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# Why They Do It: Inside the Mind of the White-Collar Criminal, by Eugene Soltes

Larissa Lucas

Osgoode Hall Law School of York University

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Book Review



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# Why They Do It: Inside the Mind of the White-Collar Criminal, by Eugene Soltes

## **Abstract**

Sociologist Edwin Sutherland first coined the term “white-collar crime” on December 27, 1939 during his presidential address at the fifty-second annual meeting of the American Sociological Society. Sutherland began his speech by arguing that much of what his colleagues understood about crime—namely, that it was restricted to the streets and largely committed by individuals in the lower social classes—was “misleading and incorrect.” According to Sutherland, the most serious criminal offences were not being committed by the poor or the “delinquent,” but rather by society’s most “respected business and professional men.”

## Book Review

***Why They Do It: Inside the Mind of the White-Collar Criminal*, by Eugene Soltes<sup>1</sup>**LARISSA LUCAS<sup>2</sup>

SOCIOLOGIST EDWIN SUTHERLAND FIRST COINED the term “white-collar crime” on December 27, 1939 during his presidential address at the fifty-second annual meeting of the American Sociological Society.<sup>3</sup> Sutherland began his speech by arguing that much of what his colleagues understood about crime—namely, that it was restricted to the streets and largely committed by individuals in the lower social classes—was “misleading and incorrect.”<sup>4</sup> According to Sutherland, the most serious criminal offences were not being committed by the poor or the “delinquent,” but rather by society’s most “respected business and professional men.”<sup>5</sup>

Seventy-five years later, following Sutherland’s speech, white-collar crime has continued to evolve and has become increasingly intricate and complex. Sutherland’s basic argument, however, has perhaps never been more poignant. Rarely does a week go by without newspaper headlines reporting that another well-known executive has been indicted for engaging in white-collar crime. From Enron to the 2008 financial crisis, white-collar crime is often a regular fixture in the news and its effects are devastating and far reaching. But what drives wealthy and powerful individuals, who seemingly have it all, to commit these crimes?

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1. (New York: PublicAffairs, 2016).

2. Larissa Lucas is a JD Graduate (2017) from Osgoode Hall Law School in Toronto, Canada.

3. Edwin H Sutherland, “White-Collar Criminality” (1940) 5:1 Am Soc Rev 1.

4. *Ibid* at 2.

5. *Ibid* at 1.

Eugene Soltes, Jakurski Family Associate Professor of Business Administration at Harvard Business School, addresses this question in his debut book, *Why They Do It: Inside the Mind of the White-Collar Criminal*. Soltes's groundbreaking analysis is truly the first of its kind since Sutherland initially studied the question in his seminal work, *White Collar Crime*.<sup>6</sup> Sutherland analyzed the misdeeds of seventy of America's largest corporations and their executives in order to explain the origins and dynamics of white-collar crime. Soltes takes Sutherland's original idea a step further, drawing from extensive personal interaction and correspondence with nearly fifty former executives over a period of seven years, in addition to using the latest research in psychology, criminology, and economics to investigate how once-celebrated executives become white-collar criminals.

The two books differ greatly in that Sutherland's publisher, fearing legal repercussions in the timid climate of the 1940s, required him to remove identifying markers, including names, of the corporations and individuals involved in the illegal activity. Soltes's work does not face the same restrictions. However, they are similar in both their quality of analysis and novel contribution to the existing body of literature.

*Why They Do It* is particularly topical given the increasing globalization of business and developments in technology that threaten our society with even more devastating corporate misconduct. The extraordinary costs to victims of corporate misconduct are clear and have been addressed extensively in the literature. Soltes's contribution is unique in that it allows the reader to peer deeply into the minds of the many prominent perpetrators of white-collar crime through their firsthand accounts. Accordingly, the lessons Soltes draws on in *Why They Do It* are needed more now than ever.

In *Why They Do It*, Soltes argues that the explanations for white-collar crime that have been put forth by academics thus far fail to paint a comprehensive picture as to why many seemingly successful people cross the proverbial line. According to Soltes, white-collar criminals are not merely driven by their excessive greed or hubris, nor do they undertake a calculated cost-benefit analysis before deliberately undertaking to break the law. Instead, Soltes demonstrates that the executives he studied who committed crimes did so on the basis of their intuitions and gut feelings. Executives frequently find themselves in a position where they must make important decisions under pressure and with imperfect information, and are thus forced to—as Soltes puts it—“manag[e] the gray.”<sup>7</sup> Soltes notes that these “gut feelings” are often poorly suited for the modern business world,

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6. Edwin H Sutherland, *White Collar Crime* (New York: Dryden Press, 1949).

7. Soltes, *supra* note 1 at 7.

where business leaders are increasingly distanced from the consequences of their decisions and the victims they impact.

## I. THE STRUGGLE TO CRIMINALIZE

Soltes does an excellent job of setting the stage by explaining the historical, legal, and political context through which white-collar crime came to be publically condemned and regulated. This detailed background is a strong platform for the analysis that follows, and provides an exemplary breakdown of the factors leading to the birth of white-collar crime in the United States. Soltes begins by telling the story of how the conduct now conceptualized as white-collar crime came to be criminalized. Soltes notes that if his book “had been written a hundred years earlier, much of the business misconduct described ... would not have been illegal.”<sup>8</sup> Further, to the extent that the law prohibited this conduct, violations produced little public condemnation and few prosecutions. Up until a half-century ago, the public generally stood behind executives who were prosecuted for white-collar offenses. Throughout the latter half of the twentieth century, however, public sentiment changed and regulators began to design and enforce laws to restrict white-collar crime.

Edwin Sutherland figures prominently in the birth of white-collar crime, as does the political climate that eventually led to the regulation of executive misconduct. Following the stock market crash of October 1929, the United States Congress introduced legislation to regulate corporate financial reporting and securities trading. Franklin D Roosevelt focused on this in his 1932 presidential campaign, highlighting the dangers posed by irresponsible business practices and proposing regulation to control the “privileged princes.”<sup>9</sup> Despite resistance from corporate leaders, legislators eventually recognized the need to address weak state blue-sky laws.<sup>10</sup> This led to the first major pieces of federal securities regulation in the United States: the *Securities Act of 1933*<sup>11</sup> and the *Securities Exchange Act of 1934*.<sup>12</sup> It was not until the 1960s, however, that executives began being criminally prosecuted for behaviour such as collusion and price-fixing, and “sending them to prison was still a foreign and uncomfortable idea.”<sup>13</sup>

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8. *Ibid* at 8.

9. *Ibid* at 20-21.

10. Blue-sky state laws are designed to protect consumers and investors against fraudulent sales practices and activities. See *ibid* at 21.

11. *Securities Act of 1933*, 15 USC § 77a *et seq* (1933).

12. *Securities Act of 1934*, 15 USC § 78a *et seq* (1934). See also Soltes, *supra* note 1 at 21.

13. Soltes, *supra* note 1 at 31.

History and context are important factors in understanding the criminalization of white-collar crime. By the end of the 1970s, the head of the American Bar Association's Section on Litigation stated that white-collar criminal defense was the fastest-growing legal specialty.<sup>14</sup> The Department of Justice officially made white-collar crime a top priority in 1978, and legislators passed the *Foreign Corrupt Practices Act of 1977*<sup>15</sup> ("FCPA"), which "significantly restrict[ed] corporate behavior that the public felt was not just unethical but criminal."<sup>16</sup> The FCPA made bribery of foreign officials a criminal offense for the first time—prior to its enactment, foreign bribery was not only explicitly legal, but also tax deductible.<sup>17</sup>

## II. NATURE OR NURTURE? REASONING OR INTUITION?

Soltes explores the various explanations for why people commit white-collar crimes in Part II of the book, and argues that the cost-benefit explanation of white-collar crime fails to fit the evidence. He looks at the various psychological and sociological explanations for executive deviance with impressive expertise. It is here where Soltes begins to reject the notion that executives make calculated decisions to commit criminal acts. He instead suggests that these acts are a result of executives relying on their imperfect intuition in imperfect situations where they are frequently required to make important decisions.

Part II also highlights the impact of the enactment of the *Sarbanes-Oxley Act of 2002*<sup>18</sup> ("SOX") in the United States. The SOX was designed by regulators to address the very issue that Soltes has identified—namely, that executives do not think carefully enough before making major decisions. More specifically, SOX deals with the reliability and accuracy of firms' financial statements. SOX requires senior executives to personally attest to the accuracy of their firm's statements by signing the financial report, thereby providing "a final opportunity to reflect—and reconsider—the consequences of filing a fraudulent financial statement."<sup>19</sup> But Soltes argues that the solution that regulators designed in the form of SOX is ineffective: "By the time a manager appreciates that he should have made a decision differently, it's often too late."<sup>20</sup>

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14. See *ibid* at 37.

15. *Foreign Corrupt Practices Act of 1977*, Pub L No 95-213, 91 Stat 1494 [FCPA].

16. Soltes, *supra* note 1 at 37.

17. See *ibid*.

18. *Sarbanes-Oxley Act of 2002*, Pub L No 107-204, 116 Stat 745 [SOX].

19. Soltes, *supra* note 1 at 156.

20. *Ibid*.

### III. THE BUSINESS OF MALFEASANCE

In the final part of the book, Soltes focuses on conversations and correspondence with former executives and how they reflect on their actions. He divides this part into six chapters, with five of the six chapters dealing with a different type of white-collar crime: (1) misleading financial disclosure, (2) financial reporting fraud, (3) insider trading, (4) deceptive financial structures, and (5) Ponzi schemes. This structure lends itself particularly well to displaying the breadth of Soltes's research and analysis, as it allows him to effectively discuss what each offense entails, the legal regulation of each type of misconduct and the history behind it, and give examples of how the offenses played out in practice through accounts of his conversations with former executives.

Each of these chapters provides a range of tangible examples supporting Soltes's overarching thesis. For example, in chapter 12 (which discusses deceptive financial structures), Soltes details the rise and fall of Enron. He notes that:

Figuring out how aggressively to pursue loopholes is a difficult question without an easy answer. Sometimes exploiting loopholes is applauded as inventive, while at other times it's destructive. However, we can see what happens if everytime a business encounters a law preventing it from moving forward, its executives see it as another hurdle to be jumped over, a problem to be solved.<sup>21</sup>

Through conversations with Enron's Chief Financial Officer, Andrew Fastow, Soltes paints a picture of how various "loopholes" in the law and in Enron's organizational structure and corporate culture allowed one of the most significant financial frauds in history to be perpetrated. Fastow said:

I was doing exactly what I was incentivized to do. We wouldn't have gone through all this trouble if we just wanted to cheat. We were finding ways to get around the rules but going through a complex process to find the loopholes to allow us to do it.<sup>22</sup>

The final chapter changes tack and examines an individual: perhaps the most famous white-collar criminal, Bernie Madoff. Bernie Madoff, unlike Fastow, preferred to view the fraudulent scheme for which he was convicted—the largest Ponzi scheme in history—as something closer to oversight than to recklessness. According to Madoff, "[e]veryone thinks I had this master plan and they give me credit for being this master thief. That was not the situation."<sup>23</sup>

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21. *Ibid* at 231. Soltes gives modern-day examples of "applauding loopholes" by citing such companies as Uber and Airbnb. See *ibid* at 227-29.

22. *Ibid* at 243.

23. *Ibid* at 308.

While Soltes's analysis of Madoff would have undoubtedly fit well with the chapter on Ponzi schemes, Soltes takes the opportunity to give Madoff his own chapter. This underscores not only the magnitude of Madoff's misconduct, but also the differences between Madoff and the other individuals discussed throughout the book.

#### IV. CONCLUSION

While *Why They Do It* is helpful in illuminating the background context of white-collar crime and providing a platform off which Soltes is able to build his argument, it is the final part of the book that is the true masterpiece. No other work has come close to doing what Soltes does here. His interviews and correspondence with more than fifty white-collar criminals over a seven-year period provide unprecedented insight into a previously unexplored area of the law: Why do white-collar criminals do what they do? Soltes tackles head-on our troubling lack of understanding of this phenomenon.

The book also stands out in its multi-disciplinary aspect. Few works combine law, business, history, and psychology in such a masterful way as to paint a complete picture of white-collar crime. Soltes demonstrates an ability to effectively summarize the existing literature on the topic while also advancing his own unique and highly persuasive argument.

Soltes provides a few recommendations for preventing future incidences of white-collar crime, including revamping ethics curricula in business schools and creating "uncomfortable dissonance" for executives through corporate governance structures that require seeking disagreement.<sup>24</sup> Ultimately, Soltes's book will change how readers think about why executives commit white-collar crime. He concludes:

Appreciating our [own] lack of invincibility—our inherent weakness and frailty—offers us the best chance of designing the appropriate mechanisms to help manage these limitations. If we learn to be more suspicious of our gut feelings when placed in new or difficult situations, we can acknowledge the need to create more opportunities for reflection and to bring in the viewpoints of others to question us. If we humbly recognize that we might not always even notice the choices that will lead us astray, we are more likely to develop ways to identify and control those decisions. But it's only when we realize that our ability to err is much greater than we often think it is that we'll begin taking the necessary steps to change and improve.<sup>25</sup>

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24. *Ibid* at 315.

25. *Ibid* at 329-30.



Although the book focuses almost exclusively on the United States, Soltes's underlying sentiment transcends geographic boundaries and is universally valuable. Canada is not without its own recent instances of large-scale corporate misconduct—for example, Nortel and Livent—and as such, this book will be highly relevant to the Canadian reader.