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Sorting Out White-Collar Crime, 97 *Texas Law Review* __ (forthcoming 2019)

The federal code that defines crimes declines to sort its fraud offenses according to degrees of harm or culpability. Although state prosecutors routinely charge crimes such as homicide or robbery in varying degrees, the federal code's core fraud statutes are noticeably flat. There is no such thing as First or Second-Degree Fraud in the federal code.

Amidst a roiling debate as to whether the federal government overcriminalizes or under-enforces white-collar crime, scholars have lost sight of the federal code's lack of gradation. This Article seeks to remedy this neglect, particularly in regard to fraud crimes. Drawing examples from federal and state criminal codes, this Article analyzes the ways in which ungraded statutory regimes generate problematic and self-destructive expressive gaps. By lumping so much conduct under a single statutory umbrella, the federal code deprives the public of the ability to gauge the seriousness of a specific offense. At the same time, it obscures those factors that separate the worst frauds from the merely bad ones.

If criminal law's function is to distinguish wrongdoing and not solely to prohibit it, then our federal fraud statutes leave much to be desired. Reasonable people can debate the proper methodology for distinguishing bad from worse offenses, but it is quite another matter to abandon statutory sorting altogether. Accordingly, the Article closes by advocating the use of a white-collar misdemeanor statute to improve—and sort—the federal code's fraud crimes.
