**White-collar offenders: Is criminal punishment a successful deterrent?**

# Abstract

Recent decades have seen headline stories about white-collar crimes in Israel and elsewhere. These crimes have caused untold damage, and require close attention. The article describes white-collar crime and presents theoretical explanations for its occurrence, together with associated psychological, personality and cognitive characteristics that affect rational decision-making. Doubts have been cast regarding the possibility that even harsh criminal punishment achieves the aims of deterrence for white-collar offenders. This does not mean that offenders should go unpunished, and in certain cases it would even be justified to deal with them severely. It does, however, require more meaningful goals to be sought for their punishment.

# Introduction

Recent decades have seen headline stories about white-collar crimes in Israel and elsewhere, including illegal stock manipulation by Nochi Dankner in Israel, and the Ponzi scheme by Bernard Madoff in the USA. Segments of the population have called for increasing the severity of punishment (Holtfreter et al., 2008; Huff et al., 2010) as a deterrent.

The term “white-collar crime” was coined by Sutherland in 1939. There is still no single definition for the term (Ragatz and Fremouw, 2010), which reflects the complexity of this phenomenon. “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 (Mann, 1990). 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.

The present article concerns the white-collar felon who is a member of society’s privileged elite and abuses a senior position in order to commit and conceal financial crime (Logan et al., 2017; Onna et al., 2014; Sutherland, 1983). The offences associated with this category include fraud, blackmail, falsification of official documents, embezzlement, money laundering, breach of trust through bribery, insider trading, illegal stock manipulation, tax offences and computer crimes.

White-collar offenders hold positions that provide them with an opportunity to commit the crime. Unlike blue-collar crimes, the victims are faceless, since there is rarely any physical contact between perpetrator and victim (Soltes, 2016). The crimes are usually sophisticated, with few complainants and a host of anonymous collaborators. Discovery takes a relatively long time since there is a tendency to wrap up such cases within the organizations themselves. Law enforcement agents are therefore unsuccessful in exposing most of the crimes; even if they succeed, conviction is difficult (Marriott, 2018; Xie, 2015). When a conviction is eventually made the perpetrators suffer the ignominy of sullied reputations (Marriott, 2018).

Various estimates have been made about the propensity for white-collar crimes. Some claim (Ben Zvi and Volk, 2011) that propensity is low relative to other crimes, though others estimate a high percentage of recidivism. Weisburd et al. (2001) found that a high percentage of white-collar criminals were habitual offenders.

White-collar crime results in considerable economic damage, estimated in the USA to range from 500 billion to one trillion dollars a year (Friedrichs, 2007). It causes untold damage and suffering to the victims, while also affecting public trust in financial institutions (Ashforth and Anand, 2003; Friedrichs, 2004).

Given 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 recently become more negative (Cullen et al., 2009), with calls for more severe and equitable penalization (Faichney, 2014; Reiman and Leighton, 2013; Weisburd, 1991). Nevertheless, some claim that the public considers white-collar crimes “less serious” than other crimes, such that lenient punishment could find support (Cedric, 2016).

Researchers have pointed to the establishment of certain punitive guidelines (Federal Sentencing Guidelines, 1987) as a turning point in penalizing white-collar offenders, claiming that the system has resulted in greater equality and severity of punishment (Kostelnik, 2012). This is manifested in greater recourse to imprisonment and for longer periods (Gustafson, 2006). Salient examples 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).

Nevertheless, a study conducted at Yale University by Hewitt (2016) found that a significant majority of white-collar criminals tried in New York’s Northern District from 1987 to 2005 received prison sentences that were more lenient than advocated in the guidelines. A study on penalization of white-collar offenders in Israel (based on 5,792 verdicts handed down from 2000 to 2016) shows that sentences passed on white-collar criminals were significantly more lenient than the maximum punishments imposable (Rub, 2017).

White-collar crime has long been treated as instrumental crime (Friedrichs, 2007), which are driven by profit and loss considerations (Paternoster and Simpson, 1993). Criminological explanations have focused on its social and cultural implications (Langton and Piquero, 2007), focussing less on personality (Friedrichs, 2007; Perri, 2013). This approach derives from the sociologically oriented theory of white-collar crime proposed by Sutherland (1939), which addresses the social and cultural impacts of individual behaviour. Since this approach views the white-collar criminal as rational, it follows that penalization can serve as a deterrent.

Various researchers claim 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, according to which white-collar criminals are reasonable individuals who plan their strategy and stand to lose something (money, social status) by being punished; they should thus be deterred by severe punitive measures. An aspect 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.

Accordingly, to achieve a better deterrent effect, punishment of white-collar felons should be harsher, such that the expected loss is greater than the expected gain. More resources should be invested in serious investigations that will lead to conviction, thus reinforcing the element of certainty with respect to penalization; it is claimed that difficulty in making convictions affects deterrence adversely (Marriott, 2018; Regev, 2008).

Research on the personalities of white-collar criminals is a neglected area (Alalehto and Azarian, 2018; Babiak et al., 2010). In recent years, however, there has been increasing focus on the personality traits of perpetrators, and the relevant population appears to possess specific personality attributes (Nee et al. 2019). The present theoretical study therefore revisits the premise that white-collar offenders are rational individuals subject to deterrence in the form of criminal punishment.

This article considers the complex makeup 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. Reference is made to the implications for the possibility that criminal punishment constitutes a deterrent for white-collar criminals. The article ends with an attempt to identify more meaningful goals for punishing and addressing white-collar crimes.

# Deterrence with respect to offenders

One aim of criminal punishment is to deter individuals from causing physical, mental and economic harm to persons, organizations or companies, with a view to setting an example to others (Zimring and 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. The literature refers to groups of variables for predicting the degree of differential deterrence inherent in criminal punishment. These refer principally to the type of offence in terms of its instrumentality or expressivity (Chambliss, 1967), the nature of the criminal punishment imposed and the offender’s attributes (age, level of recidivism, personality, etc.) (Lernau, 2016; Shoham et al., 2009).

A series of variables affect deterrence, including irrationality in decision-making, inability to plan, and personality traits (extraversion, optimism, overuse of defence mechanisms, external locus of control, inability to defer gratification, low frustration threshold, 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 (Curtis, 1980; Zimring and Hawkins, 1976)

# White-collar crime: Theoretical rationale

Prior to their criminal involvement, most white-collar offenders are considered to have lived normative lives. As they do not comprise a homogeneous group, there appear to be multiple explanations for the phenomenon of white-collar crime. Although its definitions often refer to it as the conscious, rational exploitation of opportunities, there are theories that seek to explain the factors contributing to the blurring of reason.

Cressey’s (1953) Fraud Triangle Theory, intended to explain offences related to fraudulent conduct, was recently extended to include white-collar crime (Gottschalk, 2015). It proposes a three-factor model to account for more than the mere opportunity that comes the offender’s way. It adds two conditions to the risk-taking decision: the existence of a financial problem and the use of a defence mechanism in the form of rationalization, which allows the white-collar offender to clear his conscience with a satisfactory explanation before and after the act.

Following Cressey, Soltes (2016) conducted a study with 50 senior managers in prison for serious financial convictions. After he corresponded with them and gained their trust, their shared their stories with him candidly. His findings emphasize the murky aspects of rational thinking on the part of white-collar offenders, not least a lack of awareness of the seriousness of the crime: “I never thought I was doing anything bad” (Soltes, 2016: 115). The aberrant acts were perceived as legitimate exploitation of loopholes in the system, manoeuvres in a grey area where no criminal line was crossed; the offence was viewed as technical in nature, simple and harmless. Soltes concluded that the criminal activity stemmed from a number of reasons, including the absence of direct contact between offender and victim (minimizing the seriousness with which the offender viewed the deed), 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, a cognitive dissonance mechanism is used that generates justifications and rationalizations, helping the offender overcome any ethical uneasiness.

The Fraud Diamond theory (Wolfe and Hermanson, 2004) adds two components to Cressey’s theory: motivation for committing the crime and ability to commit the crime. Ability in the psychological sense includes cognitive capability (high intelligence); personality traits, such as self-confidence, resilience, and ability to lie; and knowledge of and status within the organization.

Wheeler (1990), like Cressey, offers an explanation linking white-collar crime to financial difficulties; white-collar crime takes 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 which jeopardized their businesses. Wheeler claims that the potential offender is unwilling to deal with loss and return to a modest lifestyle, or is afraid to admit failure. He is therefore willing to flout the law in the short-term, with the hope of stabilizing his business and repaying debts, without adopting this as a way of life. This explanation gains support from researchers like Dearden (2019), who asserts that economic hardship fosters rationalization for perpetrating crime. However, Alef (2018) claims that white-collar crimes are committed not during times of financial stress but of economic success, when the person feels an “entitlement to everything” and abuses this power.

All the principal theories incorporate elements that adversely affect rational thinking, such as the use of defence mechanisms that make the offence appear insignificant or allow the potential offender to disregard the unlawfulness of the actions. According to Cressey and Wheeler, rational thinking is compromised when the threat of economic hardship becomes real, since the ensuing stress can disrupt the decision-making mechanism (Dearden, 2019). Similarly, the decision-making process can be distorted when the individual is intoxicated with power (Piff et al., 2011).

Recent studies have shown that personality differences provide an etiological basis for white-collar crime (Benson and Manchak, 2014; Levi, 2013; Simpson, 2013). Researchers 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 are associated with risk-taking decision-making in the financial sphere (including insider trading and securities fraud). A significant number of 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 behaviour of the financial market is attributed to people in the world of finance 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) states that these biases are extremely common and have adverse effects since they raise the incidence of unnecessary risk-taking (see Baker and Nofsinger, 2002). Durand et al. (2008) point to personality traits, such as extraversion, lack of conscience, and exaggerated masculinity – factors that are associated with erroneous risk-taking decision-making among financiers.

A biological basis, including hormonal, genetic, and neurological factors, may also play a part. Coates and Herbert (2008) show that high levels of the stress hormone cortisol predict irrational decision-making. Similarly, Lo and 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).

In the context of irrational economic decision-making, it is worth noting the “winner effect,” where a combination of successful investments in the financial market and a high level of testosterone favours irrational decision-making, which could lead to criminal activity (Apicella et al., 2008; Takahashi et al., 2006; Zethraeus, 2009).

Dearden (2019) describes the manner in which heuristics and biases promote criminal economic activity. For example, an optimism bias regarding the outcomes of the crime could have a disruptive effect on decision-making, especially in times of stress. In white-collar crime, this optimistic bias is supported by the fact that white-collar offences are difficult to expose and slow to be punished. Thus a sense of optimism highlights the lower certainty of penalization, a significant element in deterrence in general.

Rub (2017), who investigated senior officers convicted of financial crimes using an intuitive decision-making questionnaire (Kahneman and Tversky, 1973), found that officers made decisions based more on intuition and gut feeling, and less on rational thinking. Soltes (2016) carried out a qualitative study in which he interviewed senior managers convicted of financial crimes, and reached a similar conclusion: “I never thought about the benefit versus the loss,” according to one white-collar offender convicted of insider trading (Soltes, 2016: 99).

# Psychological traits of white-collar offenders

Research on the personalities of white-collar offenders has long been neglected (Alalehto and Azarian, 2018; Babiak et al., 2010; Shover and Hunter, 2010), possibly due to the perception that the felony is committed by respectable people who are guilty of 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 behavioural characteristics (Bucy et al., 2008; Engdahl, 2009; Heath, 2008).

However, recent studies on white-collar felony emphasize the influence of personality traits that determine a higher risk of committing offences such as fraud and tax evasion. The population involved is extremely heterogeneous, and findings are contradictory; however, the scant research indicates that the personality traits of this population are indeed unique (Nee et al., 2019).

Interest has focused on the correlation between the characteristics in the so-called Dark Triad (psychopathy, narcissism and Machiavellianism) and white-collar crime; a high level of narcissism has been found among these offenders (Blickle et al., 2006; Bromberg, 1965; Hogan and Hogan, 2001). Inherent in narcissistic disorder as a recurring pattern are a grandiose sense of self-importance, a constant need for admiration, and a lack of empathy (Alalehto and 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 (with the most beautiful home, the most flourishing business, etc.), otherwise they experience emptiness and failure that they cannot cope with. 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 gains (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 the individual’s perspective, leading to possibly adopting antisocial behaviour patterns.

A correlation was found between white-collar crime and Machiavellianism (Tang et al., 2008). However, the most disturbing trait in the Dark Triad associated with white-collar felony is psychopathy, a lack of conscionableness (Hare, 1993). Clearly, a deficient conscience aids rationalization and promotes fraudulent acts (Trompeter et al., 2013).

Recent studies have clarified the nature of psychopathy (Babiak et al., 2010) and its different forms. The new definitions revert to the original one (Cleckley, 1941), taking into account characteristics of sociability (personal charisma, initiative, intelligence) and placing less emphasis on past criminal behaviour (Cooke et al., 2007). According to estimates, six to twenty percent of senior personnel in organizations suffer from this disorder (Babiak et al., 2010; Fritzon et al., 2017), compared to one percent in the general population (Neumann and Hare, 2008). Employees who are pathological dissemblers (Nee et al., 2019) succeed in concealing their negative attributes, exhibiting impulse control, and conveying an impression of being normal. They use their talents manipulatively, devoid of compassion, guilt, or empathy. They are cold, calculating individuals who do not accept responsibility for their actions (Wall et al., 2015). Previous studies that did not consider these traits have overlooked this disorder among white-collar felons (Rolseh et al., 2017). Thus, with few exceptions (e.g., Ray and Jones, 2011), there is limited knowledge about the relationship between corporate psychopathy and white-collar crime.

Another form of psychopathy has been associated with white-collar offences (Alalehto and Azarian, 2018; Collins and Schmidt, 1993), whose manifestations include a dubious lifestyle, impulsiveness, outbreaks of violence, risk-taking and antisocial leanings (Hare and Neumann, 2010), with no acceptance of responsibility or long-term goals (Hare, 1994). Perri (2011) disputes the perception that white-collar offenders are not violent, pointing to instances where white-collar offenders become “red-collar criminals,” resorting to murder to avoid exposure (Alalehto and Azarian, 2018; Perri, 2011). Indeed, traits such as psychopathy and narcissism increase the probability of violence and can serve in certain circumstances as a trigger for violent acts (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, Blickle et al. (2006), whose study in Germany included 76 company directors serving sentences for white-collar crimes, found high levels of hedonism, thrill-seeking, and lack of self-control, but higher conscientiousness than in 150 law-abiding directors in other companies.[[1]](#footnote-1) This surprising finding is in line with another German study (Bresser, 1978, in Blickle et al., 2006), which found that white-collar felons are extremely persevering and target-oriented. High conscientiousness is in keeping with the image of rational businessmen who wish to promote their own personal interests as well as those of their firm. These offenders need high conscientiousness in their senior managerial positions and, unlike managers who are non-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 psychopathic makeup 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 and O’Toole, 2012). The motivation for deceit can also be more pronounced among psychopaths for two reasons: 1) selfishness and a sense of entitlement (Kranacher et al., 2011); and 2) greater impulsiveness and thrill-seeking (Babiak and O’Toole, 2012; Paulhus and Williams, 2002), which in itself can motivate fraudulent acts.

Thus, individuals high on the psychopathic scale are not “accidental” felons 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.

Another personality trait associated with white-collar crime is extraversion – Scale E in the questionnaire of Eysenck et al. (1985). Relative to the general population (Nee et al., 2019) and even to blue-collar offenders (Craig and Piquero, 2017; Rub, 2017), white-collar felons are higher on the scale in terms of thrill-seeking, impulsiveness, absence of social inhibitions and risk-taking, and lower in self-regulation and anger control. 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 and Piquero, 2017).

The attraction to risks can explain why individuals who have money and respect are nonetheless avaricious, willing to risk their fortunes and reputations for extra profit. 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. One explanation is that 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).

Ragatz and 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, however, 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.

# White-collar crime: Is criminal punishment a successful deterrent?

The results of research on the deterrent effect differ according to types of offences and offenders (Lernau, 2016). Few controlled studies have examined the effectiveness of criminal punishment in achieving personal and/or general deterrence among white-collar criminals. Irrespective of methodological complexities, it is difficult to expose white-collar crimes; thus 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 felons (differences in personality and type of offence, e.g., corporate or individual) (Logan et al., 2017; Onna et al., 2014).

Despite the fact that 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 in its pure form 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 behaviour and thinking are multifaceted: they include insight, rationality and efficiency, but also flawed thinking, misdirected considerations, and erroneous decision-making. Research incorporating elements of economics and psychology (Kahneman and Tversky, 1979) found that “rules” were followed in certain cases of irrational behaviour.

The effectiveness of deterrence using criminal punishment depends in part on the offender’s mode of decision-making and personality traits. These factors, especially when intertwined with irrational thinking, neutralize the deterrent effect, and must be taken into account when examining the efficacy of specific types of deterrence for 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 wisdom regarding white-collar offenders, a substantial evidence base suggests that the offender’s conduct involves components, such as personality disorders, use of defence mechanisms, and cognitive biases, that disrupt rational thinking and have an adverse effect on deterrence. Since the offender population is heterogeneous, in cases where rational thinking takes place it appears that social punishment (Aviram, 2011; Kostelnik, 2012), or being taken to court, results in deterrence (Regev, 2008; Weisburd et al., 1995). This conclusion is in line with the complexity of achieving this aim (Lernau, 2016; Pratt et al., 2011) and with Amendment 113 of the Israel Penal Law (2012), which relegates this recourse to the lowest level of importance. Although this does not entail that formal punishment of white-collar offenders be discontinued, and should perhaps me made even stricter in some cases, meaningful aims must be found for penalization.

A highly important aim of penalization in general, and of white-collar criminals in particular, 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 criminal population) are constantly subject to scrutiny by the public, their penalization reinforces social order. This approach is in keeping with Functional Theory (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 (social solidarity).

White-collar crime causes economic losses for nations and suffering for victims, possibly triggering a decline in public trust in national institutions and laws (Ashforth and Anand, 2003; Friedrichs, 2004). Accordingly, one of the goals of punishment is just and proportionate retribution for serious crimes (Canton, 2019; Hegel, 1952; Kant, 1965; von Hirsch, 2017). This is in keeping with Amendment 113 of the Israel Penal Law, in which this adequacy clause appears in top order of importance. To the best of our knowledge no surveys have been conducted in Israel with respect to public attitudes towards penalization of white-collar offenders; however, opinion polls in the USA suggest that the public recognizes the seriousness of the offences and calls for proportionately strict punishment (Holtfreter et al., 2008; Kane and Wall, 2006; Reiman and Leighton, 2013).

Punishment of white-collar offenders that aims to expel them from society is related to the danger they pose to their surroundings. However, there are no built-in tools to assess this, unlike offenders accused of sex crimes or domestic violence (Abulafia and Hovav, 2019). Data from research and experience in working with white-collar criminals indicate that a unique diagnostic tool to assess this is required.

Apart from court rulings (sentencing and its aims, parole, etc.) the assessment of dangerousness as a diagnostic tool could serve as a basis for therapy and rehabilitation. The goal of rehabilitation, an important punitive target in Amendment 113 of the Penal Law (Lernau and Sharon, 2012) that has gained legal ground in the past decade as well as in its practical application (Lernau, 2016; Lernau and Oz, 2019), appears particularly relevant in cases with a high potential for change and suited to psychological intervention. Since these offences are associated with various types of personality disorders, overuse of defence 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, characterized by an obsessive pursuit of success, can be moderated through therapy (Dimaggio and 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). Nevertheless, it should be borne in mind that white-collar offenders are generally smart and manipulative, using defence mechanisms to minimize the seriousness of the offence in their eyes. Accordingly, for diagnosis and therapy, skilled and experienced professionals are required.

# Summary and conclusions

White-collar felony is a high-profile crime that causes untold damage, and public calls for increasing the severity of punishment are understandable. However, close scrutiny of the aims of punishment is necessary.

The present article describes white-collar crime and the personality attributes of its perpetrators. It presents theoretical explanations for its occurrence and examines the processes involved in decision-making, which both exemplify and challenge the view of white-collar offenders as rational individuals who can be deterred by criminal punishment.

It appears that the least achievable aim, even with harsh criminal punishment such as imprisonment, is personal deterrence, because of the impaired rationality associated with this offence.

The principal aim in penalizing white-collar criminals appears to be restoration of social order. White-collar criminals, who belong by and large to the higher stratum of society, undermine the social order, and their penalization restores public trust in state institutions and the law enforcement system. An additional aim, going beyond the retributive aims of adequacy and prevention, is rehabilitation. Since the white-collar crime population appears to be governed unconsciously by irrational elements affecting behaviour and decision-making mechanisms, therapeutic intervention is required. However, few research studies have examined suitable therapies and their effectiveness.

Clearly, there is a need to examine the types of penalization that are appropriate for this complex population. Suitable actions for achieving the principal aims of punishment in the case of white-collar crime (restoration of social order, reward, compensation, prevention and rehabilitation) are likely to be fines, probation warrants, and imprisonment.

Imprisonment is recommended in unusual cases only; given diminishing marginal productivity (Lernau, 2016) short-prison terms may suffice. Although imprisonment of white-collar criminals helps restore the social order and serves the retributive aims of adequacy and prevention, its effects on deterrence and rehabilitation are doubtful. Given the complex characteristics of the population, even severe punishment in the form of imprisonment is unlikely to have a successful deterrent effect.

With respect to rehabilitation, 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 Peled-Laskov et al. (in print), which quotes white-collar criminals as stating 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.” Imprisonment also sees white-collar criminals, who may already be older, growing old behind bars and remaining there at an age where they are much less likely to be involved in crime (Shichor and Sechrest, 1996; Zimring et al., 2001).

The marginal benefit of imprisonment for some white-collar offenders is related to a current issue in the criminal justice system in Israel: crowded conditions in prisons and the obligation to implement the Supreme Court ruling to increase the living space for individual prisoners and detainees (Supreme Court Case 1892/14). Penalization of white-collar felons outside prison or through shorter periods of imprisonment could improve the state’s capability in executing the Supreme Court decision.

In contrast to imprisonment, the imposition of fines could be instrumental in restoring public order, achieving the aims of retribution, compensation and prevention and preventing damage caused by imprisonment. A heavy fine could worsen the financial status of the prisoner, removing a significant element that – according to the Fraud Diamond theory (Wolfe and Hermanson, 2004) – facilitates white-collar crime. However, an excessive fine could precipitate financial hardship for the offender which, according to Cressey (1953) and Wheeler (1990), increases the risk of committing white-collar crime. A combination of fines and rehabilitative penalization, including imposition of a probation warrant, could serve all purposes, including prevention and rehabilitation.

The imposition of punishments perceived as lighter than imprisonment has the potential for undermining public trust in the law enforcement system and upsetting the social order. Nevertheless, it appears that white-collar crimes are regarded by the public as less serious than other crimes, and lighter punishment could enjoy some support (Cedric, 2016).

In conclusion, white-collar crimes are unique, their definition is complex, and they can be conceived as a system supported by an irrational base. Despite the resentment they arouse in certain public circles and the expectation of reprisal in the form of severe punishment, the type of punishment and its aims must be carefully examined. The neglect of personality features and research on the effectiveness of deterrence call for studies paying serious attention to the aims of punishment, including rehabilitation, and the limited capacity for deterrence through punishment in this variegated and complex population.

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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)