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Occupational crime, occupational deviance, and workplace crime: *Sorting out the difference*

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Abstract

The concept of occupational crime—as one of the principal forms of white collar crime—has been quite familiar and widely invoked since the publication of Clinard and Quinney's influential *Criminal Behavior Systems: A Typology*. More recently, however, the term occupational crime has been applied to activities quite removed from the original meaning of white collar crime, and it has been used interchangeably with such terms as occupational deviance and workplace crime. In the interest of greater conceptual clarity within the field of white collar crime the argument is made here for restricting the term 'occupational crime' to illegal and unethical activities committed for individual financial gain—or to avoid financial loss—in the context of a legitimate occupation. The term 'occupational deviance' is better reserved for deviation from occupational norms (e.g. drinking on the job; sexual harassment), and the term 'workplace crime' is better reserved for conventional forms of crime committed in the workplace (e.g. rape; assault). The conceptual conflation of fundamentally dissimilar activities hinders theoretical, empirical, and policy-related progress in the field of white collar crime studies.

Key Words

• occupational crime • occupational deviance • white collar crime • workplace crime definitions

Introduction

Perhaps no other area of criminological inquiry has been more plagued by conceptual confusion than that of white collar crime. Many attempts have been made to resolve the definitional conundrums that arise in this realm (e.g. Friedrichs, 1992, 1996a, 1996b; Geis, 1992; Helmkamp et al., 1996; Meier, 2001). At least some of those who write about white collar crime choose to address the definitional question very briefly—if at all—and then move on to other substantive issues or empirical research findings. Although a certain level of impatience with the definitional and conceptual debates may be understandable, a premise adopted here is that theoretical advancement, meaningful analysis of empirical research, and the development of effective policy responses in the realm of white collar crime is only possible if it is grounded in optimal conceptual clarity (Helmkamp et al., 1996; Gerring, 1999). This claim should not be confused with a failure to recognize that consequential disputes about the best way to define key terms are inevitable, or that for some purposes intentionally ambiguous definitions are desirable. On the first point, one can agree with John Braithwaite's observation that 'It is an enormously valuable type of scholarship to study the struggle between those with an interest in clarifying and those with an interest in muddying the criminal-non-criminal distinction' (2001: 23). On the second point, one can agree with Vilhelm Aubert's (1952) call for adopting a deliberately ambiguous definition of white collar crime itself. The specific concern here, however, is with explicit or implicit claims that key terms have discrete, coherent meaning, when any such claims enhance rather than diminish conceptual confusion. Accordingly, further engagement with definitional and conceptual issues is called for, however tedious it may seem to some.

The present article was inspired by a long-standing dissatisfaction with Gary Green's (1997 [1990], 2001) solution to the definitional challenge, and more immediately by a review of several new encyclopedia entries, on: occupational crime, occupational deviance, and workplace crime.

A brief review of the history of the white collar crime and occupational crime concepts

It is well known that Edwin Sutherland (1940) introduced the concept of white collar crime in his 1939 American Sociological Society address in Philadelphia. In the present context only two observations need to be made. First, Sutherland has also been faulted with having contributed to the long history of conceptual confusion in this realm both because he defined white collar crime in somewhat different ways at different points, and because these definitions themselves were intrinsically problematic; second, Sutherland's (1949) own major work on white collar crime focused on the crimes of corporations.

In their influential *Criminal Behavior Systems: A Typology*, Clinard and Quinney (1973 [1967]: 131), building on earlier work by Quinney (1964), discriminated between corporate crime and occupational crime, or ‘violation of the legal codes in the course of activity in a legitimate occupation.’ This typological distinction has been widely accepted, along with the recognition that the term ‘white collar crime’ encompasses an exceptionally broad range of activities that can only be analyzed and discussed in a coherent manner when broken down into types. Indeed, the usefulness of typologies within criminology generally is quite established, despite some criticisms of limitations or distortions inherent in existing criminological typologies (Gibbons, 1983; Miethe and McCorkle, 2001). Gilbert Geis, the most respected active white collar crime scholar over a period of more than four decades, has long favored a typological approach to white collar crime (Geis, 1962, 1982, 1992, 2002; Meier, 2001). In my own approach to typologies of white collar crime I have argued for recognition of the term itself as relativistic and heuristic (Friedrichs, 1996a). While corporate crime and occupational crime are the two principal, or ‘pure,’ forms of white collar crime, I make the case for recognition of cognate, hybrid, and marginal forms of white collar crime, including: governmental crime; state-corporate crime; finance crime; technocrime; enterprise crime; contrepreneurial crime; and avocational crime (Friedrichs, 1996a). Each of these activities has a fundamental link with the core concept of white collar crime. But in the present context I will only address the conceptual confusion that has arisen in relation to the invocation of the terms ‘occupational crime’, ‘occupational deviance’, and ‘workplace crime’. The concept of occupational deviance—or deviance in an occupational setting—was especially influenced by Clifton Bryant’s (1974) reader, *Deviant Behavior: Occupational and Organizational Bases*. The term ‘workplace crime’ seems to derive principally from some recent attention to workplace violence (e.g. Southerland et al., 1997). On the one hand, occupational crime, occupational deviance, and workplace crime—as invoked today—are often used quite interchangeably, although I will argue that it makes more sense to differentiate quite clearly between them. On the other hand, although traditional white collar crimes are frequently encompassed by these terms, many of the other activities subsumed within these categories have nothing to do with white collar crime. This inevitably produces great conceptual confusion, and hinders both empirical and policy-related work.

Occupational crime

Gary Green (1997 [1990], 2001) has promoted the case for replacing the term ‘white collar crime’—which he regards as conceptually incoherent—with his particular conception of occupational crime. He defines such crime as ‘any act punishable by law that is committed through opportunity

created in the course of an occupation that is legal' (Green, 1997 [1990]: 15). The core argument here is that it is the structuring of crime opportunities, as a consequence of having a legitimate occupation, that most fully and effectively distinguishes what has traditionally been characterized as white collar crime from other forms of criminal behavior, and most especially conventional crime. Gerald Robin (1974) is credited with first having called for replacement of the term 'white collar crime' with 'occupational crime'. As Green puts it, 'The concept of occupational crime seeks only to identify a general type of opportunity' (2001: 406).

Certainly opportunity is a highly significant variable in the occurrence of crime, and arguably it has not been adequately emphasized in some criminological theories and typologies. But the claim is made here that the opportunity factor can also be overstated in the formulation of viable criminological theories and typologies. If occupations structure or facilitate the commission of certain forms of crime it does not necessarily follow that this dimension is the most significant element of the crime. All truly useful typologies of crime use multiple criteria, and attempt to group together activities that most logically belong together (Gibbons, 1983; Miethe and McCorkle, 2001). I hope to demonstrate here that the typological groupings emerging out of Green's approach are fundamentally flawed, and distorting.

Green breaks down occupational crime into four types. The first of these, 'Organizational Occupational Crime,' is essentially the equivalent of corporate crime. But Green loses more than he gains in this translation, and not only by virtue of the awkwardness of the term itself. It is the corporate structure, resources, environment, mission, and so on, that are the key elements for understanding crime in this category—e.g. environmental pollution; unsafe products; unsafe working conditions; price-fixing; contractual fraud; etc.—not the fact that company executives and managers have legitimate occupations. It is not so much the occupation as the organization that structures the opportunities in this realm. Indeed, corporate crime such as environmental pollution typically involves corporate personnel on various different levels for purposes of implementation, from CEOs to lowly workers.

Green's second type, 'State Authority Occupational Crime,' is arguably an even more awkward term for what I have chosen to characterize as governmental crime (with state crime and political white collar crime as the major types). This term is applied to abuses and illegal applications of state power by those holding some official position. In relation to this term an unusually broad array of activities is encompassed, ranging from a notary public who takes a bribe to genocide. In my own approach state crime is the public sector equivalent of corporate crime, and political white collar crime is the public sector equivalent of occupational crime. In the case of genocide, the fact that those carrying it out—from the high command to killing squads or concentration camp guards—may have 'legitimate' occu-

pations in some sense is far less significant than the role of the apparatus, resources, and ideology of the state.

Green's third type is 'Professional Occupational Crime,' the equivalent of crimes of professionals in other typologies. As an example under this heading we have unnecessary treatment and fraud by physicians. Green characterizes unnecessary surgery as a form of aggravated assault uniquely available to physicians. Certainly the injury to patients is real, but unnecessary surgery typically differs in a fundamental way from aggravated assault, insofar as the intent is not to do physical harm but rather to realize a financial gain. Green also includes sexual assault by physicians, and misappropriation of drugs, under this heading. It makes more sense to recognize that physicians may have special opportunities to commit sexual assaults, and to shield their actions from prosecution, but that such offenders are basically rapists/molesters or drug abusers simply utilizing the enhanced opportunity they have as physicians, and the dynamic and motivation for such offenses is fundamentally at odds with that of white collar crime, or financially driven crimes of professionals.

Green's fourth and final category is 'Individual Occupational Crime,' which is conceded to be a catch-all term for all other forms of occupational crime. Personal income tax evasion is given as one example of this type of crime. But one's personal income tax obligation is not linked to one's occupation; rather, it is linked to one's having income, from whatever source. Accordingly, I characterize it as a form of avocational crime, parallel to white collar and occupational crime, but in definitional terms outside the boundaries of such crime because it does not specifically occur within an occupational context.

Under this heading, as well, Green includes offenses ranging from thrifts fraudsters to nonprofessionals molesting children at day care centers. While the former example certainly fits under the traditional heading of white collar crime, the latter clearly does not. Again, as in the case of physicians, while it may be true that day care workers who molest have unusual opportunities to carry out this type of crime, they are best classified as molesters, not as occupational offenders. We do not characterize conventional crime as 'neighborhood crime,' despite the fact that in many respects the neighborhood structures the opportunity for such crime. The offenders identified here have far more in common with others with tendencies promoting pedophilia than they do with financially oriented occupational offenders, such as the crooked thrift executives, or employees who steal.

In noting the dissension on the meaning of white collar crime, Green claims that 'some scholars include among white collar crimes those offenses committed in the course of occupations that are illegal themselves' (2001: 406). Mafioso, contract killers, bookies, burglars, and the like might be said to occupy illegal occupations, but I am not aware of white collar crime scholars who would label those occupying such positions as white collar offenders. However, it should be recognized that the legality (or legitimacy) of a particular occupation is not always entirely clear-cut, and occupations

could be ranged along a continuum of legitimacy and legality. For example, real estate agent is a fully legitimate/legal occupation, con artist is not, but what about a time share entrepreneur who is using high-pressure sales tactics and some forms of misrepresentation? In my book *Trusted Criminals* I adopted a term formulated by Francis, 'contrepeneur,' to encompass a wide range of activities (and related occupations) that incorporate in varying degree elements of both legitimacy and illegitimacy, legality and illegality (Friedrichs, 1996a). A 'fence' who deals in stolen goods is obviously engaged in illegal activity, so fence is not a legitimate occupation, but fences are invariably legitimate businessmen (e.g. pawnbrokers) who engage in much legitimate and legal activity along with their illegal and illegitimate activity. Accordingly, if we address actual cases, it is not necessarily accurate to characterize someone as either engaged in a legal or an illegal occupation, as opposed to elements of both. 'Enterprise crime' is another term I have used to characterize activities involving the intersection of legitimate businesses with syndicated (organized) crime. Again, what level of engagement with illegal enterprises is required for a businessman to no longer be legitimate?

Green argues that '... the concept of occupational crime can be equally as useful as "white collar crime" in seeking an understanding of the ways in which wealth and political powers affect the making of law and their application' (2001: 406). But many legal occupations are essentially devoid of real wealth and political power. White collar crime, in its traditional use, incorporating corporations and the professions, does in fact highlight the disproportionate political clout of organizations and occupations in the elite or at least upper middle class realm.

In sum, Green fails to make the case that the benefits of replacing the concept of white collar crime with occupational crime outweigh the costs. What Green gains—the emphasis on how occupations can structure criminal opportunities—is more than offset by what he loses, through wholly abandoning the important social class dimension of the traditional concept of white collar crime, and by conflating activities that may occur within a single occupational framework but are fundamentally different in terms of motivation and form. Those who adopt the white collar crime concept typically only make heuristic claims for it; Green claims a fundamentally analytical coherence for his concept of occupational crime that simply cannot be demonstrated. The Clinard and Quinney conception of occupational crime as a subtype of a broader category of white collar crime remains more valid, in this view.

Occupational deviance

The term 'occupational deviance' has also been invoked. Nathan W. Pino (2001: 260) defines it as 'any self-serving deviant act that occurs during the course of one's occupation,' broken down into deviant occupational be-

haviors (e.g. extramarital relations with a co-worker; consuming alcohol in the workplace; whistle-blowing) and occupational crime (e.g. embezzlement; sexual harassment; accepting kickbacks). Pino cites Clifton D. Bryant's (1974) reader *Deviant Behavior* as one basic source of inspiration for this conception. Readings in this volume addressed such matters as work-norm violations in the factory, drug addiction among physicians, lesbian behavior among strippers, fortunetelling, and abortion clinic ethnography, as well as some forms of white collar crime. Deviant occupational behavior is characterized as activity undertaken for one's own gain, or to cope with workplace stress, and not for the benefit of one's employer or organization. However, there are obviously fundamental differences between extramarital relations with a co-worker and whistle-blowing; the latter activity can be exceptionally selfless, for example. It is also important to differentiate between the workplace norms established by employers (often quite formally, in employee manuals) and the norms of co-workers, typically informal but often quite potent. 'Rate-busting,' or exceeding employer quotas and expectations, is likely to be viewed positively by the employer, and may well be rewarded; from the point of view of co-workers, however, it is more likely to be viewed negatively. Professionals must also orient themselves in relation to the norms of their professional associations (e.g. the American Medical Association; the American Bar Association), and such professional association norms may be at odds with the norms and expectations of both employers and co-workers.

Some of those who write about white collar crime—or at least certain forms of white collar crime—have opted to use the term 'deviance', instead of 'crime' (e.g. Douglas and Johnson, 1977; Ermann and Lundman, 1996; Simon, 1999). But the application of deviance in the realm of white collar generates several fundamental problems. First, 'deviance' as a term is powerfully associated with those who are fundamentally (and sometimes visibly) different from mainstream members of society—e.g. prostitutes; homosexuals; drug addicts; the mentally ill; and so on. One of the striking dimensions of white collar crime (and occupational crime) is that the offenders are typically quite fully integrated into the mainstream of society, and are widely so perceived. Second, for certain significant forms of white collar crime offenders are in fact conforming to prevailing organizational or occupational norms, rather than deviating. Of course many traditional forms of deviance are characterized by peer group conformity—e.g. gang members—but in the case of white collar crime or occupational crime the deviance from mainstream norms may be more ambiguous, or less clear-cut. Finally, any invocation of the term 'deviance' in this context has to clarify whether deviance from formal or informal societal norms, from formal or informal organizational norms, from formal or informal professional peer association norms, or from informal norms of workgroup peers, is involved.

In discussing occupational crime (as a subtype of occupational deviance), Pino (2001) basically adopts Green's approach, and accordingly

includes such phenomena as child molesting in a day care center, along with embezzlement and accepting kickbacks, but expands on Green to include workplace violence. Occupational crime, then, has been conceived of as financially driven crimes committed by middle and upper class individuals within the context of their legitimate occupation; financially driven crimes committed within the context of any legitimate occupation, regardless of socioeconomic status; financial and non-financial forms of crime and deviance committed within the context of any legitimate occupation; and conventional criminal behavior committed in the setting of the workplace. Occupational crime can range from that which conforms to widely held norms within the occupation (e.g. taking kickbacks; favoring some suppliers; tax evasion) to that which is wholly at odds with occupational norms (e.g. sexual molestation; violence against co-workers). Occupational crime, as defined here, incorporates violations of society's laws and regulations (e.g. fraud and embezzlement); violation of the norms of professional associations (e.g. ambulance chasing); violations of the rules or norms of employers (e.g. misappropriating trade secrets); and violations of co-workers' norms (e.g. rate-busting). All of this tends to contribute to and enhance conceptual confusion. In my view it would make more sense to restrict the term 'occupational deviance' to non-criminal violations of norms within a legitimate occupational setting, with differentiation between violations of the norms of the employer, of professional or occupational associations, and of co-workers. See Table 1.

Table 1. Comparing forms of white collar and conventional crime

<i>White Collar Crime</i>		<i>Conventional Crime</i>		
<i>Corporate/Organ. Occ.</i>		<i>Occupational Crime</i>		<i>Conventional Crime</i>
<i>C & Q</i>	<i>Green</i>	<i>C & Q</i>	<i>Green</i>	
HMO defrauds Medicaid		MD defrauds Medicaid	MD steals patient's wallet	Pickpocket steals stranger's wallet
Pharmaceutical Corporation sells dangerous product (e.g. Dalkon shield)		Surgeon performs unnecessary surgery	MD molests patient	Uncle molests niece
Corporation defrauds consumers		Employee steals f/employer	Maid steals f/guest	Burglar steals from homeowner

Notes: Examples in the two columns to the left would be uniformly defined as white collar crime, either in Clinard and Quinney's (C & Q) typology of Corporate Crime and Occupational Crime, or Green's Typology of Organizational Occupational Crime and Individual Occupational Crime. Examples in the right-hand column would be uniformly defined as forms of conventional crime. In the remaining column we have examples of illegal acts that could be regarded as fitting Green's conception of occupational crime. The question here is this: do they have a closer generic relation to white collar crime or to conventional crime? I would argue, with the latter.

Workplace crime

Finally, we have the concept of ‘workplace crime,’ defined as ‘any harmful act committed by a person or group of persons during the course of a legitimate occupation’ (Ismaili, 2001: 530). It is taken to be harm specifically generated by the workplace, and accordingly is broken down into: occupational crime; corporate (organizational) crime; and workplace violence. In my view, however, the concept so defined simply confuses our understanding of the range of illegalities that can occur in the context of the workplace. As an ‘umbrella’ term for a range of different offenses it is quite inferior to the white collar crime concept, which at a minimum offers a fundamental contrast to conventional crime. By analogy, it would not seem to be either theoretically or conceptually useful to put forth a concept of ‘home-based crime.’ The home can be the locus of a broad range of illegalities that have nothing important in common: burglaries; domestic violence; and even some forms of occupational crime—e.g. investment fraud—in an era when growing numbers are working out of their homes. It is one thing to say that an organizational structure (e.g. an asbestos-producing corporation) can generate a particular form of crime, or a specific occupation (e.g. medicine) can generate a particular form of crime. However, the workplace per se is merely a setting, and has much less to offer toward an understanding of how specific forms of crime are generated. Quite different forms of violence are linked with the workplace: e.g. the violence of unsafe working conditions; the violence of unnecessary surgery; the violence of homicide by a disgruntled worker, or sexual assault by a co-worker. To conflate such different violence under the heading of workplace violence confuses violence that is financially driven (and typically indirect or incremental), with violence that is emotionally driven (and typically direct and immediate).

The notion of ‘workplace’ is implicit in the concepts of corporate crime and occupational crime: i.e. they occur by definition in the context of the workplace. When this concept is then extended to the activities of state institutions even greater confusion arises. We are informed by Ismaili (2001: 532), in his encyclopedia entry, that workplace crime occurs in the public sector ‘when public officials violently victimize citizens on the basis of either formal or informal policies.’ As stated, this definition encompasses genocide, CIA assassinations, and budgetary cutbacks for prenatal care, or inadequate funding for addressing AIDS. Lax enforcement (or non-enforcement) of building codes can produce victims in the context of earthquakes. This concept might also include sexual exploitation of subordinates by a public official.

But if we are informed that some two million Americans are victims of violence at the workplace—including homicides, assaults, rapes, and robberies—how shall we treat this information in relation to the broader concept of workplace violence? First, on homicide, such statistics may

include crimes committed by aggrieved, disgruntled, and dismissed employees, and crimes that arise out of the intrinsic dangers of the workplace—e.g. a prison inmate murdering a guard—but also may incorporate victims of violence in the workplace for reasons wholly independent of the work setting itself (e.g. homicides committed by estranged husbands and jilted boyfriends), and by conventional offenders who have invaded the workplace for specifically criminal purposes. Assaults and rapes occur in the workplace, but it seems useful to discriminate between sexual exploitation of a subordinate by a supervising manager (through direct or indirect threats relating to employment status, promotion, and salary bonuses), an employee taking advantage of special access in the workplace (e.g. a janitor raping a doctor, or vice versa), and an assault by an outsider (entering an office where a secretary is working alone, late at night). Official theft statistics relating to the workplace are highly unlikely to include systematic thefts of workers by owners and managers (e.g. looting of a pension fund; illegal underpayment in violation of minimum wage law), but could include theft by a co-worker, or by an outsider.

Although it may be useful for some purposes to recognize that a significant number of crimes occur at the workplace, it is not conceptually or theoretically useful to classify criminal offenses together on that basis. If a convenient market night clerk is robbed and murdered on the job by a stranger at 3 a.m., in an inner city location, this may be ‘workplace crime’ in the broad sense of the term, but it is best classified as conventional felony robbery and murder. Certainly this crime—as well as many other offenses provided as examples—is about as far removed from what Sutherland meant by white collar crime as one could possibly imagine.

If the term ‘workplace crime’ has any conceptual and theoretical value it seems that it should be restricted to conventional forms of crime that occur at the workplace, further differentiated in terms of whether they involve insiders or outsiders.

Conceptual clarity and policy challenges

Different forms of crime require different types of policy initiatives in response to them. Accordingly, clarity in the identification of appropriate policies provides one important rationale for discriminating between occupational crime, occupational deviance, and workplace crime. Each of these types of crime involves somewhat distinctive interactive dynamics between motivations and structures of opportunity. Each offers somewhat different challenges for the development of effective policies.

In the case of occupational crime, the policy challenges focus on addressing the structures of opportunity for defrauding in some form customers, clients, patients, or employers, as a function of the organization of the occupation and its professional associations; the exploration of procedures and principles capable of reducing inherent conflicts of interest

within particular occupational settings; the development of more tightly coupled and effective review and oversight procedures (i.e. both external policing and self-policing), with applications to both occupational qualification and disqualification; and more systematic education and socialization of consumers, clients, and patients to enhance their capacity to protect themselves.

In the case of occupational deviance, the policy challenges focus on the formal articulation of standards of acceptable behavior within an occupational context; the empowering of peer groups to monitor and respond more effectively to certain forms of deviant behavior within their occupational milieu; the promotion of more work-based rehabilitation and treatment programs for those with pathologies affecting work-related behavior; and mechanisms for promoting more open dialogue about the boundaries of appropriate work-related behavior.

In the case of workplace crime, the policy challenges focus on the implementation of reasonable measures to promote security from external threats; appropriate screening of personnel during hiring, to weed out individuals with predatory or psychopathic tendencies; the development of an appropriate balance between surveillance of employees and the implementation of internal security measures with respect for employee privacy; and the evaluation of professional practice standards and procedures to minimize vulnerability to conventional crime victimization at the hands of professionals.

Conclusion

The conceptions of occupational crime, occupational deviance, and workplace crime, as put forth in a new criminological encyclopedia, contribute to the on-going confusion about the nature of white collar crime, and surely intensify this confusion. White collar crimes, as traditionally defined, are conflated with many other types of illegal or deviant activities with which they have nothing significant in common. I have argued elsewhere that the concept of white collar crime is inevitably a heuristic and relativistic term, and illegal and harmful activities may be viewed as more or less purely white collar crime; some kinds of illegal activities are characterized as cognate, hybrid, or marginal forms of white collar crime (Friedrichs, 1996a, 1996b). But all such activities have a clear, logical relationship to both the original meaning of white collar crime put forth by Sutherland, and the meaning in public discourse. Many of the activities identified as forms of occupational crime, occupational deviance, and workplace crime, by the authors of the encyclopedia entries discussed above, have absolutely no logical or coherent relationship to white collar crime. Accordingly, it would be far more productive to retain the original meaning assigned to occupational crime by Marshall Clinard and Richard

Quinney, with a qualifying thesis, as financially oriented offenses committed by individuals within the context of a legitimate occupation, and specifically made possible by that occupation; to restrict the use of occupational deviance to activities deviating from norms within an occupational setting, including the norms of the employer, the norms of professional associations, and the norms of co-workers; workplace crime is best restricted to conventional forms of crime—e.g. homicide; assault; rape; molestation; robbery; theft; etc.—that occur at the workplace. Such conceptual distinctions should be useful in theorizing about crime, in engaging in empirical study of it, and in formulating policies in response to it.

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