

EXPLOITING WHITE-COLLAR CRIMINALS' KNOW-HOW: TOWARDS A NEW WAY OF PUNISHMENT

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White-collar criminality is the epitome of modern-era criminality, affecting several sustainable development goals such as the promotion of access to justice and the contrast to organised crime, the provision of essential services, and the reduction of economic inequalities and vulnerabilities. For this reason, it is essential to envision a strategy that would effectively tackle white-collar crimes. This chapter argues that the enforcement of the laws for white-collar crimes should rely on a customised punishment system that combines the traditional prison sentence with community services carried out in the same context in which the white-collar crime was committed. Such a solution would guarantee at least two beneficial effects: individuals would be deterred from repeating the offence by public visibility, peers would be deterred from committing a white-collar crime, and the community would be “compensated” by a virtuous use of those skills (know-how) once improperly used by white-collar criminals.

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IZKORIŠČANJE ZNANJA IN IZKUŠENJ STORILCEV BELOOVRATNIŠKE KRIMINALITETE: NOVEMU NAČINU KAZNOVANJA NAPROTI

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Beloovratniška kriminaliteta je utelešenje kriminalitete sodobne dobe, ki vpliva na več ciljev trajnostnega razvoja, kot so spodbujanje dostopa do pravnega varstva in boja proti organizirani kriminaliteti, zagotavljanje osnovnih storitev ter zmanjšanje ekonomskih neenakosti in ranljivosti. Posledično je nujno oblikovati strategijo, ki bi se učinkovito spopadla z beloovratniško kriminaliteto. V poglavju izpostavimo, da bi moralo izvrševanje zakonov za kazniva dejanja beloovratniške kriminalitete temeljiti na prilagojenem sistemu kaznovanja, ki združuje tradicionalno zaporno kazen s skupnostnimi sankcijami, ki se izvajajo v istem kontekstu, v katerem je bilo storjeno kaznivo dejanje. Takšna rešitev bi imela vsaj dva pozitivna učinka: z vidnostjo v javnosti bi odvrnili posameznike od ponovitve kaznivega dejanja, vrstnike od storitve kaznivega dejanja beloovratniške kriminalitete in skupnost bi prejela “kompenzacijo” s krepostno uporabo veščin (*know-how*), ki so jih uporabili storilci beloovratniške kriminalitete.



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1 Introduction

In September 2015, over 150 international leaders gathered at the United Nations to contribute to global development, promote human well-being, and protect the environment. As a result, the community of states endorsed the 2030 Agenda for Sustainable Development, which includes the 17 Sustainable Development Goals (SDGs) and 169 sub-goals aimed at ending poverty, fighting inequality, promoting social and economic development, addressing climate change, and building peaceful societies. In this context, curbing criminality represents a pivotal task because illegal activities inherently hinder the pursuit of sustainable goals. Specifically, due to its scale, reach, and capacity to multiply, white-collar criminality impacts sustainable goals both directly and indirectly. On the one hand, white-collar crimes directly hinder the promotion of access to justice and the establishment of effective, accountable, and inclusive institutions at all levels (SDG 16).

On the other hand, white-collar criminality represents a pervasive phenomenon that generates collateral consequences in critical areas. For example, corruption (SDG 16.5) distorts resource allocation, significantly undermining the provision of essential services such as health care (SDG 3) and education (SDG 4), while jeopardising access to justice when it involves judges and law enforcement officers (SDG 16.3). Furthermore, corruption (SDG 16.5) exacerbates economic inequalities (SDG 1 and 3) and vulnerabilities (SDG 10). Similarly, financial fraud poses a significant threat to people's well-being, as it involves the loss of individuals' invested assets, which is often difficult to recover. In this regard, financial fraud presents a major challenge to improving the regulation and monitoring of global financial markets and institutions (SDG 10.5). Finally, money laundering, which involves concealing the illegal origins of money, serves as a primary tool to perpetuate other forms of criminality, such as drug trafficking and terrorism, thereby undermining efforts to reduce illicit financial flows and combat organised crime (SDG 16.4).

Financial scandals, such as Enron, WorldCom (Brickey, 2003), Consec, Lehman Brothers (Mensah Mawutor, 2014), General Motors (Guo et al., 2023), Wells Fargo (Schichor & Heeren, 2020), Chrysler, Cirio, and Parmalat (DeMattè, 2004), have shaken the world, creating chasms in which private and taxpayer money, jobs, and trust in companies and political institutions have declined. Dangerous criminal opportunities lurk behind the reassuring appearance of white-collar workers, turning

into critical variables in the global market and democracies. Considering these disastrous events, governments have recognised the seriousness of such peculiar criminality and related phenomena.

Unlike traditional crimes such as robbery or assault, white-collar crimes do not involve force or violence. Instead, they are non-violent and rely on deception, suggestion, or manipulation, resulting in delayed and often intangible consequences. Additionally, while those who commit conventional crimes are often motivated by a need for immediate gratification, white-collar criminals are driven by long-term financial gain. Indeed, white-collar crimes typically manifest in business through activities such as false financial reporting, stock market manipulation, insider trading, bribery (both public and private), false advertising, fraud, tax evasion, embezzlement, misappropriation of funds, and bankruptcy fraud. Because of these differences, white-collar criminals are often perceived as acting “out of character” compared to traditional offenders (Perri, 2011), and as a result, they frequently avoid detection by law enforcement.

The emergence of such crimes, as silent as they are disastrous in their consequences, has forced governments to question the appropriateness of preventive and countering measures set in place. However, designing an effective law enforcement strategy for such a broad crime category faces preliminary hurdles including: 1) defining the criminal phenomenon, 2) measuring its incidence, and 3) estimating the resulting costs to society.

In this chapter, after briefly examining the phenomenon of white-collar crime and the critical issues involved in defining and framing its scope and magnitude, I critically address how governments have chosen to deal with this form of crime by opting for increasingly severe prison sentences. These sentences not only reflect the seriousness of the crime but are also intended to deter potential white-collar criminals (deterrent effect). However, an analysis of available statistical data on the number of convictions in the United States and Italy suggests that severe prison sentences are ineffective in deterring white-collar crime. Based on these findings, I argue that a viable response would be the creation of a system that combines traditional punitive tools with restorative alternatives – interventions that meet community needs on both a material and symbolic level, requiring the offender to actively and supportively commit to repairing the harm caused. This solution would

have at least three advantages. First, it would involve the re-education of the offender by publicly showcasing their specific skills and professional privileges. Second, the community would be “compensated” through the constructive use of these skills (know-how), which were previously misused by white-collar criminals. Third, the community receive constant reminders about the consequences of misusing their skills and professional positions.

2 White-Collar Crimes

2.1 Defining White-Collar Crimes

The first challenge pertains to defining white-collar criminality and who white-collar criminals are. In 1939, Edwin H. Sutherland first outlined a portrait of businessmen with experience, refinement, culture, excellent reputation, and standing in business and society, whose criminal conduct would not be criminally prosecuted but only administratively segregated (Sutherland, 1940). However, since Sutherland’s primary goal was to include within the scope of criminal conduct those who were previously not perceived as criminals at the time, he pointed out a series of criteria to detect offenders. However, he did not provide a comprehensive definition, and his criteria did not encompass, for example, all illegal conduct made outside the occupational context (such as income tax evasions) or those undertaken by low-level employees. For this reason, the debate on the definition of white-collar crimes has been a pivotal open question in criminology, engaging scholars in finding a more comprehensive notion that would include factors like motivations, means, technique, setting of the criminal behaviour, and social responses (Perri, 2019). Consequently, a wide variety of terms have been used, such as “elite deviance”, “power crime” (Michel et al., 2014; Ruggiero & Welch 2009), “crimes of the powerful” (Friedrichs & Rothe, 2012; Rothe & Kauzlarich, 2022), and “economic crime,” which gained significant popularity within Europe (Korsell, 2001).

Considering such an overabundance of definitions, some have attempted to clarify the state of the art through the so-called “typological approach” (Faria, 2018; Friedrichs, 2019). Specifically, to facilitate both the explanation and response to crime, scholars have proposed organising patterns of crime and criminal behaviour into coherent or homogeneous categories. Considering this approach, some scholars have considered the nature of the employment when creating typology (Clinard et

al., 1993). While corporate crime benefits the offending company, occupational crime only benefits the perpetrator (Clinard & Yeager, 2006; Tolkina, 2020). In addition, other scholars started to distinguish white-collar crimes as business and professional crimes, occupational crimes, and individual frauds (Wellford & Ingraham, 1994), while others have classified offences based on the “opportunity” emerging within the occupational context (Green, 1990).

Unfortunately, extensive typological classifications have proven insufficient because they often appear too narrow or conceptually unclear. As a result, law enforcement bodies have adopted a somewhat different approach, considering white-collar crimes neither a legal category nor a specific offence per se. Instead, police officers consider white-collar crimes as a set of crimes with similar features, such as being committed through the breach of fiduciary duty, deception, omission, concealment, misappropriation, and abuse of public trust, despite often having non-violent consequences (Brody & Kiehl, 2010; Simpson, 2011). In other words, the “nonviolent” nature of the crime becomes the main criterion for distinguishing white-collar criminality from traditional crime (Simpson & Benson, 2009). Alongside this approach, some scholars have ended up defining white-collar crimes simply in negative terms: those illegal or harmful activities that are neither street crimes nor conventional crimes that involve physical force or the threat of physical force to commit the crime (Aubert, 1952).

White-collar criminality is a complex area to conceptualize, resulting in several problems in the research field regarding definition and analyses. However, even though the aspiration for a single, coherent, and universally accepted definition of white-collar crime might appear a vain undertaking, the term itself still represents an “umbrella” formula (Mifflin, 2011) that deserves to be retained because it signals, at least, that generally legitimate and seemingly reputable institutions or individuals committed a crime violating private or public trust to gain a financial advantage or maintain and extend their powers and privileges (Friedrichs, 2019).

2.2 Measuring White-Collar Crimes

Defining white-collar crimes is not only a theoretical problem but also a practical one. Indeed, the broad-encompassing formula of white-collar crimes leads to biases in statistical sources because how we define white-collar criminality influences how

we research and measure it (Johnson & Leo, 1993). Nevertheless, crimes such as fraud, bribery, data breaches, and insider trading have become a topic of almost daily news (Salinger, 2013). Still, an accurate portrayal of white-collar crimes is unavailable due to the lack of reliable statistical data. In other words, without consensus on the definition, there can be no consensus on the measurement standard (Cohen, 2016).

Moreover, one cannot ignore that “the ‘dark figure’ of white-collar crime is undoubtedly much larger than it is for other forms of crime” (Benson et al., 2016). Specifically, the dark figure refers to the undisclosed or hidden aspects of crimes that go unreported or are not officially documented. Corruption and money laundering exemplify this issue. By its nature, corruption is secretive, involving collusion between two or more people who enter a secret agreement for an illegal purpose. In contrast, money laundering typically does not directly harm individuals who might report the crime, which increases the likelihood of it going undisclosed. Furthermore, money laundering often occurs within the financial sector, crossing multiple jurisdictions and creating a disconnect between the criminal launderers and their victim(s) (Young, 2015).

However, the need for well-grounded statistical results impacts both the research field and, most importantly, the political arena. Estimating the extent of white-collar crimes is indeed a significant part of designing criminal sanctions (Cohen, 2016) and appropriate preventive policies, which primarily rely on the criterion of harm caused by the crime at stake (Anderson, 2012). In this context, statistical methods based on police reports are insufficient because they reflect only a fraction of the crimes that occur (Shulman, 1966), mainly because white-collar victims might be unaware of their status and thus do not report the crime to the police (Albanese, 1995). Such difficulties are exacerbated within legal systems where prosecution is discretionary, and several entities handle these crimes. For instance, in the United States, various regulatory agencies – criminal, civil, or administrative (Croall, 2007) – handle white-collar crimes, requiring a monetary threshold to determine whether a case must be pursued (Simpson, 2011). Not to mention those cases in which connections between white-collar executives, politicians, and the judiciary are possible and often so close as to allow the former to manipulate the legislative and court systems in their favour.

2.3 Costs of White-Collar Crimes

In the absence of longitudinal data and consistent methods to count white-collar arrests and prosecutions, it is burdensome to determine the incidence of such crimes, which can lead to the misleading conclusion that white-collar crimes are not as severe as conventional ones (Albanese, 1995). However, even imperfect and partial data prove that white-collar criminality affects society much more than traditional crimes because they result in more massive financial, emotional, and even physical distress to victims than traditional crimes (Croall, 2007; Kane & Wall, 2006), not to mention social, economic and political drawbacks. For instance, several studies have pointed out that many cases of depression and suicide involve victims of financial fraud (Saxby & Anil, 2012). Furthermore, where white-collar crimes are pervasive and often tolerated, young people can view criminality as a gate to a better life, while adults will feel delegitimation towards political and economic leaders (Conkting, 1977; Dearden, 2016; Shapiro, 1987). Lastly, white-collar crimes contribute to lower social conditions by reducing available resources, as governments may allocate funding to deter, detect, and prosecute them instead of granting social programs (McFayden, 2010), not to mention the monetary losses to employees and stockholders, which total hundreds of billions of dollars (Public Citizen, 2002), ranging between 300 and 600 billion dollars per year (Huff et al., 2010).

White-collar criminality massively impacts society and the economy, and there is room to suspect the effects might increase in the future (Cliff & Wall-Parker, 2017). On the one hand, white-collar crimes generally require significantly high levels of education or specialised technical skills, which are becoming progressively more available in our society with an increase in literacy rates, computer use, and educational attainment (UNESCO, 2016). On the other hand, opportunities to commit white-collar crimes are increasing. For instance, about half of the workforce nowadays has realistic access to corporate information. It might be able to sell trade secrets, embezzle funds, or commit other traditional white-collar crimes (U.S. Department of Justice – Federal Bureau of Investigation, 2015). Furthermore, one should consider that nowadays, things of value are frequently intangible and more exposed to attacks (Cliff & Wall-Parker, 2017), such as online banking fraud (Apte et al., 2008). Advanced information and communication devices make white-collar crimes easier and less costly to commit than before (Zickuhr & Smith, 2012). Finally, there may be an overlap between white-collar crime and cybercrimes, not

only because all significant business transactions are carried out with computers (Pontell, 2005), but also because white-collar and informational crime share several similarities. Both crimes typically occur in contexts different from those in which traditional street crimes occur, and often, cybercrimes can fall into the category of “professional crime”. This can occur when, for example, a white-collar professional engages in hacking or an employee steals computer passwords and sells them for personal gain (Payne, 2018).

3 Traditional Approaches to Countering White-Collar Crime

3.1 Deterrence and Overcriminalisation

The theoretical and operational obstacles outlined above, along with the need to curb white-collar crimes, resulted in policies that provide increasingly harsh sentencing practices for white-collar cases. Such an approach is based on the idea that potential offenders will comply with criminal law, given the awareness that disobedience will result in severe penalties (Nicholson, 2007). This belief is rooted in the theoretical explanation of Professor Becker’s deterrence theory, wherein Bentham’s “felicific calculus” is translated into economic terms and applied to criminal law (Becker, 1974). More specifically, it is believed that humans tend to maximise their well-being by rationally weighing pleasure and pain (Bentham, 2007). The resulting economic model of criminal behaviour states that a criminal act is preferred and chosen if the expected benefits from committing a crime exceed the expected costs, including any foregone legal alternatives (Becker, 1968). Consequently, increasing the probability and severity of punishment should reduce the crime rate because it is supposed to minimise the gains people expect from crime in terms of future well-being (Mungan, 2012).

Considering this idea, white-collar crimes are considered to fit well with deterrence theory because of their inherent profit-oriented and risk-averse attitude, especially when the risks and losses result in freedom deprivation due to a criminal conviction (Arnulf & Gottschalk, 2012; Chambliss, 1967). In other words, more than other offenders, white-collar offenders are supposed to process the available information on alternative courses of action and rank the possible outcomes in order of expected utility (Braithwaite & Geis, 1982), adjusting their behaviour based on a simple question: does the benefit of money outweigh the risk of punishment if caught and

convicted? Such reasoning is known as the “risk equation”, whereby subjects weigh how much they would gain from the crime, considering the actual or perceived risk of being caught and convicted.

The primary justification for imposing a prison term is to control the defendant while discouraging others from committing the same offence, achieving both a specific and a general deterrent effect (Frase, 2008). However, how much relevant is deterrence in sentencing white-collar offenders? To what extent would harsh prison sentences prevent offenders from reoffending and others from committing the same white-collar crime?

White-collar criminals are typically educated adults with no significant history of prior convictions or incarcerations (Strader, 1999). Their crimes are predominantly nonviolent, yet they wield significant victimising power and have far-reaching consequences (Green, 2007). However, sentencing white-collar criminals is challenging, especially when the conduct involved does not immediately appear criminal (Brown, 2012) and poses little risk of recidivism, particularly in cases of one-shot violations (Weissmann & Block, 2007) or when offenders cooperate fully. Furthermore, there is little need to protect society by isolating white-collar offenders due to their minimal physical threat to the public. Given these factors, imposing lengthy sentences on white-collar criminals can lead to two polarised scenarios.

On the one hand, the recidivism risk is relatively low since white-collar criminals are unlikely to return to jobs like those held before conviction, especially if they previously held high-management positions in public institutions (Weissmann & Block, 2007). Conversely, white-collar criminals are not typically “one-shot” offenders if socio-environmental conditions conducive to illegal conduct persist (Edelhertz & Overcast, 1982; Wheeler & Kenneth, 1988). Research has shown that nearly 40% of those convicted of bribery, bank embezzlement, income tax evasion, false claims, and mail fraud had at least one prior arrest (Weisburd et al., 2006). In a nutshell, like street criminals who tend to re-commit crimes when they perceive there is little to lose, recidivism in white-collar offenders may be more likely when prestige and status are lost (Mann, 1992; Pollack & Smith, 1984). Ultimately, harsher sentences do not seem as effective as expected in deterring potential white-collar criminals. Consequently, determining the appropriate punishment for such a peculiar

criminal category is pivotal to guarantee a proportionate treatment capable of instilling responsible and honest behaviour among white collars.

Considering these premises, I attempted to identify a correlation between the increased severity of sentences and actual decreases in convictions to understand whether harsher sentences translate into fewer white-collar crimes. For this purpose, I examined statistical data on convictions for certain white-collar crimes in two countries: Italy and the United States. While the United States and Italy belong to two different geographical realities with distinct legal and economic cultures, both countries implemented hyper-criminalisation policies against white-collar crime in the early 2000s due to scandals involving financial fraud, tax evasion, false accounting, and corruption. One of the secondary objectives is to understand whether, based on the available data, the effectiveness of hyper-criminalisation policies for white-collar crimes may vary depending on the states in which they are implemented.

On the one hand, the United States has a long history of white-collar criminality as it is home to many of the largest multinational corporations and is, therefore, central to the global economy and finance. It is no coincidence that the most significant financial scandals originated in the United States. On the other hand, Italy, like most European countries, bases its economy on small and medium-sized enterprises and records most white-collar cases in the public administration. Additionally, a peculiarity of Italy is that it represents a country in the European landscape that tends to address social emergencies with a significant use of criminal law, engaging in reforms aimed at toughening penalties.

As anticipated, both countries have progressively toughened their penalties for white-collar crimes. Specifically, in 2002, the United States introduced the American Sarbanes-Oxley Act (Thomsen & Norman, 2009), which provides imprisonment for those who, among other things, destroy fraudulent corporate documents (maximum 20 years) and defraud shareholders of publicly traded companies (maximum 25 years). On the other hand, the Italian legal system has gradually increased the penalties for tax evasion, false accounting, and corruption (Balbi, 2012; Dolcini & Viganò, 2013; Mucciarelli, 2015; Viganò, 2013). Since 2000, Italy has increased penalties for tax evasion by up to six years and for false accounting by up to eight

years (2015). Regarding bribery, penalties have increased from a maximum of five years of imprisonment in 2012 to ten years in 2015.

Tables 1 and 2 display data on crimes affected by the criminalisation cycles (left column) and the number of white-collar offenders convicted for the decade 2007-2017. This timeframe was chosen due to the availability of aggregate secondary data and because this decade represents the period closest to the beginning of the waves of criminalisation that occurred in Italy and the United States, but far enough to assess their impact. Despite this penal tightening, an analysis of secondary data obtained from the U.S. Annual Report of Federal Sentencing Statistics and the Italian National Institute of Statistics revealed that there has not been an appreciable decrease in convictions despite the gradual increase in penalties. Specifically, Tables 1 and 2 and Figure 1 show that severity has not increased, even though the new laws raised the severity of sentences; on the contrary, the trend in sentencing has remained relatively constant over the ten years. This suggests that increased sentences are not a sufficient deterrent to committing white-collar crimes.

Table 1: Number of Convictions Per Year Reported for Crimes that Received Increased Sentences in Italy

Italy	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Corruption	311	338	347	272	265	258	289	60	293	313	291
Corporate crimes	5,653	5,654	5,524	4,269	4,221	4,159	4,360	3,855	4,416	4,767	4,904
Tax crime	2,022	2,446	2,978	3,714	5,080	6,110	6,729	7,015	6,539	4,023	3,222

Source: Istituto Nazionale di Statistica (n.d.)

Table 2: Number of Convictions Per Year Reported for Crimes that Received Increased Sentences in United States of America

USA	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Fraud	7,550	7,041	7,566	8,032	8,300	8,551	7,789	7,607	7,414	6,516	6,027
% of total convictions	10.7	9.8	9.5	9.7	9.8	10.5	9.8	10.0	10.5	9.6	9.0

Source: United States Sentencing Commission (n.d.)

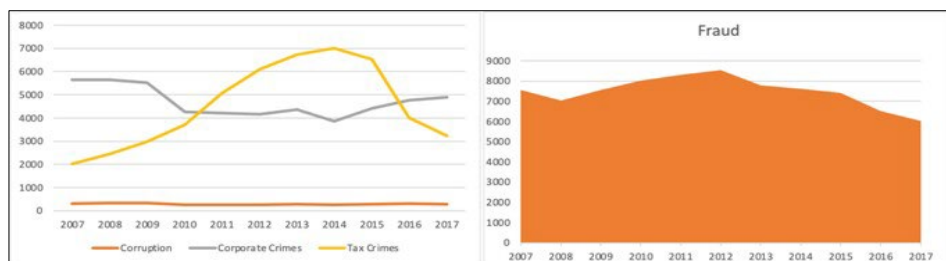


Figure 1: Conviction Trends in Italy and United States of America in the Period 2007–2017

Source: Istituto Nazionale di Statistica (n.d.), United States Sentencing Commission (n.d.).

3.2 Over-Criminalisation and Criminal Diversions: A Collateral Effect

Increasing penalties by the laws in the two countries may have created an even greater incentive to perpetuate the link between over-criminalisation and plea bargaining (Beale, 2005). On this point, as early as 1970, the United States Supreme Court stated that plea bargaining serves those who seek a minor benefit in return for conserving judicial and prosecutorial resources in clear cases of guilt.

To date, it has been recorded that about 97 per cent of convictions in the federal system result from a guilty plea (Dervan, 2013). Similarly, Italian scholars have pointed out that the Italian form of plea bargaining – the so-called *patteggiamento* – represents a waiving of the right to criminal cross-examination and to be judged beyond all reasonable doubt, to deflect the time and expenses required by the judicial trial (Pierro, 2011). Consequently, increasing criminal penalties may reinforce the trend of resorting to negotiated punishment (Romero, 2003). For example, six out of ten corruption cases submitted to Italian criminal courts end in a plea-bargained sentence (Istituto Nazionale di Statistica, n.d.). Such a trend leads to two questionable outcomes: either innocent individuals accept the negotiated conviction to prevent the distress deriving from the trial (Dervan, 2013; Palmer, 1999) or guilty individuals eventually bargain for lower penalties than they deserve by law (Dooley & Radke, 2010). This latter circumstance would represent the greatest failure of “get tough on crime” policies and prove the gap between theory and practice because, in the long run, offenders would still enjoy disproportionately lenient punishments that do not match their wrongdoing (Russel, 1988).

3.3 Tightening of Sentences and Neutralisation Processes

Our analyses showed that statutory harshening of penalties for white-collar criminals in Italy and the United States may not have the presumed deterrent impact. Several reasons may explain such an effect. Scholars have noted that the marginal utility of long prison sentences decreases with time spent in prison (Coffee, 1980) because they do not provide a marginal effect beyond the experience of prosecution, conviction, and sentencing (Benson, 1982). In other words, a ten-year sentence is not ten times more punitive than a one-year sentence (Coffee, 1980). Therefore, research has shown that any specific deterrence achieved by added prison sentences may already be produced with penalty imposition (Benson & Moore, 1992). On the other hand, the prison experience might also be meaningless because white-collar criminals, especially senior executives, are better able to become “model prisoners” (Benson & Cullen, 1988) and be treated kinder by prison officials (Frankel, 2006). Finally, although the media massively covers white-collar criminal cases, once trials are over, the stigma eventually fades for the offender, and the public tends to promptly forget the message of shame that was addressed (Nicholson, 2007).

Although the above reasons significantly weaken the hoped-for effect of increased penalties, the main point of criticism lies upstream, namely in the belief that purely rational processes lead to white-collar illegal conduct. On the contrary, the cost-benefit calculation may not be the only reason people are tempted to commit white-collar crimes. When the stakes are high, the penalties imposed are not significant enough to produce the desired deterrent effect (Coffee, 1981). Such a counterintuitive circumstance is motivated by the fact that white-collar offenders are driven by subjective features pertaining to a behavioural spectrum: ranging from potential criminals who are less inclined to think about the consequences of their actions to those who are so confident in their abilities that they cannot appreciate the risk involved (Robinson & Darley, 2004). Furthermore, especially among middle-class offenders, the “good soldier” phenomenon can occur (Barnard, 2005), whereby employees collude with upper management because they feel like “cogs in the wheel” and hardly perceive the consequences of their actions (Lobel, 2009). In other words, if there is a rationalisation process, it does not address whether it is beneficial to commit the crime but rather whether the crime can be somehow “hidden” or “justified” (Sutherland, 1949). Such reasoning is called “neutralisation” and allows white-collar offenders to maintain a sense of dignity by invalidating the criminal label

of their conduct (Benson, 1985b). In this vein, apologetic narratives of white-collar criminals can range from denial of criminal intent and harm (Benson, 1985a) to claims of fulfilling economic goals (Aguilera & Vadera, 2008; Coleman, 1987; Heath, 2008).

Furthermore, the law itself may sometimes generate this effect due to its general construction or content (Sandeep, 2010), leading individuals to believe that their conduct is within legal bounds. For example, in the United States, the same conduct might lead to civil penalties and criminal prosecution, resulting in unexpected changes in how the law is applied, and potential offenders may give themselves the benefit of the doubt that their conduct is not entirely criminal (Henning, 2015). Finally, individuals may not perceive the extent of their criminal behaviour for at least two reasons: first, many white-collar crimes do not elicit the moral opprobrium that street crimes do (Green, 2006); second, the likelihood of misestimating criminal behaviour increases when the violation involves technical rules (Henning, 2015). In such cases, offenders are not fully aware of the unlawfulness of their conduct, making strategies based on deterrence seem futile.

4 Novel and Alternative Approaches to Countering White-Collar Crime

4.1 The Addition of a Restorative Intervention

The current response to white-collar criminality would benefit from adding restorative options in the justice process, namely interventions that meet the community's needs on both material and symbolic levels, requiring the offender to take an active and solidarity commitment to repair the offence caused (Walgrave, 2000). In other words, it would be desirable to have a measure that, while maintaining a fair afflictive degree, succeeds in preventing white-collar offenders from justifying or, worse, incentivising criminal conduct. Matching criminal responses with restorative measures would provide a more comprehensive approach that considers pivotal factors such as the offender's social surroundings (Darley, 2005) along with the role of victims (van Ness, 2003). Combining traditional criminal responses with restorative tools enhances the understanding that crime is more than lawbreaking and, therefore, requires a reaction that goes beyond criminal punishment (Bazemore, 2000). Importantly, this approach prevents the perception

of justice operating in a summary fashion to prove sufficiently severe and swift (Resta & Bianconi, 2012; Volpi, 2015).

Studies have found that informal sanctions have a substantial deterrent effect (Anderson et al., 1977; Heitkamp & Mowen, 2023). For instance, disapproval from specific social environments appears to influence the decision to commit such crimes. This phenomenon is a variation of the so-called “reintegrative shaming” theory, where shame is crucial in reinforcing normative behaviours within the business community (Barnard, 1999; Kostelnik, 2012). This is particularly relevant for white-collar criminals, given that the population of top corporate executives can be characterised as residing in an exclusive social environment (Paternoster & Simpson, 1996). In other words, shame, along with social censure, loss of respect, and moral consideration, seems to weigh more heavily than rational cost-benefit calculations (Paternoster & Simpson, 1996).

Ultimately, the desirable reform involves tempering punishments based on the active participation of the offender in the restoration processes. It is not a matter of conceiving alternatives to existing justice tools and mechanisms, but rather implementing complementary punishment that could better fit specific forms of criminality, thereby preventing future crimes and motivating to repair of unlawfully committed acts. Only when the restoration is not possible should imprisonment be the remaining recourse. Such a perspective aligns with the idea that criminal punishment should be a “last resort”, with imprisonment reserved for crimes that violate not-restorable goods or values, such as life or sexual integrity (Donini, 2015).

4.2 Making Community Service Part of The Punishment

Community service can be a viable addition to traditional criminal punishment. A community sentence requires convicted individuals to perform community work for free – the “community service” – to repay society for the crime committed (Yukhnenko et al., 2019). Community service orders began in England and Wales in 1973 on an experimental basis (Mcivor, 1992), and Italy has a history of dealing with community sentences (Scalfati, 2023). Several reasons justify the spread of community sentences among nations. First, community service is cost-saving because it eases prison crowding by allowing convicted offenders to complete a corrections program. Second, it increases social welfare through the unpaid work

performed by offenders for the public benefit (Kantorowicz-Reznichenko, 2013). Lastly, some studies have shown that recidivism rates after first-time community service are lower than after imprisonment (Bol & Overwater, 1986), with nearly half as many reconvictions over an eight-year follow-up period (Wermink et al., 2010).

Alternative measures are effective in fighting white-collar criminality if four objectives are met: ensuring an adequate deterrent effect for both convicted and potential white-collar offenders, providing some form of restoration for the harm caused by white-collar crime, reducing the cost of imprisonment, and ensuring greater economic benefits. Matching prison sentences with community sentences appears to achieve these objectives in at least two ways. On the one hand, the prosecutorial process would generate traditional deterrent effects through status degradation, public stigma, and shame (Mann, 1985; Wheeler & Kenneth, 1988). On the other hand, remaining visible in the public domain would make offenders sensitive to the community's loss of reputation and respect. In other words, while restitutions and reintegration compensate individual victims, community sentence restores systemic consequences (Posner, 1980).

To be effective, community service for white-collar offenders must efficiently redress the harm caused by their crimes. Some have suggested relying on the “moral distress” caused by community service: for instance, convicted coal executives might work in mines to experience what their workers must endure; convicted pharmaceutical executives might serve in rehabilitation centres; and convicted auto executives might work in emergency rooms to witness the daily reality of humans injured or killed in car accidents (Mokhiber, 1988).

However, such solutions appear to be less punitive alternatives to purely vindictive options like incarceration. What kind of conscience can we expect a white-collar offender to develop in an environment that is physiologically hostile to them? What benefit does society gain from solely humiliating the convicted white-collar offender in the spotlight? Moreover, and most importantly, white-collar offenders may develop a sense of outrage at the state and the justice system, becoming more likely to break the law again because they are not persuaded by the value of legality. Additionally, the public might perceive that the state is more interested in shaming than in re-educating offenders. Therefore, it is evident that the solution for aligning community service with white-collar criminals needs to be different.

Community service should align with the cognitive-technical profile of the white-collar offenders, considering their highly specialised and unique know-how; which was misused to commit the crime. Essentially, community service reallocates these skills by engaging offenders in activities like those that led to crime, but this time, carrying out these activities in a virtuous way and for righteous purposes. To achieve this, the convicted must perform community service in a work environment like the one where they committed white-collar crimes. This solution would generate a dual effect. On the one hand, white-collar offenders would be re-educated by developing a deeper awareness of the proper use of specific skills and job privileges. On the other hand, it would serve as a daily reminder for workplace employees about the consequences of misusing their skills and job positions. Consequently, community service in white-collar workplaces would decrease the likelihood that potential offenders would be unaware of the effects of their actions. Finally, one must consider the economic benefit of reemploying highly specialised skills.

One could argue that letting convicted white-collar offenders in an environment like the one where they committed the crime would increase the odds of recidivism. However, community service is designed as a form of punishment in which convicted white-collar offenders lose the power they had in their previous positions. In the end, doing this type of community service can be just as punitive, if not more, spending time in jail or paying a fine or restitution, because it can leave a mark of shame on the offender (Supernor, 2017). Well-crafted shaming sanctions, especially as applied to top-level corporate executives, can effectively influence individual and corporate behaviour (Barnard, 1999; Kostelnik, 2012).

Indeed, an individual convicted of corruption could hold compliance and integrity training courses that many governments have made mandatory for public administrations or companies. Who is better than someone who has circumvented anti-corruption systems to know how to make them work? Likewise, an individual convicted of international bribery could help growing companies set the right strategies for expanding into international markets. It is assumed that a person capable of establishing corrupt dealings in other countries has a thorough knowledge of the socio-cultural context and economic substrate of foreign countries, which would help expand companies with limited resources to hire a marketing consultant. Similarly, a person convicted of embezzlement, tax offences, or bankruptcy could work in the accounting department of a company or institution. Additionally,

perpetrators of computer fraud may be hired by the same company they have harmed, or companies with similar features, to work as white-hat hackers, using their knowledge to improve the firm's internal security systems. Finally, those convicted of money laundering could cooperate with judiciary offices, contributing to the investigations by fully disclosing money laundering schemes. Money laundering can be challenging to detect because it is often part of a more extensive criminal activity involving multiple markets and jurisdictions.

Yet, it is essential to design alternative options that prevent white-collar offenders from engaging in manipulative behaviours while doing community service or, at worst, relapse into white-collar criminality. A viable solution would be appointing a monitor to supervise the white-collar community service. Monitors should be neutral third parties who are qualified and knowledgeable. They should be appointed through a selection process that is transparent, merit-based, free from conflicts of interest, and subjected to judicial scrutiny to ensure the fairness and effectiveness of the entire procedure.

5 Conclusion

White-collar criminality has become a worldwide endemic occurrence, often causing damage beyond the criminals' expectations. Governments have traditionally focused on toughening penalties to deter individuals deemed particularly sensitive to the consequences provided by criminal law (e.g., Balbi, 2012; Dolcini & Viganò, 2013; Mucciarelli, 2015; Thomsen & Norman, 2009; Viganò, 2013). However, our data analyses show that such a strategy has questionable results regarding general and specific deterrence of white-collar criminals. Reading the newspapers is enough to realise that crimes such as bribery, bankruptcy, false accounting, and tax fraud are still common. Moreover, there are many reasons to fear that these crimes will not decrease. Their devastating effects will continue to impact individual victims, the well-being of society, the smooth functioning of markets, the efficiency of the bureaucracy, and the credibility of democratic institutions and the services they provide. Therefore, it is time to consider these punitive measures insufficient to curb white-collar crimes and to encourage the exploration of innovative solutions.

In conclusion, I aim to demonstrate how providing a punishment designed for white-collar crimes can address economic deviance while also impacting their

systemic social and cultural consequences. Specifically, punishing white-collar criminals by combining imprisonment with specific community services allows offenders to engage in activities similar to those involved in their crimes but for the common good. In this context, punishment transcends the criminal law's punitive power. It becomes an opportunity to generate a virtuous circle of individual re-education, general deterrence, and restitution to the socio-economic system. Ultimately, such a strategy would enable the reintroduction of “cleaned up” qualified resources and highly specialised know-how in the market, while also reinforcing confidence in the justice system by avoiding disproportionate, unreasonable, or emotional responses.

From a global perspective, a justice system that can respond radically and systemically to the crime it addresses plays a crucial role in pursuing sustainable development goals. This includes promoting an accessible and equal justice system (SDG 16.3), reducing forms of criminality such as bribery (SDG 16.5) and organised criminal activities benefiting from illicit financial flows (SDG 16.4), and creating conditions for policies to operate in an environment less hampered by illegal activities. In doing so, it would also contribute to addressing the collateral effects of white-collar crimes, which exacerbate economic inequalities (SDG 1.3) and vulnerabilities (SDG 10), particularly when they affect the allocation of essential services such as healthcare (SDG 3) and education (SDG 4), as well as public and private investments and the proper functioning of financial institutions (SDG 10.5).

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