of harsh criminal punishment does (or can) constitute a deterrent for white-collar criminals, and concludes with an attempt to identify more meaningful goals for treating white-collar offenders in order to deter white-collar crimes and reduce recidivism.

**What is white-collar crime?**

The term “white-collar crime” was first coined by Sutherland in 1939. Even now, there is no single definition for the term (Ragatz & Fremouw, 2010)—a fact that reflects the complexity of this phenomenon. According to Mann (1990), the term “white-collar offender” suggests a prototype based on several parameters: the offender’s privileged status, abuse of position, camouflage and deception, economic damage, and perpetration of crime in an organizational framework or privately. Although these parameters define the phenomenon, the absence of any one of them does not alter the fundamental nature of the prototype.

Attempts have been made to identify subtypes of white-collar criminals. Friedrichs (2007) distinguishes between organizational/corporate crime, which is oriented toward promoting the interests of an organization, and occupational crime, committed in a professional capacity for the sake of personal gain. Grey-collar crime has shades of white-collar crime, but is committed in a “grey” area (Menard et al., 2011), involving an abuse of trust, including job poaching, insurance and credit card fraud, and tax evasion.

This paper uses Sutherland’s original conceptualization (1983) of white-collar offenders, and addresses those offenders who are members of a privileged elite and abuse senior positions in order to commit and conceal financial crime (see also Logan et al., 2017; Onna et al., 2014). The offenses associated with this category include mainly fraud, blackmail, falsification of official documents, money laundering, breach of trust through bribery, insider trading, illegal stock manipulation, tax offences and computer crimes. White-collar offenders usually hold positions that provide them with an opportunity to commit crimes that are often sophisticated, easy to conceal, and have few complainants. Discovery that a crime has taken place is often slow, since organizations often cover up such wrongdoing. As a result, law enforcement is often unsuccessful in exposing white-collar crimes, and even when successful, conviction is difficult (Marriott, 2018; Xie, 2015), with white-collar offenders often given more lenient sentences than blue-collar offenders (Marriott, 2018).

Deterrence and punishment

Due to the potential for concealment, white-collar felons are almost never caught, and when caught, are given more lenient sentences than blue-collar offenders (Marriott, 2018). Following years of indifference, there are signs that public opinion towards white-collar crime has become more negative, with calls for more severe and equitable penalization (Faichney, 2014; Reiman & Leighton, 2013). Nevertheless, others claim that the public considers white-collar crimes “less serious” than other crimes, thus supporting more lenient punishment (Cedric, 2016).

Researchers in the United States have pointed to the establishment of certain punitive guidelines, such as the Federal Sentencing Guidelines in 1987 as a turning point in penalizing white-collar offenders, claiming that these punitive guidelines resulted in greater equality and severity of punishment (Kostelnik, 2012). This is reflected in judges sentencing white-collar offenders more often, and to longer prison terms (Gustafson, 2006). Even so, a study conducted in the United States by Hewitt (2016) found that a significant majority of white-collar offenders tried in New York’s Northern District from 1987 to 2005 received prison sentences that were more lenient than advocated in the Federal Sentencing Guidelines. On the other hand, large-scale, high-profile white-collar offenders have received heavy punishments, likely reflecting the negative impact of these crimes on public trust and confidence in institutions—salient cases in point include Jeffrey Skilling, CEO of Enron Corporation, sentenced to 24 years’ imprisonment and fined $45 million for his involvement in the collapse of the energy giant; and Bernard Madoff, sentenced to 150 years in prison following exposure of his Ponzi scheme (Kostelnik, 2012; Marriott, 2018).

White-collar crime has long been treated as instrumental crime (Friedrichs, 2007), driven by profit and loss considerations (Paternoster & Simpson, 1993). Criminological explanations have focused more on its social and cultural implications (Langton & Piquero, 2007), and less on personality traits (Clarkson & Darjee, 2022; Friedrichs, 2007), drawing on from Sutherland’s (1939) sociologically-oriented theory of white-collar crime, which addresses the social and cultural impacts of individual behavior. Since this approach views the white-collar criminal as rational, it follows that penalization may serve as a deterrent.

Indeed, various studies have indicated that the deterrent effect is more pronounced in connection with white-collar crime (Alef, 2018; Kostelnik, 2012; Regev, 2008; Weisburd et al., 2001). The principal explanation is based on the rational choice model of crime, which argues that since white-collar offenders are rational individuals who plan their criminal strategy and stand to lose money and/or social status by being punished, the threat of severe punitive measures should deter them from committing crimes. Lending support to the assumption that white-collar crime is rational is that these acts are essentially instrumental, necessitating prior thought and planning, and are not generally accompanied by expressions of anger or violence. Arguably, therefore, harsher punishment of white-collar offenders should serve as a greater deterrent, so that their expected loss is greater than their expected gain. Since there is some evidence that difficulty in securing convictions reduces deterrence (e.g., see Marriott, 2018; Regev, 2008), there is an argument for investing more resources in criminal investigations of white-collar offenses that will have a greater chance of leading to prosecution and conviction, thus reducing the level of uncertainty regarding penalization.

Research on the personalities of white-collar criminals has been scarce until recent years (Alalehto & Azarian, 2018; Babiak et al., 2010; Clarkson & Darjee, 2022), when there has been increasing focus on the personality traits of perpetrators, indicating that the relevant population appears to possess specific personality attributes (Nee et al., 2019). The present theoretical study therefore re-examines the premise that white-collar offenders are rational individuals responsive to deterrence in the form of criminal punishment.

This article considers the complex composition of punitive deterrence. Relevant theories regarding white-collar crime are presented alongside a review of the literature on unique personality characteristics that adversely affect rational thinking. Since white-collar crime is associated with financial decisions, a review is presented of irrational processes involved in financial decision-making. Addressing the implications of the idea that criminal punishment constitutes a deterrent for white-collar criminals, this article concludes by trying to identify more meaningful goals when punishing and addressing white-collar crimes.

# Deterrence with respect to offenders

One aim of criminal punishment is to deter people from causing physical, mental and economic harm to individuals, organizations or companies, with a view to setting an example to others (Zimring & Hawkins, 1976). The basis for deterrence can be found in Beccaria (1764/1963) and Bentham (1789/1970), who treat the potential criminal as a rational individual who calculates moves based on cost versus benefit: if the anticipated gain does not justify the anticipated punishment, the offender will desist from committing the crime.

Criminal penalties do not appear to be successful in achieving deterrence (primarily specific deterrence) across the board, and their effect is complex. Various studies have proposed groups of variables for predicting the degree of differential deterrence in criminal punishment. These refer to the type of offense (Chambliss, 1967), the nature of the punishment imposed and the offender’s attributes (age, level of recidivism, personality, etc.) (Lernau, 2016; Shoham et al., 2009). Similarly, numerous variables affect deterrence, some of which could apply to white-collar offenders, including irrationality in decision-making, inability to plan, and personality traits (in particular, the overuse of defense mechanisms, thrill-seeking, external locus of control, and pathological conditions). Despite the threat or imposition of criminal punishment, the legal system has not achieved personal deterrence (Shoham et al., 2009).

Neutralization of the personal deterrence factor is especially clear for offenders with personality disorders such as psychopathy, narcissism, paranoia and impulsive personality disorder (Zimring & Hawkins, 1976).

To examine the potential of specific punishments as deterrents for white collar offenders, the following is a review of the theoretical explanations for the phenomenon of white-collar crime.

# White-collar crime: rational or irrational?

Prior to their criminal involvement, most white-collar offenders are considered to have lived normative lives. As they do not comprise a homogeneous group, multiple explanations have been offered for the phenomenon of white-collar crime. Although its various definitions often refer to white-collar offenses as a conscious, rational exploitation of opportunities, other theories point to underlying factors that suggest white-collar offenders do not always act rationally.

Cressey’s (1953) Fraud Triangle, intended to explain fraud offences, was recently extended to include white-collar crime (Gottschalk, 2015). It proposes a three-factor model to account for such crimes: opportunity, the existence of a financial problem, and the use of a defense mechanism (rationalization), which allows white-collar offenders to clear their consciences with a satisfactory explanation before and after the act. In his in-depth research involving 50 senior managers serving sentences for serious financial crimes, Soltes (2016) found that these white-collar offenders had not rationally calculated the costs and benefits of their crimes, but had acted on instinct: “I never thought about the benefit versus the loss,” according to one white-collar offender convicted of insider trading (Soltes, 2016: 99). Rub (2017), who investigated senior officers convicted of financial crimes using an intuitive decision-making questionnaire (Kahneman & Tversky, 1973), also found that officers made decisions based more on intuition and gut feeling, and less on rational thinking. Furthermore, Soltes (2016) found that offenders rationalized their choices by perceiving their offenses as legitimate exploitation of loopholes in the system, maneuvers in a gray area where no criminal line was crossed, and as technical in nature, simple and harmless, they also demonstrated a lack of awareness of the seriousness of the crime: “I never thought I was doing anything bad” (Soltes, 2016: 115). Soltes concluded that there were several reasons for the offenses, including the absence of direct contact between offender and victim (minimizing the seriousness with which the offender viewed the crime), heavy workload (triggering speedy decision-making without thinking things through), lack of awareness of the full consequences, and frequent changes in regulations (with which ethical management principles do not always keep pace). Finally, he pointed to a cognitive dissonance that generated justifications and rationalizations, helping the offender overcome any ethical uneasiness.

Wheeler (1990), like Cressey, suggests that some degree of rationalization underpins white-collar crime by linking it to financial difficulties, whereby the offenses occur place in times of distress and fear of personal financial collapse. Wheeler describes white-collar felons as those who initially experienced financial success but subsequently found themselves in a downward economic spiral that jeopardized their businesses. Wheeler claims that, being unwilling to deal with loss and return to a modest lifestyle, or afraid to admit failure, the offenders were ready to flout the law in the short term, in the hope of stabilizing their business and repaying debts, without adopting crime as a way of life. Dearden (2019) also asserts that economic hardship fosters rationalizing of the perpetrating of crime. Conversely, Alef (2018) argues that white-collar crimes are committed during times of economic success, when the offender feels an “entitlement to everything” and abuses this power. While contradictory (perhaps reflecting the heterogeneity of white-collar offenses), all these studies found the presence of elements that adversely affected rational thinking, such as the use of defense mechanisms that make an offense appear insignificant or allow the offender to disregard the unlawfulness of his actions. In some cases, rational thinking was compromised when the threat of economic hardship becomes real, since the ensuing stress can disrupt the decision-making mechanism (Dearden, 2019), while in others, the decision-making process was distorted when the offender was intoxicated with power (Piff et al., 2011).

Recent studies have shown that personality differences provide an etiological basis for white-collar crime (Benson & Manchak, 2014; Levi, 2013; Nee et al., 2019; Pusch & Holtfreter, 2021; Simpson, 2013). Studies have also pointed to a biological basis for crimes of this nature (Ling et al., 2019; Raine et al., 2012). These deterministic explanations base their claims on the existence of an element that adversely affects free choice and rational decision-making.

# Irrational processes in financial decision-making

White-collar offences often involve risky financial decision-making (including insider trading and securities fraud). Many studies have examined decision-making with an emphasis on economics (Arieli, 2012; Kahneman, 2003). Rational decision-making is a key assumption in most basic economic and financial models. The failure of models to predict the behavior of the financial market is attributed to finance professionals not always behaving rationally due to psychological biases. In most cases, the biases have an emotional basis, such as self-confidence (Odean, 1999) and self-attribution (Daniel et al., 1998). Shefrin (2000) argues that these biases are extremely common and have adverse effects, since they raise the incidence of unnecessary risk-taking (see Baker & Nofsinger, 2002). Durand et al. (2008) point to personality traits, such as extraversion, lack of conscience, and exaggerated masculinity as factors associated with erroneous risk-taking decision-making among financiers.

A biological element, including hormonal, genetic, and neurological factors, may also play a part in irrational decision-making. Coates and Herbert (2008) show that high levels of the stress hormone cortisol predict irrational decision-making. Similarly, Lo & Repin (2002) point to distinct changes in physiological variables, such as blood pressure, among traders during fluctuations in the market. Additional findings which correlate biological variables and decision-making in finance show that medication and drugs affect decisions involving risk-taking (Lane et al., 2005). The “winner effect,” involving successful financial investments and high levels of testosterone, also may favor irrational decision-making which could eventually lead to criminal economic activity (Apicella et al., 2008; Takahashi et al., 2006; Zethraeus, 2009).

Dearden (2019) describes how heuristics and biases promote criminal economic activity. For example, an optimism bias regarding the consequences of crime could have a disruptive effect on rational decision-making, especially under stress. In white-collar crime, this optimism bias may be supported by the fact that white-collar offences are difficult to expose and slow or have a lower certainty of punishment, a significant element in deterrence in general.

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# White-collar offenders: Psychological dynamics

Possibly the personalities of white-collar offenders had been an under-researched area (Alalehto & Azarian, 2018; Babiak et al., 2010; Clarkson & Darjee, 2022; Shover & Hunter, 2010) due to the perception that these offenses are committed by respectable people who have committed a one-time transgression. According to this notion, a typical white-collar offender is middle-aged, educated, decent, dutiful, and impelled by unusual circumstances to carry out an uncharacteristically fraudulent act (Perri, 2011; Weisburd, 1991). White-collar crime is thus often explained more through situational factors, such as temporary economic hardship or opportunities for profit, and less through personality and behavioral characteristics (Bucy et al., 2008; Engdahl, 2009; Heath, 2008). However, recent studies have begun to explore the influence of personality traits that entail a higher risk of committing white-collar offences such as fraud and tax evasion (Amos et al., 2022; Greelis & Pocalyko, 2020). Some work has suggested that certain traits are found with a high frequency in white-collar offender populations. One trait is extraversion – Scale E in Eysenck’s Personality Questionnaire. Relative to the general population (Nee et al., 2019) and even to blue-collar offenders (Craig & Piquero, 2017; Rub, 2017), white-collar offenders scored higher in terms of thrill-seeking, impulsiveness, absence of social inhibitions and risk-taking, and lower in self-regulation and anger control. Nee suggested further research to eventually create a screening tool to identify individuals who are more likely to engage in corrupt behaviors. Thrill-seeking among white-collar offenders can be understood considering the risks they take in a variety of areas, involving social, financial, and status-related aspects (Craig & Piquero, 2017). The attraction to risk can explain why individuals who already have money and respect are willing to risk their fortunes and reputations for extra profit. The risk involved in breaking the law and engaging in fraudulent dealings itself constitutes a thrill, which enhances its appeal for the offender (Wheeler, 1990). This contradicts the law of diminishing marginal utility, which states that the richer the person, the more marginal the additional profit; thus, the wealthier the person, the less the incentive to take risks for marginal benefit.

There has also been interest recently in exploring the possible correlation between the characteristics of the so-called Dark Triad (psychopathy, narcissism and Machiavellianism) and white-collar crime (Amos et al., 2022; Gottschalk, 2017; Konnikova, 2016; Greelis & Pocalyko, 2020). In particular, a high level of narcissism has been found among these offenders (Blickle et al., 2006; Bromberg, 1965; Hogan & Hogan, 2001). Individuals with narcissistic personality disorder exhibit a grandiose sense of self-importance, a constant need for admiration, and a lack of empathy (Alalehto & Azarian, 2018; American Psychiatric Association, 1987). Narcissists tend to take advantage of interpersonal relations manipulatively and instrumentally, not balking at crimes since they feel entitled to special privileges (Perri, 2011). Narcissism is typified by individuals with a mania for succeeding at any cost (Bromberg, 1965). They are driven by a need to prove that they are talented and special; otherwise they experience a sense of overwhelming emptiness and failure. The more intense the disorder, the more the individual’s perspective is impaired, the greater the thirst for achievement, and the more serious the danger of crossing the line into antisocial conduct in search of immediate gain (Egan et al., 2015; Jones et al., 2017). The drive behind their ambition and, generally speaking, positive deeds, is the need to prove their worth to the world. However, certain degrees of narcissism can impair an individual’s perspective, leading to possibly adopting antisocial behavior patterns.

Other work has shown a positive correlation between white-collar crime and Machiavellianism, a personality trait involving a high degree of manipulativeness, callousness, and indifference to morality (Jakobwitz & Egan, 2006; Tang et al., 2008). However, the most disturbing Dark Triad trait associated with white-collar offending is psychopathy, which is defined by a lack of conscience (Hare, 1993). A lack of conscience could aid the rationalization of fraudulent acts (Trompeter et al., 2013). Recent studies have shed more light on the nature of psychopathy (Babiak et al., 2010; Sheehy et al., 2021) and its different forms. These refer to the original definition of psychopathy (Cleckley, 1941), which takes into account characteristics of sociability (personal charisma, initiative, intelligence) and places less emphasis on past criminal behavior (Cooke et al., 2007). Furthermore, a distinction has been made between primary and secondary psychopathy, which highlights the differences between violent psychopaths who are more likely to be incarcerated (secondary psychopaths), and individuals with psychopathic personality traits that may help them be successful in certain areas of life (primary psychopaths) (Palmen et al., 2020). White-collar offenders fit the original definition of psychopathy as first described by Cleckely (1941), who spoke of a personality syndrome known as sociopathy, which is characterized by manipulativeness, cheating, cunning, and impulsivity. According to Cleckely, individuals with this syndrome are able to mask their antisocial tendencies behind high intelligence and prosocial behaviors. Although many studies have pointed to a link between secondary psychopathy, antisocial behavior, and negative lifestyles (e.g., Beaver et al., 2015; Patrick, 2019), there have been comparatively fewer studies on the potential relationship between “successful” individuals with psychopathic personality traits, who may be found in white-collar professions, and delinquency (Leeper Piquero et al., 2019; Taylor, 2021).

According to estimates, six to twenty percent of senior personnel in organizations suffer from this disorder (Babiak et al., 2010; Boddy et al., 2022; Fritzon et al., 2017), compared to one percent in the general population (Neumann & Hare, 2008). Employees who are pathological dissemblers (Nee et al., 2019) succeed in concealing their negative attributes, exhibit impulse control, and convey the impression of being normal and successful. They use their talents manipulatively and are devoid of compassion, guilt, or empathy (Wall et al., 2015). Previous studies have overlooked this disorder among white-collar felons (Rolseh et al., 2017). Thus, with few exceptions (e.g., Ray & Jones, 2011; Sheehy et al., 2020), there is limited knowledge about the potential relationship between primary psychopathy and white-collar offenses.

In fact, the more violent form of psychopathy (secondary psychopathy), which can involve impulsiveness, outbreaks of violence, risk-taking, and antisocial leanings (Hare & Neumann, 2010), with no acceptance of responsibility or long-term goals (Hare, 1994), has been associated with white-collar offences (Alalehto & Azarian, 2018; Collins & Schmidt, 1993). Perri (2011) disputes the perception that white-collar offenders are never violent, pointing to instances where some become “red-collar criminals,” resorting to murder to avoid exposure (Alalehto & Azarian, 2018; Perri, 2011).

Some studies of the personalities of white-collar offenders had mixed findings. Collins and Schmidt (1993) sampled 300 white-collar criminals and found evidence of psychopathic tendencies, manifested in an absence of responsibility-taking, unreliability, and violation of norms. However, a study by Blickle et al. (2006) of 76 German company directors serving sentences for white-collar crimes found high levels of hedonism, thrill-seeking, and lack of self-control, but higher conscientiousness[[1]](#footnote-1) than in 150 non-offending directors in other companies. This finding is consistent with a much earlier German study (Bresser, 1978), which found that white-collar offenders were extremely persevering and target-oriented. High conscientiousness is in keeping with the image of rational actors who wish to promote their own personal interests as well as those of their organization and was necessary for these offenders to achieve a senior managerial position. Unlike managers who are non-offenders, these offenders have the high level of technological knowledge required to commit white-collar crimes.

Bailey (2017) proposes a combination of personality and circumstances to explain white-collar crime, based on a model that incorporates psychopathy as a personality attribute in the fraud triangle (Cressey, 1953; Trompeter et al., 2013) and its expanded version (Dorminey et al., 2012). The clearest consequence of psychopathy is its effect on rationalization. The seizing of opportunities can be curbed when control systems associated with fear of being caught are activated (Dorminey et al., 2012). Psychopaths, however, are typified by fearlessness, lack of emotion, and confidence in their ability to evade punishment (Babiak & O’Toole, 2012). The motivation for deceit can also be more pronounced among psychopaths for two reasons: selfishness and a sense of entitlement (Kranacher et al., 2011); and greater impulsiveness and thrill-seeking (Babiak & O’Toole, 2012; Paulhus & Williams, 2002), which in itself could motivate fraudulent acts. Thus, individuals high on the psychopathic scale are not “accidental” offenders driven by circumstances; in their case, “criminal mindset and arrogance replace pressure and rationalization” (Dorminey et al., 2012: 367). Existing theories offer no comprehensive explanation for white-collar crime, but this is particularly true for psychopathic white-collar offenders.

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Ragatz & Fremouw (2010) conducted a meta-analysis of 16 research studies of the psychological profiles of white-collar criminals, and concluded that white-collar offenders are relatively low on the scale of social graciousness and self-control. They noted a nonuniformity with respect to definitions and a lack of control over intervening variables (since comparison groups were not always used). They recommend further research with respect to gender differences and psychological variables including criminal mindset, psychopathy, and motivation.

Some studies have examined the psychological histories of white-collar offenders that unconsciously drive them to commit crimes. For example, Einat & Ben-Moshe (2022) mapped factors that led a group of 18 women in Israel to commit white-collar crimes, with particular focus on family and personal histories, and on the various roles these female white-collar offenders played as children and adults, which prepared and “trained” them for future illegal behavior. The authors found a positive relationship between problematic family backgrounds, difficulties in seeking help, and an intense need for love in adulthood, and between the latter and white-collar offending.

# Is criminal punishment a successful deterrent?

Findings on the deterrent effect of criminal punishment differ according to types of offenses and offenders (Lernau, 2016). Few controlled studies have examined the effectiveness of criminal punishment in achieving personal and/or general deterrence among white-collar offenders. Irrespective of methodological complexities, it is difficult to expose white-collar crimes and therefore recidivism is unreliable as an indicator of the deterrent effect of punishment. Moreover, studies do not always take into account the heterogeneity of white-collar offenders (differences in personality and type of offense) (Logan et al., 2017; Onna et al., 2014).

Although the few relevant studies support the effectiveness of deterrence through formal punishment (Regev, 2008; Weisburd et al., 1995) and social punishment (Aviram, 2011; Kostelnik, 2012), recent developments in understanding the complexity of white-collar crime point to the need for further research. The rational model of crime alone is not enough to understand white-collar crime in its entirety. The study of human decision-making and judgment has been a tug-of-war between the rational model and psychological considerations, which are not always in keeping with the principles of rational decision-making. The conflict is rooted in the fact that human behavior and thinking are multifaceted: it includes insight, rationality, and efficiency, but also flawed thinking, misdirected considerations, and erroneous decision-making. Research incorporating elements of economics and psychology (Kahneman & Tversky, 1979) found that “rules” were followed in certain cases of irrational behavior.

The effectiveness of deterrence through criminal punishment depends in part on the offender’s mode of decision-making and personality traits. These factors, especially when combined with irrational thinking, neutralize the deterrent effect, and must be taken into account when examining the efficacy of criminal punishment measures in deterring white-collar offenders.

# The aims in penalizing white-collar offenders: If not deterrence, then what?

In examining criminal penalties in general, and for white-collar crime in particular, consideration must be given to the aims of punishment )e.g., retribution, exclusion/prevention, compensation, deterrence, rehabilitation) (Kanai, 2001) and their potential for being achieved.

Despite the entrenched belief that white-collar offenders are rational and largely normative, a substantial body of evidence suggests that their conduct can involve components that disrupt rational thinking (including personality disorders, adverse childhood experiences, use of defense mechanisms, and cognitive biases) and have an adverse effect on deterrence. This conclusion is in line with the complexity of achieving deterrence (Lernau, 2016; Pratt et al., 2011). While there is still a case for harsher punishment of white-collar offenders, meaningful goals must be found for penalization.

A highly important aim of penalization in general, including of white-collar offenders, is the maintenance of social order. Since senior officials, public figures, and representatives of the law enforcement system (who comprise a significant percentage of the white-collar offender population) are subject to constant public scrutiny, their penalization reinforces social order. This approach is in keeping with Functionalism (Merton, 1971), which maintains that the social status of offenders makes it possible to punish them in a way that is disproportionate to the severity of their act—the intention not being to penalize a specific transgression but to serve the needs of the public as a whole, namely, ensuring that citizens abide by the laws of the land. White-collar crime causes economic losses for corporations and suffering for victims, possibly triggering a decline in public trust in national institutions and laws (Ashforth & Anand, 2003; Friedrichs, 2004). Accordingly, one of the goals of punishing white-collar offenders should be just and proportionate retribution for serious crimes (Canton, 2019; Hegel, 1952; Kant, 1965; von Hirsch, 2017). With respect to public attitudes towards penalization of white-collar offenders, opinion polls in the United States suggest that the public recognizes the seriousness of the offences and calls for proportionately strict punishment (Holtfreter et al., 2008; Reiman & Leighton, 2013).

Punishment of white-collar offenders is related to the danger they pose to society. However, there are currently no tools to assess this, unlike offenders accused of sex crimes or domestic violence (Abulafia & Hovav, 2019). A unique diagnostic tool to assess the threat posed by white-collar offenders may be required, which, apart from court rulings (sentencing and its aims, parole, etc.) could serve as a basis for therapy and rehabilitation. The goal of rehabilitation, an important punitive target (Lernau & Sharon, 2012) that has gained legal ground in the past decade as well as in its practical application (Lernau, 2016; Lernau & Oz, 2019), appears particularly relevant in the case of offenders with a high potential for change who are suitable for psychological intervention. Since in some cases, white-collar offences are associated with various types of personality traits, adverse childhood experiences, overuse of defense mechanisms or irrational thought processes, the suitability of psychological therapy and the chances of its success must be considered on a case-by-case basis, adapting the treatment method to the offender. For instance, narcissism can be moderated through therapy (Dimaggio & Attinà, 2012; Kohut, 1971). In contrast, psychopathy responds poorly to treatment, although some therapists believe that even this extreme disorder can be treated. In a survey conducted in England with 500 forensic therapists, only a small number believed that it would be impossible to treat psychopathy, with more than two-thirds feeling that treatment could succeed despite being unable to specify the optimal method (Tennent et al., 1993).

Regarding the prevalence of adverse childhood experiences (including abuse and neglect) among a group of female white-collar crime in Israel, Einat and Ben Moshe (2022) recommend that treatment of these offenders address those experiences if they are present in their histories, and that they may benefit from a positive therapeutic relationship that can encourage them to share their narratives and take responsibility for their lives. Accordingly, they recommend that female white-collar offenders be treated using an approach appropriate for people with complex PTSD as part of trauma-informed care.

Nevertheless, it should be borne in mind that white-collar offenders are generally smart and manipulative, using defense mechanisms to minimize the seriousness of the offence and exhibit a normative/normal façade, and convince themselves that they are strong and perfect. Accordingly, for diagnosis and therapy, skilled and experienced professionals are required to encourage offenders to drop these facades.

# Summary and conclusions

White-collar offenders, particularly high-level offenders in senior management positions, can be perceived as driven by rational thinking and pre-planning. In addition, large-scale white-collar offenses, such as those perpetrated by Madoff, are high-profile crimes that harm public trust as well as individuals. Against this background, the call by certain segments of the population to increase the severity of punishment for white-collar offences is understandable. However, there is evidence to suggest that, in reality, white-collar offenders do not act rationality and that personality traits associated with impaired rational thinking may be prevalent within this population, making personal deterrence difficult to achieve. Therefore, if one of the central aims of harsh criminal punishment is deterrence, close scrutiny is necessary to determine the best way to prevent and punish white-collar crime.

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A key aim in imprisoning large-scale, high-profile white-collar offenders appears to be restoration of social order. Such offenders, who are powerful figures within society, undermine the social order, and their penalization restores public trust in state institutions and law enforcement. An additional aim of criminal punishment is rehabilitation and the prevention of recidivism. Since some white-collar offenders may be governed by irrational elements affecting behavior and decision-making mechanisms, therapeutic intervention is required. However, few studies have examined suitable therapies and their effectiveness. There is a lack of research on the efficacy of dedicated therapy programs for this population. Some indications may be found in research conducted by the authors (in print) among a group of white-collar offenders who complained that the therapeutic framework in prison did not answer their rehabilitation needs. Their stay in prison exacerbated their anger towards the state, rendering them “less patriotic.”

In conclusion, white-collar offences are unique and their definition is complex. However, they often exhibit irrational decision-making. Despite the public outrage that such offenses, particularly large-scale and high-profile crimes, provoke, and the expectation that perpetrators should be punished harshly, the type of punishment and its aims must be carefully examined. Next-step research could examine the personality traits of various populations of white-collar offenders and examine the effectiveness of deterrence regarding such traits. Future research should bear in mind the aims of punishment, including rehabilitation and the prevention of recidivism, as well as the potential for deterrence through punishment to be limited among some groups of white-collar offenders.

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1. Conscientiousness encompasses attributes of orderliness, performance of obligations, ambition and self-discipline (Costa and McCrae, 1992) – desirable qualities in management. [↑](#footnote-ref-1)