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International Summaries

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ACQUISITIONS

Prevention of White-Collar Criminality: Possibilities and Limitations

The difficult problem of combating white-collar crime—which is often hard to detect and rapidly increasing its scope—is the subject of this lecture.

By Edwin Kube

White-collar crime: the phenomenon

Despite the expansion of white-collar crime in West Germany and internationally, knowledge of its origins is quite limited, and effective methods of prevention are still being sought. Estimates of the cost of white-collar crime to West German society range from \$0.7 to \$1.05 billion annually. The problems surrounding the phenomenon and its prevention are outlined here, and strategies for its control are proposed.

Attempts to define white-collar crime usually remain within the context of breaches of the economic order, deleterious effects on society, abuse of positions of trust, and the job-related nature of the crime. Considerable confusion continues to surround the question of when to regard certain crimes, e.g., violations of environmental or customs regulations, as white-collar offenses. Practical definitions provided by a specific law are applied in about 200,000 cases a year, most of them involving minor offenses.

The actual scope of white-collar criminality is very broad and expands with astonishing speed as economic changes give rise to new opportunities. "Innovative" economic crimes include options fraud in commodities futures and exploration; organized check and credit card fraud; offenses involving insider information, particularly in the securities trade; the illegal transport and employment of foreign workers; data-processing-related crimes; and pirating of videorecordings and tape-

recordings. The advent of computer-based technology has produced a whole new spectrum of economic crimes, many of which are extremely hard to detect.

The increasing extent of the intellectualization, organization, and internationalization of the planning and execution of white-collar crimes greatly complicates effective response, repression, and prevention. The most common penalty to date has been fines, but demands for much more stringent measures are becoming increasingly louder and more frequent. Some substantial fines have been levied, yet their deterrent effect appears to be minimal.

The prevention problem

The fact that both positive general prevention (reinforcement of public consciousness of the law) and negative general prevention (fines and prison sentences) seem to be appropriate, and that the perpetrators of white collar crime can be assumed to be very rational people, implies that a differentiated approach to crime prevention would be the most effective. Such an approach should involve suitable restructuring of the environment in which the crimes take place.

Three levels of prevention are generally recognized in criminological literature. Primary prevention stops criminality at its roots by eliminating basic causes. Secondary measures prevent individuals ready to commit a crime from doing so by altering the opportunity structure or by actively encouraging conformity to legal norms. Tertiary prevention seeks to reduce recidivism through appropriate penalties, treatment, and rehabilitation.

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For prevention of economic crimes, primary and tertiary preventive measures are of limited utility. Primary preventive measures can only alter conditions that influence general acceptance of legal standards affecting the economy. Tertiary prevention is unfeasible, as specific effective sanctions for white-collar criminals are virtually nonexistent under current West German law.

Limiting opportunity: specific countermeasures

The aim of secondary preventive measures should be to alter the criminal opportunity structure by placing obstacles in the path of the potential perpetrator. Such measures are more likely to deter occasional offenders than hard-core career criminals.

Victim education. One way of accomplishing this is to concentrate on potential victims and on educating them in how to avoid being victimized. (Unfortunately, some potential victims knowingly expose themselves to the risk of victimization because they cannot resist the temptation of potential illicit gains.) Such views on the part of potential victims greatly hinder victim protection and crime prevention. Use of the mass media to inform potential victims about how to protect themselves has definite benefits. However, such benefits may well be offset by the information contained in media messages on how to commit white-collar crimes. Such information occasionally prompts copycat offenses. In many ways, the best method for protecting potential victims and preventing white-collar crime is to alert inexperienced individuals to the risks of engaging in speculative deals.

Increasing the energy required to commit a crime. Another form of crime prevention involves increasing the amount of energy and effort required for the commission of a criminal act. In other words, make white-collar crime more trouble to commit than it is worth. A simple illustration of this approach is security measures for buildings. A more complex example involves technical measures implemented to protect computers and especially computer line systems from being tapped. Sound preventive measures in the computer field include regular job rotation of personnel who have access to various parts of an on-line system, precise records of all systems activities, and comprehensive plausibility checks. However, the advantages of such measures are offset to some extent by their extreme costs. Moreover, these measures affect everyone equally, not just persons who are likely to commit white-collar crimes. Hence, a criminal rather than an administrative solution would appear to be more suitable, since it would focus on potential perpetrators and would not penalize innocent employees. A series of graduated penalties, ranging from civil action or warnings in cases of minor offenses, to criminal action in cases of major crimes, also could be implemented. Practice has shown that civil action is one of the most effective penalties for minor criminal acts, and it has even been an important deterrent in some cases of serious crime.

Legislation. Another way to control and prevent white-collar crime is through the administrative structure, by streamlining legislation and regulations. Some rules actually seem to encourage criminal behavior, such as tax laws that support the so-called underground econ-

omy. Moonlighting and cash transactions without records are regularly condoned. There are even laws that invite criminality; one example is the investment fee law, which prescribes fees for investments consummated within a pre-defined time period. Such a practice provides an incentive to backdate or foredate invoices and contracts.

Streamlining crime legislation is not a simple matter. Extreme care must be taken to avoid doing more damage than legislators wish to prevent. For example, there have been calls to ban the limited liability company and similar business structures due to abuses committed under the guise of corporate transactions. Such a ban, however, would certainly hinder the accumulation of capital for legitimate business purposes. The legislature should at least seek ways of curbing business abuses, including bankruptcy crimes and illegal dealings conducted by dubious investment companies. One potentially effective means of combating bankruptcy abuse would be to forbid people who have been implicated in bankruptcy fraud from founding or managing limited liability enterprises, at least under certain conditions.

Another area in need of control is construction, an industry that has been the subject of much legislation. According to a 1975 Federal law, sound business practices on the part of the building contractor are a prerequisite for conducting business. For example, payments should not be made before work is completed satisfactorily.

Regulations requiring public notice would constitute a significant step forward in preventing fraud. For example, a law requiring that a prospectus be issued at the time of public announcement of any investment offering is desirable; the prospectus would be examined by an economic expert and a regulatory authority and would contain all the information necessary to judge the quality of the offering. Unfortunately, such a measure would have the disadvantage of further expanding bureaucratic regulatory agencies.

Increasing the risk of apprehension. In view of the fact that instantaneous gratification of needs on an individual basis has become a frequent expectation, as well as the cultural and perhaps the moral justification of the present economic system, a fundamental approach is needed that encourages socially ethical behavior through the threat of effective penalties for the commission of economic crimes. The most direct expression of this approach would be a marked increase in the number of white-collar offenses detected and prosecuted. There is no linear relationship between the risk of detection and effective prevention, however; rather, the effectiveness of preventive efforts depends on the offender's own, subjective perception of the risk to which he is exposing himself. Since most white-collar offenders commit rational, calculated crimes rather than crimes of passion, accelerating the rate at which suspects are charged and sentenced could prove to be a most effective deterrent to crime.

It has to be recognized that the risk of detection will remain minimal as long as there is confusion and controversy regarding the identification, reporting, and

sentencing of white-collar criminals. The fact that specific individuals who might press criminal charges are rarely the direct victims of such crimes, or that such victims may pursue civil redress rather than bring the matter to the attention of the criminal authorities, contributes greatly to the disorganization of legislation concerning white-collar criminals. There is a possible remedy for this problem. Administrative authorities could consult with criminal authorities in cases where they suspect economic crimes within the jurisdiction of the criminal authorities. In this way, suspects could reduce their own sentences by cooperating with administrative as well as criminal authorities.

Better education of the public also could lead to increased reporting and sentencing of white-collar offenders. Better information could be collected, and the public's cooperation in ensuring prosecution could be secured. In general, improved public education would make it possible for citizens to recognize white-collar crime when they see it. At present, the public's attitude toward such crime is one of relative indifference, especially when the crime is committed by individuals of high social standing and when the victims are the government or large companies, rather than individuals.

Better exchange of information between the police and administrative authorities would result in improved detection and prevention. The situation involving the environmental protection authorities is a case in point: these authorities frequently encounter violations that could have significance in a criminal investigation but may fail to pass these violations on to the police for followup. The illegal import, transport, and employment of foreign workers is another area that would benefit from improved information exchange. Various administrative authorities are involved in combating these offenses, but failures of communication among the agencies involved are frequent because of the dispersion of functions and powers to numerous regional and/or local authorities.

The mobility of white-collar criminals makes effective exchange of intelligence information particularly important. Interaction must be improved among international contacts as well as between the police and state's attorneys. Many initiatives exist in the area of international cooperation for the prevention of white-collar crime. Some apply to information exchange. Others consist of tax tests, or comparisons of the taxes paid by a parent organization in one country and by its subsidiary in another, for example. Another effort in this area involves control reporting; that is, reporting of payments to foreign artists, for example, to the tax authorities in the native country of the tax payer. This initiative has been met with general public resistance.

Improved training, both basic and advanced, for police and state's attorneys is needed in order to deal with the complex issue of white-collar crime. Courses and seminars are being organized, but their effectiveness remains to be evaluated. Better education overall is urgently needed to deal with the increasingly sophisticated criminals and the inventive way in which white-collar crimes are committed these days.

Active and timely collection of information is of decisive importance for prevention of white-collar crime. All too often, the police find themselves in the position of reacting inadequately and too late to such crimes, and their potential deterrent effect is lost. The fact that economic crimes have a generally low profile and that perpetrators often leave little or no trail to follow often reduces police motivation to act promptly.

Early information on crimes that are being committed might come from sources within industry and chambers of commerce. The police department's systematic collection of information could involve actions ranging from analysis of generally available material (newspaper articles, for example) to cultivation of contacts with institutions that are particularly affected. By making carefully directed observations and checking out locations where such offenses are known to have been perpetrated in the past, police and other authorities should be able to identify potential crimes before they occur. Private information bureaus or agencies could be very helpful by monitoring economic activity routinely and, thereby, detecting white-collar crimes in advance. Such monitoring should be conducted anonymously and covertly to enhance its effectiveness. Private bureaus or agencies also could exert a preventive effect by assisting in sting operations. Of course, there is considerable uncertainty regarding the extent to which the authorities may go to pursue these operations without exceeding the boundaries of the law. Further clarification is needed in this area.

Speeding up white-collar prosecutions would be a very effective deterrent to economic crime. Several proposals have been made, including the suggestion to combine cases involving many victims into smaller, more manageable cases. Judicial reform also would help. Restricting challenges of judges for cause, changing ways of interrupting trials, and partially waiving the time-consuming reading of trial documents are all steps in the right direction and are the subject of a draft law currently being considered.

Reducing profitability. Denying the criminal any material gain from his crime would have a definite deterrent effect. Unlike criminal cases in which a victim can be compensated directly or have his stolen goods or property replaced or returned, the relationship between white-collar criminals and their victims is extremely complex. Securing evidence and timely investigation are of primary importance, but such efforts are very personnel-intensive and may strain the resources of the police and other officials. More use should be made of the remedies offered in existing legislation for compensating victims from the illicit gains of perpetrators. Many problems exist with regard to informing victims how to be compensated or recover stolen or pirated material, but some solutions already exist, and others are being contemplated. Another beneficial step would be to facilitate the seizure by authorities of illicitly acquired material or property, especially abroad. Work is underway on legislation in this area.

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Conclusions

The United States has been a pioneer in the field of white-collar crime detection, prosecution, and prevention. It has established numerous boards and commissions to study the problem and make recommendations. An international body composed of experts in the field should be organized to assist in this work. Despite the high costs of crime prevention efforts, these efforts must continue; the costs of the crimes themselves, estimated to be in the billions of marks annually, alone justify a considerable portion of the expense.

In many ways, there are adequate legal tools available for identifying, prosecuting, and preventing white-collar crime, but they are not being used fully. Exchange of information and experience across jurisdictions and spheres of competence is urgently needed to combat all types of economic crimes. Research on proposed legislation and the assumptions and practical effects of new laws should be ongoing.

Overall, it is very important that legal means of deterrence not replace a sense of individual responsibility as the underlying principle of order in society. In the present society with its altered value system, however, behavior must be channeled in the desired directions.

As mentioned above, secondary prevention, which should be emphasized in the domain of white-collar crime, must cause or at least allow the potential offender to conduct a cost-benefit calculation and to reexamine his values before he decides to commit an economic crime. Acceptance of the standards of economic order and morality is the primary prerequisite for an appropriate level of social organization. Respect for the law may be enforced almost entirely by penalties in our society. Over the long term, however, the existing opportunity structure that facilitates criminal action must be changed, and the effectiveness of general preventive efforts must be enhanced through appeals to individual responsibility and through incentives for proper behavior.