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Reimagining Sutherland 80 years after white-collar crime*

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Abstract

Eighty years ago, Edwin H. Sutherland conceptualized and defined white-collar crime. In this article, I engage retrospectively with Sutherland's ideas and work to emphasize important aspects that continue to guide research today; to note where he was prescient as well as shortsighted. I center this discussion around "corporate crime" or crimes by business. Four main themes are discussed: 1) law and official responses to corporate offending—the data problem, 2) corporate crime and the life cycle of organizations, 3) psychological and trait-based explanations, and 4) consequences of definitional ambiguity.

KEYWORDS

corporate crime, definitional ambiguity, managerial decision making, organizational life cycle, psychological traits, Sutherland address

1 | INTRODUCTION

In his presidential address before a joint meeting of the American Sociological and American Economic Societies,[1] Edwin H. Sutherland (1939) compared and contrasted "crime in the upper or white-collar class composed of respectable or at least respected business and professional *men*" (emphasis added) with "crime in the lower class, committed by persons of low socioeconomic class" (Sutherland, 1940 p. 1). In particular, he was concerned with crimes "in relation to business." Although Sutherland was by no means the first scholar to call attention to crimes of the powerful (Bonger, 1916; DuBois, 1899/1967[2]; Ross, 1907; van Erp, 2018), he was the first to call such offenders "white-collar"

[1] American Sociological Society changed its name to American Sociological Association in 1959.

[2] DuBois, for instance, argued "[I]n convictions by human courts the rich always are favored somewhat at the expense of the poor, the upper classes at the expense of the unfortunate classes, and whites at the expense of Negroes. We know for instance that certain crimes are not punished in Philadelphia because the public opinion is lenient, as for instance embezzlement, forgery, and certain sorts of stealing; on the other hand, a commercial community is apt to punish with severity petty thieving, breaches of the peace, and personal assault or burglary" (1899/1967, p. 249).

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criminals. What was initially a descriptive phrase was refined several times into the now familiar definition of white-collar crime: "Crime committed by a person of respectability and high social status in the course of *his* occupation" (emphasis added, Sutherland, 1949, p. 9).

As white-collar crime scholars know, Sutherland's (1949) view of white-collar crime far from settled the conversation about the phenomenon. Indeed, as I discuss later, the debate about what constitutes white-collar crime and how to measure it is more than a definitional distraction. It has profound epistemological consequences. Yet, much of what Sutherland (1939, 1940, 1949, 1973, 1983) had to say about white-collar crime 70–80 years ago is still true today. In many ways, the road from Sutherland to present-day knowledge and thinking about crimes by business is surprisingly straight.

In this address, I use our current knowledge about white-collar crime to engage retrospectively with Sutherland (1939, 1940, 1949, 1973, 1983). Because his influence is so broad and comprehensive, I narrow the focus to corporate crime specifically. Corporate crime is focused on the proscribed and punishable conduct of a corporation or of its representatives acting on its behalf to achieve organizational goals (Braithwaite, 1984, p. 6). Sutherland set the standard for empirical research on corporate offenders while providing a critical lens with which to view legal processes and state response to offenders.

As I engage with Sutherland's (1939, 1939, 1940, 1949, 1973, 1983) ideas and observations, it is important to emphasize the aspects of his work that have survived the test of time (see, e.g., Friedrichs, Schoultz, & Jordanska, 2018). Some of what he reported on was prescient. For instance, he used a life history approach to study corporate violators that presaged developmental and life-course criminology. Yet, there were also instances when Sutherland was shortsighted—when he faltered in his vision and conceptual analytics. For instance, some important developments in the field he did not (and could not) anticipate. I highlight these points to emphasize both Sutherland's centrality to this field of study and to note the dynamic symbiosis that is moving it in exciting new directions. I also hope that in this assessment, I may break down the disciplinary resistance and ambivalence to the investigation of corporate crime. The questions asked and approaches adopted by corporate criminologists are, frankly, at the center of criminology. They are used to speak to questions of power, social organization, justice, and fairness (Laufer, 2018). Finally, the white-collar and corporate crime field is beleaguered with definitional imprecision. I conclude this address with my thoughts about the pernicious consequences of this definitional ambiguity.

2 | REVIEW AND ASSESSMENT

2.1 | Spot-on Sutherland: Bridging data sources

One of Sutherland's most important contributions to the study of corporate crime lies with his critique of official crime data (1949). In his view, the data did not capture crimes by business and, as such, resulted in biased statistics. The source of bias rested in the political and economic power of elites "to influence the administration of justice in their own favor" and to create laws that "apply exclusively to business and the professions and which therefore involve only the upper socio-economic classes" (Sutherland, 1949, p. 8). In other words, business crimes differ from ordinary crimes "*principally in the administrative procedures which are used in dealing with the offenders*" (emphasis added, p. 8) and not in the nature of the offending behavior itself. For Sutherland, white-collar crime was a violation of law and substantively the same as other criminal violations. As clarified by Cressey in his introduction to the 1983 edition of *White Collar Crime*, "The procedural differences have no effect on the essence of the behavior" (Sutherland, 1983, p. iv).

To demonstrate this point empirically, Sutherland (1949) studied 70 corporations over their life careers, the average of which was approximately 45 years. He reviewed decisions against firms (conviction data) for violations of anti-competitive laws, labor laws, financial and other kinds of frauds, war regulations, and a few other miscellaneous offenses. Ultimately, he uncovered 980 decisions (an average of 14 per company). Only 158 of these decisions were by criminal courts. Conversely, 298 and 129 decisions were by civil and equity courts, respectively, and 361 by administrative commissions. To put this into perspective, "special" administrative commissions adjudicated more than one third of the cases (37 percent), but criminal courts accounted for only one sixth (16 percent) of the decisions.

Sutherland's (1939, 1940, 1949, 1973, 1983) empirical approach and justification for including civil and administrative data was challenged by many, most famously by Paul Tappan (1947), who argued that white-collar crimes can only be said to have occurred when identified by the processes and requirements of formal criminal law (e.g., deliberate intent and proof beyond a reasonable doubt). The acts cannot be classified as "crimes" because administrative and civil cases do not rely on criminal law standards. Nearly 80 years later, the debate continues to simmer (Simpson & Yeager, 2015), but Sutherland's (1939) original point regarding the paucity of criminal adjudication remains unchallenged as is apparent from U.S. Sentencing Commission (2018) data collected between 1991 and 2017.

In fiscal year (FY) 2017, federal courts convicted and sentenced only 131 organizations (corporations, partnerships, pension funds, and nonprofits) for felonies and class "A" misdemeanors. As shown in table 1, these numbers, despite fluctuating somewhat from decade to decade, comprise a small number of criminal convictions since the U.S. Sentencing Guidelines for Organizations were first implemented in 1991 ($N = 4{,}472$).

Between 1991 and end of FY 2000, only 1401 organizations were sentenced under the guidelines for an average of 140 per year. During the next decade (2001–2010), the numbers ticked slightly upward (in part because of the few cases that were processed immediately post-1991). The per-year average increased to 195, only to drop post-2010 to an average of 160. Generally, the pattern shows a peak number of cases in FY 2000 (304), with the number of cases sliding downward after that. Clearly, corporate criminal prosecution, conviction, and punishment have not been a primary concern for prosecutors, as noted by Baer (2018, p. 90):

> *Prosecutors haven't used their great powers to secure thousands, or even hundreds, of corporate convictions. Instead, the Department of Justice has, over the past two decades or so, leveraged the threat of criminal conviction to procure a mix of fines and reforms through extrajudicial settlements known as Deferred Prosecution Agreements ("DPAs") and Non-Prosecution Agreements ("NPAs").* In other words, despite their power and mission, federal prosecutors approach corporate prosecutions differently from individual ones. For individual defendants, federal prosecutors seek convictions and sentences of imprisonment. For corporations, prosecutors rely on extrajudicial settlements to pursue the types of compliance and governance reforms one might expect of either civil regulators or litigators in private lawsuits *(emphasis added).*

Changes in law, Department of Justice (DOJ) targeting and prosecution strategies, along with shifting budgets and resources, notably affect the number of corporate criminal convictions over time (Anderson & Wagoneer, 2014; Garrett, 2014; TRACReports, 2015). Regardless, it is obvious that *corporate* offenders, as in Sutherland's (1939) day, do not end up in federal criminal courts often.

TABLE 1 Criminal prosecutions of organizations, 1991–2017

Fiscal Year	Organizations Sentenced $N = 4{,}472$
November 1, 1991 through fiscal year 1993	50
1994	86
1995	111
1996	157
1997	220
1998	218
1999	255
2000	304
2001	238
2002	252
2003	200
2004	130
2005	187
2006	217
2007	197
2008	199
2009	177
2010	149
2011	160
2012	187
2013	172
2014	162
2015	181
2016	132
2017	131

Notes: 1991–2000, Cases = 1,401, Average 140.
2001–2010, Cases = 1,946, Average 195.
2011–2017, Cases = 1,125, Average 160.
Source: Data extracted from the U.S. Sentencing Commission, 2018, https://www.ussc.gov/research/datafiles/commission-datafiles#organization.

Those that do, paradoxically, are smaller, younger, and less powerful companies[3] (Simpson & Yeager, 2015) or set up as criminal organizations (Schlegel, Eitle, & Gunkle, 1994). Compared with corporate prosecutions, cases for *individual* fraudsters (whose offenses often are unaffiliated with legitimate businesses) are much more likely to be prosecuted criminally. Indeed, researchers have found that some so-called "white-collar" offenders are unemployed at the time of their offenses (Daly, 1989) or have spotty employment records (Benson & Kerley, 2001; Weisburd, Waring, & Chayet, 2001). Few are top executives.

[3] In a recent analysis of corporate conviction data, scholars reported a different trend once the percentage of firms of different sizes was calculated. Because there are more small and midsized companies in the United States than there are large firms, "a greater percentage of large firms were convicted in federal courts than midsized and small firms, respectively" (Anderson & Wagoneer, 2014, p. 71).

TABLE 2 Corporate crime case venue 1996–2014

Venue	Accounting/Bribery Offenses		Environmental and Anti-Competitive Offenses		Total	
	N	%	*N*	%	*N*	%
Administrative	1,097	38.83	5,087	63.68	6,184	57.19
Civil	1,258	44.53	2,859	35.79	4,117	38.07
Criminal	469	16.60	42	.53	511	4.72
Total	2,824	100%	7,988	100%	10,812	100%

Note: Data from extracted from National Institute of Justice Grant 2015-IJ-CX-0008 awarded to Simpson (PI) and Shapiro, Beckman, and Martin (Co-PIs).

Karpoff, Lee, and Martin (2008), for instance, studied all enforcement actions between January 1, 1977 and September 30, 2006 brought by the Securities and Exchange Commission and the DOJ for violations of one or more provisions of the SEC Act of 1934 as amended by the Foreign Corrupt Practices Act of 1977. Essentially, these are statutes that cover corporate financial reporting violations, fraud, and bribery. In cases where individuals were named respondents, only one third included top executives (CEO, president, or board chair), another one third were other line executives/supervisors, and the remaining one third were nonexecutive employees. Because Karpoff et al. *combined* criminal, civil, and regulatory actions, their results reveal that few criminal prosecutions are brought against corporate leaders. Karpoff et al. do not break down, by legal venue, the means through which the top executive cases were pursued, but they do report that most respondents found culpable received civil penalties for their illegal activities.

The contemporary evidence reveals a paucity of corporate criminal cases, but it is reasonable to ask whether the distribution varies considerably from the pattern discovered by Sutherland 70 years ago (1949). That is to say, do civil and regulatory cases still dominate? Certainly, the corporate landscape has changed considerably since the 1940s. It is possible that the relative mixture of cases has also reallocated.

Many corporate crime scholars have used some variation of Sutherland's (1949) approach to study corporate offenses since the 1940s (see, e.g., Calavita & Pontell, 1990; Clinard & Yeager, 1980; Pontell & Calavita, 1993; Schlegel et al., 1994; Simpson, Garner, & Gibbs; 2007; Schwartz & Steffensmeier, 2018). Because systematic counts and measures of business crimes still do not exist, the process of creating an offending database is, even now, labor intensive. Researchers must scour criminal, civil, and regulatory documents to match firms with reports of wrongdoing across a variety of different offense types. Yet, the evidence across studies is overwhelming. Corporate crime adjudication disproportionately occurs in the civil and administrative (regulatory) realms. By way of example, the results of an ongoing research project recently funded by the National Institute of Justice revealed an even more skewed distribution of criminal, civil, and regulatory cases than that identified by Sutherland in 1949 (Simpson, Shapiro, Beckman, & Martin, 2019).

Compared with Sutherland's (1949) study, the newer investigation by Simpson et al. (2019) differs on several dimensions. It is focused on federal cases brought, not on case convictions and on a different and more limited set of offense types (accounting fraud, bribery, anti-competitive behavior, environmental violations), but it has a much larger sample of companies over a shorter period of time (Standard & Poor 3000, 1996–2013). As for results, compared with those reported by Sutherland, fewer criminal prosecutions are reported by Simpson et al. As shown in table 2, of 10,812 cases brought against firms, criminal cases comprise less than 5 percent of those pursued and most of these are for financial reporting, accounting fraud, and bribery offenses. Few environmental and anti-competitive

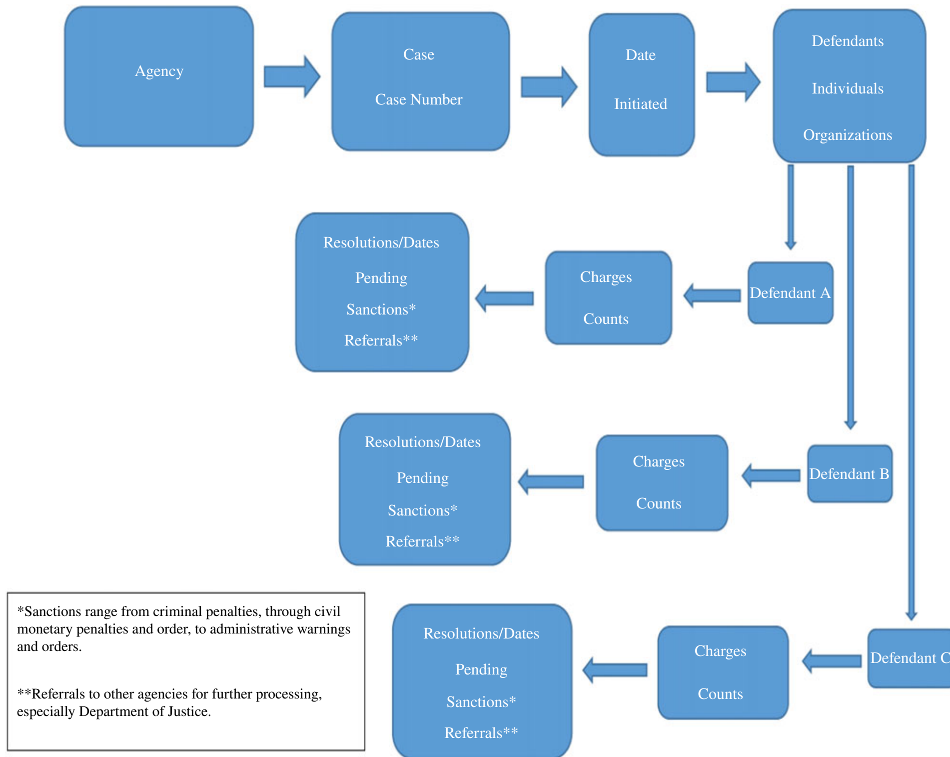

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FIGURE 1 Proposed data integration system across criminal, civil, and regulatory data sources [Color figure can be viewed at wileyonlinelibrary.com]
Source: Reprinted with permission from Simpson and Yeager (2015, p. 66).

behavior cases are criminal, although criminal prosecution is a clear statutory option for these kinds of cases.

Getting reliable and valid rates of corporate law-breaking is still especially difficult—more difficult than it should be. At the federal level, official data are scattered over dozens of regulatory agencies and similar agencies operate within the 50 states. Kept in diverse formats and designed first and foremost to meet the administrative needs and goals of the agencies themselves, combining diverse types of offenses from such dissimilar and often complex data sources into summary rates of corporate violations of law is certainly a daunting, but not insurmountable, task. It could be accomplished, however, with political will, a comprehensive collection and integration strategy, and adequate resources. In a recent Bureau of Justice Statistics Report, Simpson and Yeager (2015) showed how these disparate sources could be combined into a comprehensive database on corporate violations.

In figure 1, Simpson and Yeager (2015) proposed a data integration strategy that, similar to the Federal Justice Statistics Program (FJSP) database,[4] would be aimed at capturing defendant case information from initial charges and counts all the way through case resolution. This strategy ideally would be used to integrate and link case information across civil, criminal, and regulatory sources for both

[4] The FJSP database links data from six federal justice agencies capturing defendant information from arrest to imprisonment (Kling, Cutler, & Motivans, 2018).

firms and responsible managers. In addition to case details, the data collection effort would also result in collecting individual defendant information such as age, gender, occupation/position, and for organizations, whether it was a legitimate or criminal purpose organization, company address, type of business, and Standard Industrial Classification (SIC)/North American Industry Classification System (NAICS) code. With these details, it would be easy to link offending firms to statistical databases on businesses such as Compustat, Riskmetrics, or D & B Hoovers/Mergent, allowing for important comparisons between and among offenders and nonoffenders, by type of offense, and over time.

The lack of systematic data on corporate offending is consequential. Perhaps most costly is the general societal impression of crime and the typical offender. Reliance on traditional official data gives scholars an inaccurate and stereotypical image of crime and the typical criminal. As described by Harris and Shaw (2000), the archetypal *gestalt* of crime in the United States is one of a minority offender in the foreground framed against a sea of conforming White faces. At a recent National Academies of Sciences, Engineering, and Medicine workshop on the Criminal Justice System and Social Exclusion Marc Mauer (2018, p. 3), reported that White survey respondents in the United States "overestimate the proportion of crime committed by African Americans by 20–30 percent and suggest harsher punishments when a crime is perceived to be a 'black crime'." If crimes by business were better captured by the data, that *gestalt* would reflect significantly more White faces in the foreground and more Blacks and other people of color in the background.

Relatedly, there are also critical consequences regarding public perceptions of the criminal justice system. Corporate criminal justice remains opaque and unexamined save for some insightful deconstructive work by critical criminologists and legal scholars (Barak, 2012; Haines, 2017; Laufer, 2017; Silbey, 2011; Silbey, Huising, & Coslovsky, 2009). Acknowledging the harms of corporate crime and regulatory failures, critics have suggested that the application of law is arbitrary and primarily symbolic (Laufer, 2008). This too has consequences. If corporations are too big to fail and too big to jail (Garrett, 2014; Pontell, Black, & Geis, 2013), there is an increased risk that justice will be undistributed (Laufer, 2017, p. 80) and trust in society and its institutions likely undermined—an observation also made by Sutherland (1949).

Absent systematic data, it becomes impossible to discern the true incidence, prevalence, and scope of business crimes. From single cases of corporate crime (e.g., Enron), victimization reports (Kane & Wall, 2006), and debacles such as the savings and loan crisis (Pontell & Calavita, 1993), as well as from the more recent global financial crisis (Barak, 2013; Ryder, 2014), it can be observed that the harms to victims and cost to society dwarf those of street crime. Absent consistent and reliable measures, therefore, the true costs and consequences (as well as the meaningful indicators of these) remain obscure.

Data deficiencies also limit our knowledge and understanding of the totality and character of the societal response to offenders. To what extent are punitive sanctions and other kinds of interventions levied against offending firms and their officers effective? This knowledge gap means that empirically based prevention and control policies are, at best, few and far between if not entirely absent—a conclusion revealed recently in a Campbell Collaboration systematic review on corporate deterrence (Schell-Busey, Simpson, Rorie, & Alper, 2016; Simpson et al., 2014).

Finally, researchers over the past 50 years have subjected criminal justice processing decisions to rigorous empirical inquiry at both the state and federal levels. The field of criminology has gained a great deal of knowledge regarding the biases and inconsistencies ordinary offenders face at the various decision points in the system. The lack of integrated systematic data on corporate crime has stymied similar work on potential extralegal sources of bias in processing. We know little about why certain cases are forwarded and why others are diverted or dropped. What, if any, is the effect of firm characteristics on processing decisions? Do companies that are more powerful get a better deal? Do firm

characteristics affect diversion, who handles the case (civil, criminal, administrative), whether parallel prosecutions occur, and the type and severity of punishment? We simply do not know the answers to these important questions about corporate criminal justice because we lack systematic data with which to answer them.

2.2 | Prescient Sutherland

In *White-Collar Crime* (1949, p. 258), Sutherland observed variations in offending patterns over time, within and between firms, which he attributed *mainly* to the location of the company in the broader economic structure. Other potential factors considered, however, included firm age, size, and top management team characteristics over the firm's life history. Sutherland was committed to the idea that differential association and social disorganization (differential social organization in later works) could explain all types of criminality, but he acknowledged deficiencies in the two approaches as applied to white-collar crime. He suggested that "supplements" to the theory were needed (p. 264).

With his preferences stated, Sutherland (1949) did not expand on this idea, but his foray into life histories and criminal career patterns is an early precursor to criminal career/developmental and life-course approaches. Most of this work in criminology has been focused on antisocial behavior and violent and property offending over an individual's life course to unpack continuity and change in offending patterns. A key question of interest centers on whether state dependence or population heterogeneity can be used to explain involvement in crime. Is offending continuity caused by stable individual traits or characteristics set early in life (persistent heterogeneity)? Alternatively, is it influenced by certain life events above and beyond prior patterns of involvement in crime (state dependence)?

Despite Sutherland's (1949) initial guidance, corporate criminologists have been late arrivals to a life-course approach. Scholars initially adapted criminal career and life-course approaches to assess the career patterns and group-based trajectories of *individual white-collar offenders* (Levi, in press; Piquero & Benson, 2004; Piquero & Weisburd, 2009; van Onna, 2018; van Onna, van der Geest, Huisman, & Denkers, 2014; Weisburd et al., 2001). Use of these applications has highlighted unique offending trajectories, which reveal similarities between white-collar and traditional offenders, as well as similarities between offenders and nonoffenders. The findings from all of the studies reveal heterogeneity among white-collar criminals, but because scholars relied on criminal conviction samples, it is unclear how representative the samples are of the broader white-collar offending population. Even with a conviction sample, however, the research findings reveal a group of Sutherland-type offenders—middle to higher social class background who tend to occupy high-end organizational positions (van Onna, 2018, p. 124).

Corporate criminological scholars have taken a somewhat different approach to examining corporate criminal career patterns and crime trajectories by integrating ideas from life-cycle organizational theory (developed nearly 70 years ago in 1950 by economist Kenneth Boulding). According to the life-cycle approach, organizations, like people, progress through life phases (see figure 2). They are born, they mature, and as they become middle-aged, they start to decline. Unlike people, corporate death is not inevitable. Decline is reversible. Although many organizations do not survive, others "learn to dance" and reinvent themselves (Kanter, 1989).

Conceptually and empirically, management researchers have challenged organizational life-cycle theory (e.g., not all firms go through all of the stages, and some of the predictions of the theory are unsupported). Yet, the perspective may be used to provide a meaningful framework in which to analyze corporate offending patterns. From a state dependence argument, one might expect that the early phases of the organizational life cycle (Birth and Growth phase) and latter stages (Decline) are most apt to produce higher levels of criminal behavior but for different reasons. There are high levels of

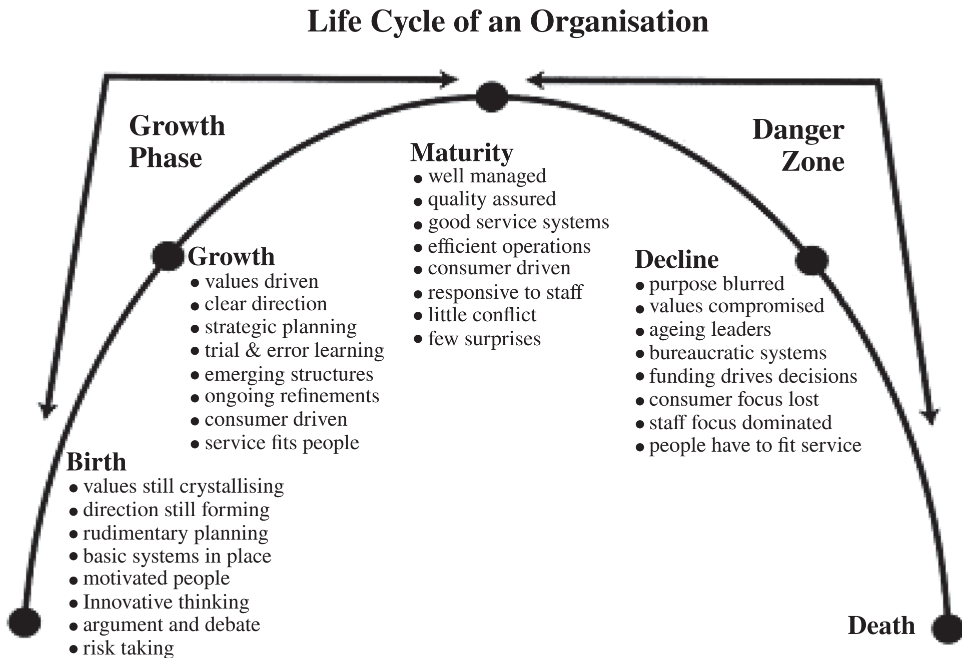

FIGURE 2 Organizational life-cycle phases and characteristics
Source: Reprinted from online figure titled "What Stage of the Organizational Life Cycle Are You In?" This figure is free to modify, use, and share.

entrepreneurial risk taking, as well as of trial-and-error learning, in the early phases of the life cycle. These actions occur in the context of few formal bureaucratic controls. As a firm moves toward maturity, the period of trial and error gives way to fewer surprises, more organizational controls, responsive management, and thus, less illegal activity. From a developmental/life-course perspective, these corporate offenders would be similar to Moffitt's (1993) adolescent-limited delinquents.

A shift toward demise, however, can produce external and internal stresses and pressures that may encourage illegality—especially if company attempts to reconfigure and readjust are unsuccessful. Downward trends in firm profitability and lost market share threaten survival. Staying in business becomes the day-to-day driver of managerial decision making. Corporate values are compromised (the ends justify the means). An ossified bureaucratic structure and aging executives cannot respond effectively. A developmental analogy or relevant pathway for firms whose offending takes off during this phase would be adult onset offending (Eggleston & Laub, 2002). Wang and Holtfreter (2012) revealed that growing firms in growing industries, as well as declining firms in poorly performing industries, have an increased risk of offending. The life-cycle approach can be used to provide a conceptual understanding for how and why these different offending pathways emerge and insight into the dimensions of a criminal career (Blumstein, Cohen, Roth, & Visher, 1986).

The notion that pathways in and out of crime may be a result of distinct transitions and turning points is consistent with the tenets of life-course criminology (Sampson & Laub, 1993). Firms that get into legal trouble early on may find it difficult to right the ship. Cumulative disadvantage resulting from discovery, the imposition of sanctions, exclusion from competition, management turnover, and other negative externalities may run counter to survival (Nagin & Paternoster, 1991; Sampson & Laub, 1997). It is also possible, however, that high-offending firms differ in fundamental ways from those that offend less often, less consistently, less seriously, and who desist over time. Such firms may have

unethical founders, have been set up for criminal purposes, or are in markets such as the financial sector that require and reward high-risk behavior (see, e.g., Cohn, Fehr, & Maréchal, 2014).

Empirically, there is consistent evidence of corporate offending continuity—companies that offend do so more often over time than do firms who offend rarely or not at all (Baucus & Near, 1991; Clinard & Yeager, 1980; Simpson, 1999; Sutherland, 1949). Researchers have also shown that offending firms, like individual offenders, "own" a large proportion of the reported violations over time (Simpson, Galvin, & Layana, 2018; Simpson et al., 2007). Although these observed patterns may reflect variations in enforcement practices and not behavioral differences among corporate offenders per se, the findings reported in a body of cross-national investigations are similar. Kluin et al. (2018), for instance, drew on life-cycle theory and life-course criminology to understand patterns of regulatory violations in the Dutch chemical industry ($N = 547$ companies) between 2006 and 2017. The findings from their analysis reveal that 6.9 percent of Dutch chemical corporations (which have more than 40 violations annually) are responsible for 24.5 percent of all violations of safety regulations by chemical companies. Slightly more than a quarter of the companies (26.7 percent) are responsible for 61 percent of all violations. The high-offending firms are also versatile in the kinds of offenses committed. Counter to research findings in the United States in which Occupational Safety and Health Administration (OSHA)-violating firms seem to change behavior in response to sanctions—a pattern consistent with state dependence (Simpson & Schell, 2009), the results from the Dutch sample reveal both population heterogeneity and state dependence among firms (see Paternoster & Brame, 1997).

The organizational life cycle is not a perfect parallel to developmental/life-course criminology. Companies consist of ever-changing aggregates of individuals. The life-course analogy, with a focus on individual-level transitions and turning points, may not be easily transferred to the firm. Schwartz and Steffensmeier (2018), for instance, in their ongoing work, have related age-graded CEO role transitions to corporate ethical behavior—a micro/meso linkage. At the organizational level, however, it is unclear what might constitute a significant turning point for high-offending corporations. Research findings have shown that some firms are responsive to punishment (e.g., state dependence), but what are the firm-level parallels to marriage, the birth of children, or going into the military? Certainly "going public," mergers (planned versus hostile), developing and launching new product lines, changes in top management, or boards of directors constitute significant transitions for companies, but are these transitions also turning points? We need findings from more theorizing and empirical work before we can discern whether a life-cycle/life-course approach can be used to advance knowledge about corporate crime and corporate offenders, but it is certainly a path Sutherland (1939) set for us in his original work.

2.3 | Myopic Sutherland: Trait theory, corporate crime, and deterrence

In Sutherland's quest to develop a sociological theory capable of explaining the breadth of criminality across social classes, he discredited pathological and trait explanations, claiming that they did not consistently fit the data of criminal behavior and were based on a "biased sample of all criminal acts" (1983, p. 6). "Personal and social pathologies play no essential part in the causation of crime" (Sutherland remarks from a 1948 Toynbee Club Lecture, as quoted in 1973, p. 79). Yet, results from research in psychology and neuroscience over the past decades have revealed much more detail about how the brain affects decision-making processes—in particular, studies have been focused on the role of emotionality, executive functioning, arousal, desire for control/illusion of control, and deceit and self-deception as putative factors (among others) in the etiology of violence, and antisocial and criminal behavior. Sutherland's blanket rejection of trait theories seems to have been shortsighted.

In criminology, the findings from nearly all of this research have indicated that these factors are linked to the emergence and persistence of traditional juvenile and adult offending (see, e.g., Ogilvie,

Stewart, Chan, & Shum, 2011). Yet, increasingly, applications are now being applied to associate biological/psychological or personality traits (Alalehto, 2003; Bickle, Schlegel, Fassbender, & Klein, 2006; Collins & Schmidt, 1993) and disorders (Babiak & Hare, 2006; Babiak, Newman, & Hare, 2010) with workplace duplicity and white-collar offending (Benson & Cullen, 2018; Benson & Livelsberger, 2012; Benson & Manchak, 2014). It is not possible in this limited space to discuss all of these factors with regard to white-collar offending broadly defined. Instead, I focus on how corporate decision making may be related to offenders' traits and characteristics.[5]

Certain characteristics such as psychopathy, self-deception, or emotionality are expected to increase antisocial and offending behavior across the board, but others have unique directional effects for different types of offenders. Raine et al. (2012) suggested that high executive functioning and other neurobiological correlates of white-collar crime may confer advantage in navigating the structure and culture of complex organizations and thus increase the likelihood of, say, participation in complex fraud schemes as opposed to stealing from the till. In the corporate context, desire for control—a psychological construct defined as the need to exercise dominance over everyday events—has been found to increase one's willingness to engage in corporate offending (see, e.g., Piquero and her collaborators—Piquero, Exum, & Simpson, 2005; Piquero, Schoepfer, & Langton, 2010), especially when decision makers are under the "illusion of control." Under these conditions, persons with a strong desire for control also have an exaggerated sense of personal control over events—even those governed by chance (Langer, 1975; Trivers, 2011). They feel infallible. Further research findings have revealed conditional effects. Those who desire control do not always experience the illusion of control. Chances are greater when participants are playing games of chance where *actual prizes are awarded* and when *odds are short versus long*. Such findings are consistent with Raine and his associates' observations that white-collar criminals seem particularly driven by the possibility of monetary rewards (2012, p. 2937). These findings are also in line with the fact that most corporate crime revolves around illegal actions that either yield financial benefit to the firm or create the illusion of profitability through financial manipulations. Because companies and their executives tend to be short-term oriented in day-to-day operations, these conditions enhance the likelihood of managerial risk-taking.

Sutherland similarly dismissed the relevance of emotionality as a factor in crime. "The assumption that an offender must have some …. Distortion of … the emotions seems … absurd" (Sutherland, 1973, p. 96). Yet, contemporary researchers have challenged the Sutherland position. Benson and his colleagues (Benson & Cullen, 2018; Benson & Livelsberger, 2012; Benson & Manchak, 2014) drew on the work of Massey (2002), Turner (2000), and Trivers (2011) to describe how emotionality and self-deception can affect managerial decision making. The brain plays a critical role in both. The interconnected structures of the modern brain, with its three layers of neural anatomy and the pathways among them, affect how information is processed.

Research findings show that the flow of information is not at the same speed between layers—the flow from the emotional brain to the rational brain is both larger and faster than vice versa. Therefore, human perceptions are affected first by our emotions and then, in a slightly delayed fashion, by our rational brain. Importantly, research findings also indicate that powerful emotions such as anger and joy often pair with stimuli that are then stored as memories—memories that exist below the level of consciousness. Thus, although we can "rationally analyze the pros and cons of different courses of action at great length and sophistication" (Benson & Livelsberger, 2012, p. 6), our actual choices are affected by emotional "valences" operating at a subrational level.

Corporations are the organizational site within which managers reflect and act and where misconduct is produced systematically and potentially normalized (Vaughan, 1999, p. 271). Actions, in turn,

[5] For an excellent review of the broader literature, see Huisman (2016).

influence the cultural environment of the organization (van Rooij & Fine, 2018). In the world of the corporation, where managerial decision making is often a group affair, emotional valences can be triggered through interpersonal exchanges. In group think, as defined by Janis (1972), exchanges are created in which each participants' personal beliefs and critical thinking are superseded by that of the group, so that the end result is not an average of the original starting positions of each participant but something else, perhaps, riskier. Leaders within groups can manipulate the amount of information and specific courses of action considered, especially when these leaders are high in power motivation (Fast, Sivanathan, Mayer, & Galinsky, 2012) and overconfident in their expertise and knowledge (Kruger & Dunning, 1999). Risky decisions can be exacerbated by the type of organizational design and structure (Vaughn, 1999). As mentioned, newer organizations tend to have flatter and unruly leadership structures compared with more established concerns. This characteristic may make them "psychopath friendly" (Babiak & Hare, 2006). In their study of 203 corporate professionals, Babiak et al. (2010, p. 188) reported that some highly placed senior managers (e.g., vice presidents, supervisors, and directors) scored high on psychopathy, which indicates that mobility up the corporate ladder and psychopathy may not be mutually exclusive. Particular personality traits may even be used to distinguish subtypes of white-collar offenders such as leaders and followers (Bucy, Formby, Raspanti, & Rooney, 2008). When you couple this with other psychological traits such as narcissism (Bickle et al., 2006) and desire for/illusion of control, it is unsurprising that strategic managerial decisions, as well as those made under crisis or in the moment, may result in less reflective and riskier outcomes than those made outside of the group context.

2.3.1 | Offender preferences and corporate deterrence

These studies and applications can be used to gain important insights into how preferences that guide offender decision making are formed—insights unanticipated by Sutherland (1939, 1940, 1949, 1973, 1983). In the case of corporate crime, the constructs also may explain why empirical tests of corporate deterrence yield such mixed results (Block, Nold, & Sidek, 1981; Braithwaite & Makkai, 1991; Gorsira, Denkers, & Huisman, 2016; Makkai & Braithwaite, 1994; Simpson, 2002; Simpson & Koper, 1992; Simpson et al., 2013). The characteristics of managers and the qualities of their decision-making styles result in inter- and intra-organizational variation in the effect of punishment.

In his work, Nobel prize-winning economist Daniel Kahneman (2011) distinguished two kinds of thinking: System 1 thinking is intuitive, spontaneous, and emotional—it is often unconscious and fast, whereas System 2 thinking takes more time. It is deliberative and rational. System 1 thinking does the heavy lifting, handling habitual and familiar decisions and choices. Because it is unreflective, however, System 1 thinking can create bias. System 2 monitors System 1, getting involved when System 1 requires assistance. This occurs when a problem is unusual or more complex. System 2 thinking, though, despite its deliberative character, can produce poor (or irrational) outcomes, in part, because System 1 bias affects cognitive processes. When the two systems are in accord, impressions turn into beliefs that shape preferences and choices. Importantly, psychological research findings have shown that preferences are not immutable. They change over time with new information and experiences.

So, how does this relate to deterrence and, specifically, to corporate deterrence? Nagin and Pogarsky (2001, 2004); Pogarsky, Piquero, and Paternoster (2004); and Loughran and collaborators (Loughran, Paternoster, & Weiss, 2012; Loughran, Pogarsky, Piquero, & Paternoster, 2012) examined perceived probabilities of sanction risk, intertemporal decision making, and discounting. In particular, they addressed the functional form of the certainty–offending relationship observing a nonlinear "tipping point" as well as whether and how would-be offender preferences regarding costs and benefits change over time (updating). Although several models of discounting exist, the evidence indicates that

individuals have hyperbolic time preferences; that is to say that they prefer to gain rewards immediately rather than delay them. They are "more impatient in the short run than they are in the longer term" (Loughran, Paternoster, et al., 2012, p. 624). Costs too are discounted but not to the same degree as benefits.

In studies of intertemporal decision making in criminology, scholars have examined the phenomenon among high-risk youth and college undergraduates. Unique circumstances and characteristics associated with the corporate context likely affect the intertemporal decision process. For instance, heterogeneity among managers (created by variations in psychological traits) will affect perceptions of the costs and benefits associated with certain lines of action (Loughran, Piquero, Fagan, & Mulvey, 2012). The corporate context, in which a short time horizon is prioritized over the long term and anticipated rewards from successful illegal activity are likely more predictable than they are for street criminals (Gottfredson & Hirschi, 1990), may enhance the hyperbolic discount for crime benefits. An overconfident manager (under the illusion of control) confronting a challenging issue with an underlying emotional valence is likely to prefer the more certain reward immediately—even when confronting a System 2 problem. When people are challenged simultaneously by a demanding cognitive task and by a temptation (easy solution), they are more likely to yield to that which is easy (Kahneman, 2011). Similarly, "strong emotional states" can narrow one's vision regarding desirable goals (Paternoster & Pogarsky, 2009, p. 123).

Given the paucity of self-reported offending data, it is hard to ascertain the epistemic correlation between the hidden figure of corporate crime and the number of offenders who are caught, but the evidence indicates that crime is rarely discovered and sanctioned (Dyck, Morse, & Zingales, 2014; Lynch, Barrett, Stratesky, & Long, 2016). Thus, a preference for unambiguous short-term rewards is likely driving decision making with little consideration given to costs. "Experienced" managers would be expected to engage in future illegality to the extent that their previous experiences create a positive emotional valence while enhancing overconfidence (illusion of control). Future corporate deterrence research should be aimed at testing for intertemporal decision making using models that include measures of rewards and costs that occur at different points in time and that incorporate potential moderating factors (overconfidence, emotional valences, and other psychological traits and characteristics).

2.4 | Definitional dilemma

In closing, I return to a point made earlier about the consequences of definitions run amok. White-collar crime is not a legal term. Sutherland (1939) coined the term "approximately" to mean offenses committed by persons of high social status and respectability in the course of their occupation. Barnett (2003, p. 1) observed that people continue to focus on the word "approximately" and use that as a basis to stretch or shrink the scope of white-collar crime to serve their purposes.

Nearly eight decades on since Sutherland's address (1939) all of the definitional revisions and recalibrations have not clarified the phenomenon (Levi, in press). Instead, it has created definitional ambiguity (Rorie, Alper, Shelly-Busey, & Simpson, 2018; Simpson et al., 2014). The subject matter is amorphous. Some white-collar crime scholars have attributed post-Sutherland ambiguity to the critical/positivist divide, suggesting that these competing perspectives "hamper obtaining a clear oversight in the nature and causes of white collar crime" (Huisman, 2016, p. 2). Others have viewed ambiguity not as a problem but as a strength (Braithwaite, 2016). I believe, however, that definitions matter. They matter in how we think about a phenomenon, how we measure it, and the knowledge generated about it. Let me give two examples.

Our theoretical understanding of how white-collar offenders are treated in the criminal justice system in terms of sentencing outcomes is entirely dependent on the definition of white-collar crime used in

the analysis. Recent research findings by Galvin (2018) demonstrated how the use of one definition may give the impression that, relative to non–white-collar offenders, white-collar offenders are treated with leniency. The use of other definitions, however, may lead to an entirely different conclusion—that white-collar offender status is a liability or immaterial to sentencing. Galvin concluded that “debating what is ‘truly’ white-collar crime is not just an exercise in semantics—it is a methodological choice that can have dramatic consequences on what (we think) we know about the treatment of white-collar crime in the criminal justice system” (2018, p. 1).

A second example involves results from the meta-analysis of corporate crime deterrence referred to earlier. In their search for relevant studies to include in the systematic review, the researchers noted that previous studies “conceptualized and measured the term ‘corporate crime’ in a widely varied manner” (Rorie et al., 2018, p. 39). The different definitions of the subject matter resulted in a cascading effect: Definitions affected measurement, research design, and ultimately study conclusions regarding effective prevention and control strategies. Given the substantial harm associated with corporate crime, such imprecision is costly to knowledge and evidence-based policy. Ironically, ambiguity may have yet another consequence—it may also result in a reduction in the urgency to develop a systematic database on corporate offending.

3 | CONCLUSION

I began this address by expressing deep admiration for Edwin Sutherland’s important contributions to our knowledge about and understanding of white-collar/corporate crime. The findings reported in his work (1939, 1940, 1949, 1973, 1983) necessitate that scholars take his arguments and ideas seriously but not so literally that it hampers how the field advances. Corporate crime, like all crime, has evolved over the past 80 years. In drawing from criminology and related disciplines, many new and exciting avenues of research and innovative theoretical approaches (too many for me to document here) have been introduced. Despite these developments, however, a glaring data problem remains that thwarts our basic knowledge about corporate crime.

The corporate crime data gap has forced scholars to draw on alternative sources and records to capture the phenomenon. Many of these efforts have been ultra-creative. Morselli and his collaborators (Morselli & Ouelett, 2018; Reeves-Latour & Morselli, 2017), for instance, have built extensive databases using public procurement records to pinpoint likely collusion among construction companies across space and time. Cross-disciplinary scholars, such as those trained in business, have used machine learning techniques to review financial statistics reported by companies to differentiate firms that likely engage in accounting fraud from those that do not (Jofre & Gerlach, 2018).

Promising approaches, however, cannot substitute for a comprehensive systematic corporate violations database, publicly available and accessible to all. With a more comprehensive data system available, researchers and practitioners could draw from existing scientific knowledge to improve the quality and usefulness of the data collected. As Laufer (2017, p. 82) pointed out, corporate criminology could learn a great deal from the science of policing: “[A]dvances in urban policing strategies, supported by sophisticated mapping and extensive data from evidence-based and place-based criminology, have no equivalent in the identification, investigation, and prediction of corporate offenses and offenders.” Yet this type of scientific and subject matter cross-pollination rarely, if ever, occurs. Sutherland, in 1939, called out for better data. My hope is that it does not take another 80 years to solve the problem.

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