**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, requiring a closer look at the aims of punishment in general, and those of deterrence in particular. 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 of criminal punishment, even the harshest, achieving 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.

No single definition of white-collar crime exists (Ragatz and Fremouw, 2010). Since the term was coined by Sutherland (1939), the complexity of the phenomenon has been clear. The term “white-collar offender” suggests a prototype based on a group of parameters: the offender’s privileged status, abuse of position, camouflage and deception, economic damage, and perpetration of the 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 to promoting the interests of an organization, and occupational crime, which is 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), consisting of 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).

Estimates have been proposed of the propensity for perpetration of 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; in the USA it is estimated 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 the trust the public places 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 severer and more equitable penalization (Faichney, 2014; Reiman and Leighton, 2013; Weisburd, 1991). Nevertheless, white-collar crimes may still be perceived by the public as less serious than other crimes, so that lenient punishment could find support (Cedric, 2016).

Researchers have pointed to the establishment of punitive guidelines (Federal Sentencing Guidelines, 1987) as a turning point in the penalization of white-collar offenders, claiming that the system has resulted in greater equality and severity in the punishment of white-collar criminals (Kostelnik, 2012), manifested in greater recourse to imprisonment and for longer times (Gustafson, 2006). Salient examples include Jeffrey Skilling, CEO of Enron Corporation, USA, 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 (Friedrichs, 2007), involving profit and loss considerations (Paternoster and Simpson, 1993). Criminological explanations have focused on its social and cultural implications (Langton and Piquero, 2007), ignoring the aspect of 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, 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 punishment together and appropriate responses to these 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 benefit vs. cost: 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 exposure, most white-collar offenders are considered to have lived normal lives. As they do not comprise a homogeneous group, there does not appear to be only one explanation for the phenomenon.

Despite the numerous definitions of this type of crime as the conscious, rational exploitation of opportunities, theories exist with respect to factors that attest to the blurring of reason.

Cressey’s (1953) Fraud Triangle, intended to explain offences related to fraudulent conduct, was recently extended to 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, allowing the white-collar felon 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 (which minimized 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 regulation (with which ethical management principles do not always keep pace). Finally, use is made of a cognitive dissonance mechanism that generates justifications (rationalizations), assisting the offender in overcoming any ethical uneasiness.

The Fraud Diamond theory 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 (Wolfe and Hermanson, 2004).

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 the literature (Dearden, 2019), which asserts that economic hardship fosters rationalization in perpetration of a crime. In contrast, however, Alef (2018) claims that white-collar crimes are committed during periods of economic success, when the person feels an “entitlement to everything” and abuses his 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 dealt with 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, could 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, mention may be made of 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 may have a disruptive effect on decision-making, especially in times of stress, since it is sustained by the difficulty in exposing white-collar offences and the considerable time from discovery to punitive action. The feeling of optimism lessens the certainty of penalization, which is a significant element in deterrence in general, and in white-collar offences in particular.

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).

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, and a high level of narcissism was 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 vision 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 vision, leading to his possible adoption of 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 per cent of senior personnel in organizations suffer from this disorder (Babiak et al., 2010; Fritzon et al., 2017), compared to one per cent 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 which 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 little knowledge regarding the relationship between psychopathy of this type and white-collar crime.

Another form of psychopathy has been associated with white-collar offences (Alalehto and Azarian, 2018; Collins and Schmidt, 1993). 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) points to instances where white-collar offenders become “red-collar criminals” (resorting to murder to avoid exposure). He disputes the perception that white-collar offenders are not violent (Perri, 2011): a subgroup of white-collar offenders, when faced with being tracked down, turn to violence, even resorting to murder (Alalehto and Azarian, 2018; Perri, 2011).

According to researchers, 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, 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 based on a model that incorporates psychopathy as a personality attribute in the fraud triangle (Cressey, 1953; Trompeter et al., 2013) and its extended 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.

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 offending, particularly 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 and 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 benefit 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.

# Considerations regarding the aims in penalizing white-collar offenders: If not deterrence, 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 (personality disorders, use of defence mechanisms, cognitive biases) that disrupt rational thinking and have an adverse effect on personal deterrence based on criminal punishment. 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 should be discontinued, or even made 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 the 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 with the aim of their expulsion from society is related to their dangerousness. However, there are no built-in tools to assess the danger posed by white-collar criminals, 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, offering theoretical explanations for its occurrence together with the processes involved in decision-making that 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 to 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 light punishments 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.

# References

Abulafia J and Hovav M (2019) *Risk Assessment: Clinical, Legal and Social Aspects.* Jerusalem: Carmel and Keshet Publishers (in Hebrew).

Alalehto T and Azarian R (2018) When white-collar criminals turn to fatal violence: The impact of narcissism and psychopathy. *Journal of Investigative Psychology and Offender Profiling* 15: 215–226.

Alef A (2018) On power, money and white-collar crimes. *Law and Business* 21: 263–306 (in Hebrew).

American Psychiatric Association (1987) *Diagnostic and Statistical Manual of Mental Disorders (3rd Edition).* Washington, DC: APA.

Apicella CL, Dreber A, Campbell B, Gray PB, Hoffman M and Little AC (2008) Testosterone and financial risk preferences. *Evolution of Human Behavior* 29: 384–390.

Arieli D (2012) *The (Honest) Truth About Dishonesty: How We Lie to Everyone—Especially Ourselves.* New York: Harper Collins.

Ashforth BE and Anand V (2003) The normalization of corruption in organizations. *Research Organization Behavior* 25: 1–52.

Aviram H (2011) Does sentencing achieve its aims? Answers from the world of empirical research. In: Hacker D and Ziv N (eds) *Is Sentencing Important?* Tel Aviv: Tel Aviv University, – (in Hebrew).

Babiak P, Neumann CS, Hare and RD (2010) Corporate psychopathy: Talking the walk. *Behavioral Science and the Law* 28: 174–193.

Babiak P and O’Toole ME (2012) The corporate psychopath. *FBI Law Enforcement Bulletin 81*(11): 7–11.

Bailey CD (2017) Psychopathy and accounting students’ attitudes towards unethical professional practices. *Journal of Accounting Education* 41: 15–32.

Baker HK and Nofsinger JR (2002) Psychological biases of investors. *Financial Services Review* 11: 97–116.

Beccaria C (1764/1963) *On Crimes and Punishments* (trans H Paolucci). Indianapolis: Bobbs-Merrill.

Benson ML and Manchak SL (2014) The psychology of white-collar crime. In *Oxford Handbooks Online in Criminology and Criminal Justice.* New York: Oxford University Press.

Bentham J (1789/1970) *An Introduction to the Principles of Morals and Legislation* (eds JH Burn and HLA Hart). London: Athlone Press.

Blickle G, Schlegel A, Fassbender P and Klein U (2006) Some personality correlates of business white-collar crime. *Applied Psychology: An International Review* 55(2): 220–233.

Braithwaite J (1985) White-collar crime. *Annual Review Sociology* 11: 1–25.

Bromberg W (1965) *Crime and the Mind.* New York: Macmillan.

Bucy, PH, Formby EP, Raspanti MS and Rooney KE (2008) Why do they do it? The motives, mores, and character of white-collar criminals. *St. John’s Law Review* 82: 401–571.

Canton R (2019) Censure, dialogue and reconciliation. In du Bois-Pedain A and Bottoms AE (eds) *Penal Censure: Engagements Within and Beyond Desert Theory*. Oxford: Hart, Bloomsbury, pp.253–276.

Chambliss WJ (1967) Types of deviance and the effectiveness of legal sanctions. *Wisconsin Law Review* Summer: 703–719.

Cleckley H (1941) *The Mask of Sanity*. St. Louis, MO: Mosby.

Coates JM and Herbert J (2008) Endogenous steroids and financial risk-taking on a London trading floor. *Proceedings of the National Academy of Sciences* 105(16): 6167–6172.

Collins JM and Schmidt FL (1993) Personality, integrity, and white-collar crime: A construct validity study. *Personnel Psychology* 46: 295–311.

Cooke DJ, Michie C and Skeem J (2007) Understanding the structure of the psychopathy checklist – revised: An exploration of methodological confusion. *British Journal of Psychiatry* 49: 39–50.

Craig JM and Piquero NL (2017) Sensational offending: An application of sensation seeking to white-collar and conventional crimes. *Crime & Delinquency* 63(11) 1363–1382.

Cressey D (1953) *Other People’s Money.* Glencoe, IL: Free Press.

Daniel KD, Hirshleifer D and Subrahmanyam A (1998) Investor psychology and security market under- and over-reactions. *Journal of Finance* 53: 1839–1886.

Dearden TE (2019) How modern psychology can help us understand white-collar criminals. *Journal of Financial Crime* 26(1): 61–73.

Dimaggio G and Attinà G (2012) Metacognitive interpersonal therapy for narcissistic personality disorder and associated perfectionism. *Journal of Clinical Psychology* 68: 922–934.

Dorminey J (2012) The evolution of fraud theory. *Issues in Accounting Education* 27(2): 555–579.

Durand RB, Newby R and Sanghani J (2008) An intimate portrait of the individual investor. *Journal of Behavioral Finance* 9: 193–208.

Egan V, Huges N and Palmer E (2015) Moral disengagement, the dark triad and unethical consumer behavior. *Personality and Individual Differences* 76: 123–128.

Engdahl O (2009) Barriers and back regions as opportunity structures for white‐collar crime. *Deviant Behavior* 30(2): 115–143.

Eysenck SB, Eysenck HJ and Barrett P (1985) A revised version of the psychoticism scale. *Personality and Individual Differences* 6(1): 21–29.

Faichney D (2014) Autocorrect? A proposal to encourage voluntary restitution through the white-collar sentencing calculus. *Journal of Criminal Law & Criminology* 104(2): 389–415.

Friedrichs DO (2007) *Trusted Criminals. White Collar Crime in Contemporary Society (3rd Edition)*. Belmont, CA: Thomson Wadsworth.

Fritzon K, Bailey C, Croom S and Brooks N (2017) Problem personalities in the workplace: Development of the corporate personality inventory. In: Granhag PA, Bull R, Shaboltas A and Dozortseva E (eds) *Psychology and Law in Europe: When West Meets East*. Boca Raton: CRC Press, pp.139–166.

Gottschalk P (2015) *Fraud Examiners in White Collar Crime Investigations*. Boca Raton: CRC Press.

Grasmick HG and Bursik RJ (1990) Conscience, significant others, and rational choice. Extending the deterrence model. *Law and Society Review* 24(3): 837–861.

Gustafson JL (2006) Cracking down on white-collar crime: An analysis of the recent trend of severe sentences for corporate officers. *Suffolk University Law Review* 40: 685–702.

Hare RD (1993) *Without Conscience.* New York: Guilford Press.

Hare RD (1994) Predators: The disturbing world of the psychopaths among us. *Psychology Today* 27(1): 55–63.

Hare RD and Neumann CS (2010) Psychopathy: Assessment and forensic implications. In: Malatesti L and McMillan J (eds) *Responsibility and Psychopathy: Interfacing Law, Psychiatry and Philosophy*. Oxford: Oxford University Press, pp.93–123.

Heath J (2008) Business ethics and moral motivation: A criminological perspective. *Journal of Business Ethics* 83(4): 595–614.

Hewitt J (2016) Fifty shades of gray: Sentencing trends in major white-collar cases. *The Yale Law Journal* 125: 1018–1071.

Hogan R and Hogan J (2001) Assessing leadership: A view from the dark side. *International Journal of Selection and Assessment* 9: 40–51.

Holtfreter K, Shanna SV, Bratton J and Gertz M (2008) Public perceptions of white-collar crime and punishment. *Journal of Criminal Justice* 36: 50–60.

Jones BD, Woodman T, Barlow M and Roberts R (2017) The darker side of personality: Narcissism predicts moral disengagement and antisocial behavior in sport. *Sport Psychologist* 31(2): 109–116.

Kahneman D (2003) A perspective on judgment and choice: Mapping bounded rationality. *American Psychologist* 58: 697–720.

Kahneman D and Tversky A (1973) Availability: A heuristic for judging frequency and probability. *Cognitive Psychology* 5: 207–232.

Kahneman D and Tversky A (1979) An analysis of decision under risk. *Econometrica* 47(2): 263–291.

Kanai R (2001) Probation warrant: From alternative to alternative punishment. *Legal Research* 15:353–376 (in Hebrew).

Kostelnik J (2012) Sentencing white-collar criminals: When is shaming viable? *Global Crime* 13(3): 141–159.

Kranacher MJ, Riley RA and Wells JT (2011) *Forensic Accounting and Fraud Examination.* New York: John Wiley & Sons.

Lane SD, Tcheremissine OV, Lieving LM, Nouvion SO and Cherek DR (2005) Acute effects of alprazolam on risky decision-making in humans. *Psychopharmacology* 181: 364–373.

Lernau H (2016) *Crime and Law Enforcement. Theory, Policy, Control.* Haifa: Pardes Publishers (in Hebrew).

Lernau H and Oz A (2019) The criminal enforcement system in Israel in the past decade: Can the winds of change be felt? *Hasenigor* 249: 4–13 (in Hebrew).

Lernau H and Sharon I (2012) Eight balanced decisions in enacting the judicial discretion in sentencing law. *Hasenigor* 183: 14–21 (in Hebrew).

Levi M (2013) Individual differences and white-collar crime. In Cullen FT and Wilcox P (eds) *Encyclopedia of Criminological Theory*. Thousand Oaks, CA: Sage, pp.469–473.

Ling S, Raine A, Yang Y, Schug RA, Portnoy J and Ringo Ho MH (2019) Increased frontal lobe volume as a neural correlate of grey-collar offending. *Journal of Research in Crime and Delinquency* 56(2): 303–336.

Lo AW and Repin DV (2002) The psychophysiology of the real-time financial risk processing. *Journal of Cognitive Neuroscience* 14: 323–339.

Logan MW, Morgan MA, Benson ML and Cullen FT (2017) Coping with imprisonment: Testing the special sensitivity hypothesis for white-collar offenders. *Justice Quarterly* 1: 1–30.

MacKenzie DL (2000) Evidence based corrections: Identifying what works. *Crime and Delinquency* 46(4): 457–471.

Marriott L (2018) Pursuit of white-collar crime in New Zealand. *Journal of Australian Taxation* 20: 1–20.

Merton R (1971) *Social Theory and Social Structure.* Tel Aviv: Yachdav (in Hebrew).

Nee C, Button M, Shepherd D, Blackbourn D and Leal S (2019) The psychology of the corrupt: Some preliminary findings. *Journal of Financial Crime* 26(2): 488–495.

Neumann CS and Hare RD (2008) Psychopathic traits in a large community sample: Links to violence, alcohol use and intelligence. *Journal of Consulting and Clinical Psychology* 76: 893–899.

Odean T (1999) Do investors trade too much? *American Economic Review* 89: 1279–1298.

Onna JHR, Geest VR, Huisman W and Denkers AJM (2014) Criminal trajectories of white-collar offenders. *Journal of Research in Crime and Delinquency* 51: 759–784.

Penal Law (Amendment 113), 2012 (in Hebrew).

Perri FS (2011) White‐collar criminals: The “kinder, gentler” offender? *Journal of Investigative Psychology and Offender Profiling* 8(3): 217–241.

Piff PK, Stancato DM, Cote S, Mendoza-Denton R and Keltner D (2011) Higher social class predicts increased unethical behavior. *PNAS* 109(11): 4086–4091.

Pratt TC, Cullen FT, Blevins K, Daigle LE and Madensen TD (2011) The empirical status of deterrence theory: A meta-analysis. In Cullen FT, Wright JP and Blevins K (eds) *Taking Stock: The Status of Criminological Theory*. New Brunswick, NJ: Transaction, pp.367–396.

Ragatz L and Fremouw W (2010) A critical examination of research on the psychological profiles of white-collar criminals. *Journal of Forensic Psychology Practice* 10: 373–402.

Raine A, William S, Laufer Y, Yang KL Narr PT and Arthur WT (2012) Increased executive functioning, attention, and cortical thickness in white-collar criminals. *Human Brain Mapping* 33: 2932–2940.

Ray JV and Jones S (2011) Self-reported psychopathic traits and their relation to intentions to engage in environmental offending. *International Journal of Offender Therapy* 55: 370–391.

Regev B (2008) *Economic and quantitative aspects of policy regarding enforcement of a white-collar crime law in Israel.* PhD Thesis, Hebrew University of Jerusalem (in Hebrew).

Reiman J and Leighton P (2013) *The Rich Get Richer and the Poor Get Prison: Ideology, Class and Criminal Justice.* Boston, MA: Pearson Publishing.

Rolseh A, Edens JF and Cox J (2017) Triarchic model personality traits and their impact on mock juror perceptions of a white-collar criminal defendant. *Journal of Personality Assessment* 99(5): 453–464.

Rub J (2017) *Criminological aspects of reduction of white-collar criminality in Moldova and Israel: Criminal behavior approach.* PhD Thesis, University of Moldova.

Shefrin H (2000) *Beyond Greed and Fear: Understanding Behavioral Finance and the Psychology of Investing.* Boston, MA: Harvard Business School Press.

Shoham SG, Shavit G, Kavleon G and Einat T (2009) *Crime and Punishment: Introduction to Phenology. On the Theory of Punishment and Rehabilitation, Crime Prevention and Law Enforcement*. Kiryat Bialik: Ach Publishers (in Hebrew).

Shover N and Hunter BW (2010) Blue-collar, white-collar: Crimes and mistakes. In Bernasco W (ed) *Offenders on Offending*. Cullompton: Willan.

Simpson S (2013) White-collar crime: A review of recent developments and promising directions for future research. *Annual Review of Sociology* 39: 309–331.

Soltes E (2016) *Why They Do It: Inside the Mind of the White Collar Criminal*. New York: Public Affairs.

Sutherland EH (1939) White-collar criminality. *American Sociological Review* 5: 1–12.

Sutherland EH (1983) *White-Collar Crime – The Uncut Version*. New Haven, CT: Yale University Press.

Tang TL, Chen Y and Sutarso T (2008) Bad apples in bad (business) barrels: The love of money, Machiavellianism, risk tolerance, and unethical behavior. *Management Decision* 46: 243–263.

Tennent G, Tennent D, Prins H and Bedford A (1993) Is psychopathic disorder a treatable condition? *Medicine, Science, and the Law* 33: 63–66.

Trompeter GM, Carpenter T, Desai N and Riley RA (2013) A synthesis of fraud-related research. *Journal of Practice and Theory* 32: 287–321.

Von Hirsch A (2017) *Deserved Criminal Sentences.* Oxford: Hart.

Wall TD, Wygant DB and Sellbom M (2015) Boldness explains a key difference between psychopathy and antisocial personality disorder. *Psychiatry Psychology and Law* 22: 94–105.

Wheeler S (1990) White-collar crime: Findings from a socio-legal and thought research program on the problem of motivation in white-collar crimes. *Law Reviews* 15:446–448 (in Hebrew).

Weidenfeld K and Spire A (2017) Punishing tax offenders in France and Great Britain: Two criminal policies. *Journal of Financial Crime* 24(4): 574–588.

Weisburd D (1991) *Crimes of the Middle Classes: White‐Collar Offenders in the Federal Courts.* New Haven, CT: Yale University Press.

Weisburd D, Waring E and Chayet E (1995) Specific deterrence in a sample of offenders convicted of white-collar crimes. *Criminology* 33(4): 587–607.

Weisburd D, Waring E and Chayet E (2001) *White Collar Crime and Criminal Careers.* Cambridge: Cambridge University Press.

Wolfe DT and Hermanson DR (2004) The fraud diamond: Considering the four elements of fraud. *The CPA Journal* 74: 38–42.

Xie J (2015) The optimization of judicial rules on anti-insider trading in China: Focusing on the judicial interpretation for the crime of insider trading. *International Journal of Law, Crime and Justice* 43: 151–193.

Zethraeus N (2009) A randomized trial of the effect of estrogen and testosterone on economic behavior. *Proceeding of the National Academy of Science* 106: 6535–6538.

Zimring FE and Hawkins G (1976) *Deterrence: The Legal Threat in Crime Control*. Chicago: University of Chicago Press.

Zimring FE, Hawkins G and Kamin S (2001) *Punishment and Democracy: Three Strikes and You’re Out in California.* New York: Oxford University Press.

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