

3

Notes toward a National Strategy to Deal with White-Collar Crime

Mark H. Moore

The Problem of Defining White-Collar Crime

Despite serious attention, a suitable definition of “white-collar crime” has remained problematic. At least two separate traditions exist. One tradition focuses on economic crimes: fraud, bunko schemes, embezzlement, stock manipulations, insurance fraud, and general chiseling in economic transactions. The common characteristics of these offenses are that they depend on deception within the institutions (and among the exchanges) of the private economy, and inflict financial (rather than physical) losses on their victims. The usual justification for paying attention to such offenses is that the total economic losses associated with such offenses are large enough (relative to losses suffered in street crimes such as robberies, burglaries, and larcenies) to warrant priority attention in deploying enforcement resources.

A second somewhat older tradition suggests a broader concept—that individuals who hold powerful institutional positions in the society can victimize others in ways that are every bit as costly and offensive as the acts of street criminals but escape punishment either by hiding their offenses within complex institutional processes or by relying on their apparent respectability to ward off investigation, prosecution, and sentencing. The original focus of this older tradition was on the same offenses that now preoccupy those concerned with economic crime, for example, fraud and embezzlement. But while the offenses were the same, the features of the offenses that motivated the interest of the older tradition were quite different. The older tradition was less interested in the size of the economic losses to victims than the irony that an individual in an established position in the society could steal sums that made the “take” in ordinary street crimes seem ridiculously small, but face much lower risks of punishment than street criminals. This simple irony highlighted two facts to which they wished to draw attention: (1) the existence of substantial institutional power in the society; and (2) the inevitable unfairness of the criminal-justice system as it confronted the power of privileged positions. These observations in turn tapped powerful ideological themes in the U.S. society, (for example, a fundamental fear of institutional power and thoroughgoing desire for equality before the law) and motivated an attack on white-collar crime.

In the context of recent history, these broad themes of institutional power and unfairness in the criminal-justice system have become even more potent than they were forty years ago. We see all around us evidence of the capacity of large institutions to exploit and injure ordinary citizens and to resist even the most determined regulatory efforts. Thus in the modern context these broad themes defining white-collar crime naturally embrace offenses such as price fixing, willful violations of environmental and safety regulations, the production and marketing of dangerous or shoddy merchandise, illegal campaign contributions to maintain favorable tax rulings, and so on, as well as large-scale stealing. Moreover, once one includes abuses of private corporate power in his definition of white-collar crime, it is hard to justify the exclusion of abuses of governmental and political power as well. Thus illegal wiretapping by government agencies, election fraud managed by dominant political parties, and the solicitation of bribes or other favors by government officials might all be included in the definition of white-collar crime. The common element of all these offenses is that they are committed with relative impunity by people in powerful institutional positions—sometimes for their own purposes and sometimes to further the interests of their institutions.

Clearly, there are significant differences between these two definitions of white-collar crime. One emphasizes economic gains to individuals as a result of deception or abuses of trust. The other emphasizes the power of institutions (and individuals in institutional positions) to victimize others and successfully resist criminal prosecution. While there are significant overlaps, the wide divergence in their respective orientations is striking.

Of course, we could treat the problem of defining white-collar crime with impatience—a matter of mere semantics, far divorced from pressing substantive choices about the design of a national strategy. My own view, however, is that the definition of the problem is of the essence. How we think about the problem will at least partly determine our response—both the relative importance we attach to it and the particular way we decide to deploy our resources.

In fact, there is a special temptation in talking about white-collar crime. As we have seen, the concept is capable of sustaining a broad definition that taps fundamental ideological themes and widespread concerns. As such, the concept is potent in mobilizing and sustaining a broad and interested constituency. On the other hand, when it comes to designing specific programs, the broad concept becomes too diffuse. Even worse, it seems to point us toward objectives that we know will be extremely difficult to accomplish. Hence when we turn to designing specific programs to deal with white-collar crime, we tend to adopt a narrower definition more consistent with our current institutional inclinations and capabilities. This situation tempts us into committing a kind of “policy fraud.” We use the broad definition of the

problem when we want to attract interest, authority and resources, and we use the narrower definition when we plan programmatic action. The predictable result is disillusionment among those who lent their support to a broad objective only to discover that the actual programmatic activity occurs along a narrower and less important front. Of course, by this time we may all be relatively inured to “policy fraud.” But one might expect a group of people concerned about white-collar crime to be more chary than most about promising effective action in a broader area than they can in fact achieve.

At the outset then we probably owe it to the constituency we expect to be concerned about white-collar crime to define the problem in a way that reliably captures their major substantive and symbolic concerns. We should resist the temptation to define the problem in a way that is merely convenient or consistent with emergent institutional interests and capabilities. If after having looked at the broader social concerns at stake in this area, we decide that we want to define the problem more narrowly or more pragmatically, that will be fine. We will tend at least to be in a position to describe what has been left out and why. And we will not be guilty of deluding ourselves about how much of what might be considered white-collar crime is in fact being addressed by our policies.

A Broad Perspective on White-Collar Crime

As individual citizens pursuing the good life, we seek to protect our property, health, freedom, and sense of security against a variety of external threats—some from natural forces and some from human agencies. To control some of the potential threats from human agencies, we pass laws prohibiting certain acts under penalty of criminal sanctions. In doing so, we immediately enhance the citizen's sense of security by allowing him to have expectations that he will *ordinarily* be free from the threats represented by the prohibited acts. As a corollary, we also entitle the citizen to feel victimized when a human agency injures him by an act that is prohibited by law and to call on the government for help in recouping his losses and restoring his sense of security.

Of course, existing laws invoking criminal sanctions fall way short of protecting us from all threats under human control. We can still fail to be hired, lose our job, buy shoddy merchandise, or be injured in an automobile accident without any crime's having been committed. Moreover, even in areas where we are protected by the existence of laws and the availability of publicly provided enforcement resources, we still quite naturally expect to shoulder a large share of the burden of defending ourselves. At the very least, we are expected to complain to enforcement agencies when we

have been victimized and to assist them in their investigative and prosecution efforts. More often we assume responsibility for resisting our own victimization through some combination of vigilance, caution, and vigorous self-defense. Still in a variety of areas we feel entitled to expect government protection and to feel victimized when that protection fails.

Historically our laws and enforcement efforts have been designed primarily to protect us from physical attacks and thefts by other individuals in the society. We have acted as if the capacity of other individuals to threaten us physically or to steal our possessions when we were not looking were the most significant *human* threats to our individual sense of well-being. To a great extent our continued preoccupation with street crime is a legacy of this common-law tradition—now buttressed by the existence of professional police forces who are organized primarily to protect us from these kinds of offenses and offenders.

Recently, however, we seem to have recognized that our property, health, freedom, and sense of security are vulnerable to methods other than physical attack and surreptitious entry, and to offenders who differ from violent or stealthy individuals. Specifically, we have noticed that we are vulnerable through deception and exploitation of an unequal bargaining position as well as through physical attack and stealth. Moreover, we sense that the increasing complexity of the society and the emergence of large institutions with discretionary control over valued opportunities have dramatically increased our vulnerability to both deception and exploitation. Partly in response to these new, real dangers and partly in response to increased demands for government protection in areas where we used to rely only on rigorous self-defense, we have passed laws (many with criminal sanctions attached) that are targeted on these "new" offenses and offenders. It is this nexus of subtle but potent mechanisms of victimizing others, changes in social conditions that have allowed these mechanisms to come into play more often, and increased demands for governmental control that has yielded a substantial white-collar-crime problem. The relationships are sufficiently complex and important to merit some elaboration.

Characteristic Modes of Victimization of White-Collar Crime

Reflection reveals remarkably few mechanisms to take from a person something that he values and has a right to have. The obvious methods are those characteristic of street crime: stealth or physical attack. Both methods allow an aggressive offender to extract something he values from a surprised and reluctant victim. The victim suffers not only material and physical losses but also such psychological losses as shame for his inability to defend him-

self and a heightened sense of his vulnerability to similar attacks in the future.

Beyond these measures typical of street crime, two other methods exist that seem characteristic of white-collar crimes. One of these is deception. A person gives up something of value in exchange for something he has been led to believe will be of roughly equivalent value and finds that the thing he receives is worth much less—perhaps nothing at all. This is the classic definition of a *fraud*.

A second method of victimization characteristic of white-collar offenses resembles extortion but does not depend on a threat of physical force. It occurs when an offender has discretionary control over some resource or opportunity whose disposition is of enormous importance to the victim and a matter of relative indifference to the offender. Moreover, there is some rule or expectation governing the disposition of the valued resource or opportunity (known to both offender and victim) that would entitle the victim to his preferred disposition. Instead of simply making the preferred disposition on the appropriate terms, however, the offender insists on some special remuneration. Depending on the value of the resource or opportunity to the victim, and the strength of the victim's claim on the resource even without the special contribution, the amount extorted by the offender and the sensation of victimization may be more or less severe. This is the classic case of *exploitation*, that is, one person's exacting maximum advantage from an unequal bargaining position, despite the fact that the terms of the exchange were supposed to have been set in advance.

These methods of victimization are characteristic of white-collar offenses for two different reasons. First, they occur among the exchanges and social interactions that are part and parcel of our daily lives. There is nothing exotic or strange about the events surrounding the offenses. There is no trespass and no attack. It is only the outcomes that are unexpected and unpleasant. In fact, the offenses probably could not occur without exchange systems that for the most part were reliable and fair. Second, to be successful, the offender must either appear to or actually occupy some relatively powerful institutional position within the society. Deception works best if the offender can surround himself with the credentials and trappings that make him part of our ordinary exchange economy. He must have "bonafides." An institutional position is even more obviously necessary in the case of exploitation. It is precisely the individual control over the substantial resources and opportunities that large institutions have to distribute that provides the representatives such enormous bargaining power. Thus these methods of victimization depend crucially on the existence of an organized society and the existence of institutional positions that can be occupied, or appear to be occupied, by individual offenders.

Note also that while the *methods* of victimization differ from those

used in street crimes, the subjective experience of victimization may be quite similar. The victim can take either physical or economic losses—though economic losses are probably much more common. In addition, the victim may experience the same embarrassing sense of impotence and the same anxieties about his vulnerability to similar offenses in the future. In fact, in the case of exploitation, the sense of degradation and anxiety about the future are likely to be particularly intense. There may be nothing the victim can do to alter the conditions that originally led to his victimization: He may continue to need whatever the institution (or its representative) has to offer; if so, the institution may continue to get from him more than he expected to pay. Since there seems to be no way out for the victim, the sense of powerlessness may be particularly acute. Thus while methods of white-collar victimization may seem subtler and less direct than the methods of street crime, they are equally cruel.

Social Conditions Creating Greater Scope for White-Collar Crimes

Of course, these methods of victimization have always been available to potential offenders. It is likely, however, that recent changes in both the organization of the society and our determination to control the behavior of people within large institutions have vastly increased the extent of what is now perceived to be the white-collar-crime problem.

One significant change is the continuing elaboration of the network of exchange relationships in which individuals find themselves enmeshed. It used to be true that important economic transactions were conducted primarily either within a family or between the family and a small number of institutions. The transactions were relatively few, relatively simple so that neither side had a great deal more information about the exchange than the other, and conducted by individuals who expected to have long-term relationships so that neither side would be willing to risk their relationship for a small advantage in a given exchange. Now, partly as the result of a continuing process of differentiation and specialization that occurs with the growth of an exchange economy, partly as the result of increased wealth that allows us to buy more complicated products, and partly as the result of a vast expansion of governmental activities paralleling the growth of the market economy, individuals find themselves dealing episodically in complex transactions with many different institutions. Moreover, many of these transactions are based implicitly or explicitly on trust because one party controls much of the relevant information on which the transaction is based. An auto mechanic knows more about what he did to a car than a customer can easily discover. The owner of a building may know more about its real worth than an insurance company. A welfare client knows more about her qualifying characteristics than the case worker. And a fire inspector may

know more about the fire regulations governing the grant of a license to a restaurant owner than the owner does. Thus the sheer number and complexity of the transactions conspire with the absence of an expectation of a continuing relationship to create enormous opportunities for fraud and exploitation.

Note that opportunities for fraud and exploitation exist on both the supplier and the consumer or client side of the transaction. On the supplier side one hears of real-estate frauds, storm-window and aluminum-siding frauds, shoddy and fraudulent auto repairs, deceptive advertising and credit practices, and so on. On the consumer or client side, one can imagine forged checks, filing false insurance claims, income-tax evasion, and giving false information about eligibility for unemployment compensation. These are all examples of people's taking advantage of the looseness of their institutional relationships and the confusion marking their economic relationship to extract an advantage from their partner in the transaction. In sum, since we make many more transactions; since the transactions involve complex products, services, licenses and duties that are hard for both parties to the transaction to understand and verify; and since long-term reciprocal relationships have been shattered by the complexity and specialization of the society; the capacity of agents on either side of the transaction to police the transactions and defend their interests has been reduced. Since it is hard to know what is happening in the transaction and few incentives to resist the temptation to take advantage, many people will be tempted to exploit the ignorance.

A second significant change related to but different from the elaboration of the exchange economy is the emergence of large institutions with discretionary control over resources and activities that are valuable (perhaps even vital) to other individuals. The emergence of these large institutions affects the opportunities to commit white-collar offenses in three important and different ways.

First, these institutions lend credibility and distribute authority among individual representatives. In doing so, they increase the opportunities for the *individuals* who represent the institutions to deceive and exploit other individuals who do business with or have an interest in the activities of the institution. An auto repairman working for a nationally recognized company can get away with a shoddy repair job more easily than an unaffiliated mechanic by hiding behind his organizational affiliation. A welfare case worker may get away with underestimating the benefits for which an applicant is eligible by virtue of his official position and apparent expertise. Similarly, hiring and contracting officials in both public and private agencies may abuse their discretionary authority over these crucial decisions by extracting special favors from people or firms who could reasonably expect to be chosen by merit alone. And government officials with the discretionary authority to distribute a subsidy, grant a privilege, or enforce a costly obligation may "extort" some payment or service from individuals even

the citizens have a clear right (under current policies) to receive the subsidy, be granted the privilege, or escape the obligation. As the reach of these institutions has grown, so have the opportunities of people who represent them to deceive and exploit other individuals who do business with them.

Second, the institutions have become relatively vulnerable *victims* of white-collar offenses as well as potential offenders. The reason is simply that the institutions distribute control over their resources and influence over their operations and policies to a large number of individuals who manipulate their positions throughout the organization. These insiders may take advantage of their position to steal the organization's assets, depart from an operational policy in exchange for a fee from outsiders who have an interest in changing current policies, or simply sell inside information about the organization's plans, interests, or capabilities. Thus bank tellers embezzle money, payroll clerks collude with line supervisors to create false payroll records, contracting officers arrange for kickbacks in making procurement decisions, real-estate owners collude with government housing officials to guarantee a mortgage that is far above the real value of a property, and high government officials promise to "do what they can" for companies that face tax, antitrust, or regulatory problems. These cases differ from the preceding ones in that it is the institution itself that is victimized by its own employees and agents, not its clients or customers.

Third, the institutions can become offenders themselves. Or, somewhat more precisely, the institutions can motivate their representatives to take actions that serve the interests of the organizations (and may even have been implicitly or explicitly authorized by higher-level officials) but are also in violation of criminal statutes. This situation has developed because we have decided to regulate the conduct of many of our institutions and have relied (at least partly) on criminal sanctions to do so.

Now part of our determination to regulate these institutions comes simply from a recognition that the institutions sometimes have interests that differ from those of the society at large. Moreover, their pursuit of their interests may injure the rest of us. Among economic institutions, the pursuit of profits may lead to production processes that are dirtier or more dangerous than they need be or to efforts to fix prices substantially above levels to which they would be driven if free competition were allowed to prevail. Among governmental institutions, an enforcement agency's interest in winning cases, a regulatory agency's interest in reaching an accommodation with a powerful, regulated industry, or a political party's interest in retaining local power may lead to decisions and actions that inflict substantial losses on the rest of us.

A second part of our motivation to regulate the institutions, however, springs from a recognition that since these institutions incorporate and organize much of the society's activity, we have no choice but to turn to them when we want to accomplish large public purposes. Thus to affect the

supply of suitable jobs, we pass minimum-wage laws; to guarantee income to retired workers, we insist on minimum standards for pension plans; to guarantee equality of educational opportunity, we require the integration of public schools; and to reduce discrimination throughout the society, we mandate affirmative-action plans. In all these cases we are drawn to the regulation of major institutions not because of their capacity to do harm if left alone but simply because they are the actors who have the capacity to help us with broad social goals.

The motivation to regulate the conduct of large institutions does not always result in the passage of statutes with criminal sanction for noncompliance. We are apt to rely more frequently on the mechanisms of private civil suits and regulatory agencies that set rules and enforce compliance through civil sanctions than on criminal statutes and criminal prosecution. Still in a surprising (and growing) number of areas, we have been willing to establish criminal sanctions to buttress the mechanisms of civil suits and governmental regulatory action. As a result, major officials, acting on behalf of large institutions (even with their explicit authorization), are exposed to criminal liability.

The net effect of all this is to produce a society in which the opportunities for individuals to commit white-collar offenses have increased dramatically. Part of the increase reflects changes in the operation of society that hold real dangers of victimization. Part reflects an increase in our demand for government assistance in defending our interests. And part reflects an increased determination to control the behavior of large institutions that have significant potential for good and ill. The combination leads to a potentially vast agenda for enforcement programs against white-collar offenses.

The Insistent Demand for Equal Justice

Arrayed against this vast agenda is a very small criminal-justice system currently overwhelmed and preoccupied by the problem of street crime. Given the disappointments and frustrations of our current efforts to deal with street crime, one is tempted to counsel against requiring the criminal-justice system to take on any new burdens, particularly one as large and knotty as white-collar crime. But it is precisely our current desperate efforts to deal with street crime that make it seem unusually important that we do something about white-collar crime as well. It is clear that we fear street crime. Moreover, in recent years we have become less sanguine about the prospects of dealing with this problem through the rehabilitation of offenders. Hence we are increasingly inclined to crack down on muggers, armed robbers, rapists, murderers, and burglars. The commitment to harshness in handling street criminals combines with a traditional ideologic commitment to fairness in the criminal-justice system to make the issue of the criminal-justice

system's response to white-collar crime of acute importance. We admit the possibility of significant victimization through methods and offenders that look much different than ordinary street offenses. In fact, we have already established criminal sanctions for some of the offenses. So fairness requires us to strike out at white-collar offenders as well as street criminals. In fact, given the intensity of our attack on street crime, there seems to be a *special* obligation to prosecute respectable people who use their position and reputation to steal through deception and exploitation. Until such attacks are visible, we worry about the fundamental fairness and rationality of the criminal-justice system.

Summary

In sum, in my view, rather fundamental symbolic and substantive issues are evoked by the concept of "white-collar crime." We are as worried about stealing and hurting and frightening people when it is done through deception and exploitation by people who occupy institutional positions (or, indeed, by the institutions themselves), as when it is done by people who rely on stealth and physical assaults. In fact, we are particularly worried when these acts are done on a wholesale basis by institutions that simply ignore the legal obligations that are supposed to restrain them. Moreover, throughout the entire area, we are concerned about fairness in the criminal-justice system. We think it is outrageous that people with institutional positions would find it relatively easy to steal large sums of money with impunity. And we want to be reassured that we are as eager to prosecute powerful people who commit crimes on behalf of their institutions as well as relatively poor people who commit crimes for themselves. In my view, it is in terms of these broad issues that we must design and evaluate any national strategy to respond to the problem of white-collar crime.

Distinct Components of the White-Collar-Crime Problem

Anybody who has a vivid sense of the limited capabilities of the criminal-justice system and who has followed the argument this far should by now be shaking his head with worry. Arrayed against the vast agenda of white-collar offenses, the criminal-justice system seems too small, too clumsy, and too fragile. It is inconceivable that the criminal-justice system could deal with any substantial portion of the individual incidents of fraud, embezzlement, graft, and abuses of authority that could occur in a society as large and complex and as wedded to the principle of *cavant emptor* as ours. Part of the problem is the sheer number of offenses that are likely to occur. But another part of the problem arises from the enormous expense of preparing cases of this type for prosecution.

Moreover, while we like to think that we are a government of laws and not men, one does not need too much experience with the actual operations of the criminal-justice system to understand that the men who work that system face acute personal dilemmas and risks in attacking institutions that represent significant economic, governmental, or political power. In enforcing environmental laws against a firm that threatens to close down if they are prosecuted, the criminal-justice official feels that he is dealing with a larger policy choice than he would like to deal with. Similarly, in attacking governmental and political institutions, the officials often feel they are attacking their peers and that their own motives will inevitably be suspect. The blade of the criminal law is simply apt to shatter when it is brought into contact with powerful political and economic institutions.

I am inclined to agree with this assessment and to worry that the criminal-justice system has bitten off much more than it can chew in taking on white-collar crime. But I would like to emphasize that we are already in this mess. We have already distributed criminal liability rather liberally among the activities and personnel of major social institutions. We have done so because we wanted to check the power we saw in those institutions and grasped the criminal law as one of society's mightiest weapons. Having created criminal liability, fairness forces us to enforce the laws. It is only then that we find that the criminal-justice system is more like a frail reed than a mighty whip.

So it is hard to decide to do nothing or to begin cutting back the use of criminal sanctions. We are impelled forward by the trends just described. In moving forward, however, we can already see that we will have to be guided by several major strategic principles. First, we should attack the problem of white-collar crime on a front that is broad enough to capture the major substantive and symbolic concerns evoked by the concept but narrow enough to be within the capabilities of the criminal-justice system. Second, we should organize our response to the substantive problem in a way that invites assistance from institutions other than the criminal-justice system and generally protects the criminal-justice system from either a significant overload or obvious unfairness. In the end we are likely to discover that the criminal-justice system plays a relatively minor role in a national strategy to control white-collar crime and that its role will be to punctuate or complement the actions of other institutions rather than bear the brunt of the main offensive.

A useful start in thinking operationally about a national strategy toward white-collar crime is to divide the problem into several distinct components. To be useful, the components should be defined in a way that allows us to make rough estimates about their relative importance and to make some broad judgments about how the problem can be approached—both by the criminal-justice system itself and by actors from outside the

iminal-justice system. Based on reflection and discussion, it seems useful to divide the problem of white-collar crime into seven major components. Table 3-1 describes the basic characteristics of the different components. Each component will be discussed in greater detail as follows.

"Stings and Swindles"

The Nature of the Offense. The first component can be described as the problem of "stings and swindles." This component involves stealing through deception by individuals (or "rings") who have no continuing institutional position and whose major purpose from the outset is to bilk people of their money. The cons and frauds that are included within this category vary in size and in targets. At one extreme is an offender who makes a few fraudulent door-to-door sales of pans, encyclopedias, or burial insurance. At another extreme are relatively sophisticated stock swindles where worthless or forged stock certificates are sold to big financial institutions. This category might even include large counterfeiting operations. What ties these varied offenses together is that individuals and institutions are tricked into giving up money to individuals who had no intention other than stealing and who are likely to disappear once the deception is successfully accomplished.

For purposes of both gauging the relative seriousness of the problem and thinking of effective responses, it is useful to compare this offense to burglary. The experience of victimization is similar. Losses are economic rather than physical. And while the victim is apt to feel humiliated by the fact that he was deceived, he is not likely to have the same sensations of despair and anxiety about the future that a victim of burglary would. In gauging the seriousness of any given offense like this, then, we are likely to look at the total amount that was stolen, the capacity of the victims to absorb the loss, and the relative innocence and frailness of the victim. We are likely to feel angrier about a man who bilks ten to twenty elderly poor for \$500 a piece in a burial-insurance fraud than a second offender who sells fake stock certificates alleged to be "hot" to a shady stock broker for 50,000. We would analyze the social cost of specific burglaries in about the same terms. While the social costs of these offenses in aggregate are not clear, I would be surprised if the problem of stings and swindles turned out to be more serious than that of burglary.

Control Possibilities. The analogy with burglary also helps in thinking about effective responses. A little reflection suggests that while we are fundamentally dependent on potential victims to prevent burglaries by locking doors and guarding property, we will be even more dependent on self-

**Table 3-1
General Characteristics of Different Components of White-Collar Crime**

Component of White-Collar Crime	Defining Characteristics				Agencies Involved		
	Nature of Offender	Nature of Victim	Made of Victimization	Losses	Detecting	Prosecuting	Punishing
"Stings and Swindles"	Noninstitutional position; individuals or "rings"	Individuals and organizations	Deception	Primarily economic	Primarily victims	Primarily CJS	Primarily CJS
"Chiseling"	Individuals with institutional positions	Clients or consumers of institution	Deception	Primarily economic	Institution (?) victims (?)	Primarily institutions	Primarily institutions
"Individual abuses of institutional position"	Individuals with institutional positions	Clients or consumers of institution	Exploitation	Primarily economic but also psychological	Institutions; victims	Primarily institutions	Primarily institutions
Embezzlement and employer fraud	Individuals with institutional positions	Institution itself	Deception	Distributed economic losses	Exclusively institutions	Primarily institutions	Primarily institutions
Client fraud	Clients of financial institutions	Institution itself	Deception	Distributed economic losses	Exclusively institutions	Primarily institutions	Primarily institutions
Influence peddling/bribery	Individuals with institutional positions	Institution itself	Collusion between outsiders and insiders	Primarily economic	Victims (?) institutions (?)	Institutions (?) CJS (?)	Institutions (?) CJS (?)
Willful institutional noncompliance	Institutions themselves	Society at large	Exploitation of bargaining position	Economic; physical; psychological	Regulatory agencies	Regulatory agencies	Regulatory agencies

fense in preventing cons. After all, burglaries produce a few signs that are potentially visible to patrolling police. Stings and swindles do not. Hence the victims will be much more on their own in defending against offenders. Once the offense has been committed, though, it may be easier to identify and prosecute the offender in a con game than in a burglary. The reason is simply that the victim is likely to have seen and come to know a little about the offender. The major obstacle to successful detection and prosecution may be nothing more than a limited jurisdiction that is easily escaped by the offender. Thus, as in handling burglaries, an effective response to stings and swindles will depend a great deal on individual self-defense and the willingness of victims to submit complaints and assist in the investigation. The criminal-justice role is likely to be nothing more than deciding how serious a complaint is and how many resources to devote to the investigation. No opportunity for a more aggressive or pro-active enforcement strategy seems immediately available.

"Chiseling"

The Nature of the Offense. The second component of the problem is "chiseling," that is, giving a customer or client less than he has a right to expect on the basis of an institution's announced policies. This component resembles the offenses above in that it involves stealing (on an ad-hoc basis) through deception. It differs from the last category in that the offenders are people who occupy continuing institutional positions, and the deception is not complete. In effect, somebody who expects to be in business for a while decides on an ad-hoc basis to supply "half a loaf." Typical offenses are auto-repair frauds, "short-weighting" in supermarkets and gas stations, or refusing to grant some privilege or provide some service that a client is entitled to in a government bureaucracy. The offender is usually an individual employee (or a relatively small unit of a much larger organization) who decides to cheat on an obligation to customers, clients, or another firm by doing something that is contrary to his institution's policies but that saves him some trouble or earns him a small, nonorganizationally provided, reward.

Altogether, the victimization associated with these offenses can be quite large. For example, it has been estimated that the public loses more than \$20 billion each year in auto-repair frauds. But even so, the experience of the individual victims may not be all that serious. For the most part, the loss will be nothing more than a relatively small economic loss. There will be few physical consequences. And the experience of humiliation and fear (with its chilling effects on one's general sense of security) may not occur at all. In fact, the victim may not even notice that he has been victimized. So while

economic losses to victims in offenses like this may be large in total, the individual experience of victimization may be sufficiently different to make these offenses much less important than other kinds of offenses that inflict fewer total losses but do so by inflicting very large economic, physical, and psychological losses on a few unsuspecting victims.

Control Possibilities. The fact that the victims may not even notice that they have been victimized creates a major problem in controlling the offenses. There is no one to resist the offenses or to identify the offenders. (This is probably the main reason that the total losses can get so large.) Still, in trying to control offenses of this kind, the criminal-justice system does have a crucial ally—the institutions themselves. To the extent that the institutions have quality-control policies that are important for them to follow (for either marketing or legal reasons), they will make enormous efforts to "police" their own employee's conduct. In doing so, they will, of course, prevent some of the possible offenses in this category. Similarly, to the extent that trade associations and professional associations exist to protect the reputation of their particular service or industry, they might be enlisted in efforts to control chiseling. Of course, these associations have much smaller capacities to detect and deal with specific instances of chiseling, but it would be an error to ignore their possible contribution.

Since institutions and professional associations have some capacity to prevent chiseling and since much of the chiseling that does occur will either go unnoticed (or be handled informally in complaints by clients and consumers to the institutions and associations), it is probably safe to say that only a tiny piece of this problem will ever end up in the lap of the government and even less in the formal machinery of the criminal-justice system. The government becomes involved primarily through two kinds of agencies: licensing boards that are designed to guarantee quality in the provision of certain kinds of services and (more recently) consumer-advocacy organizations that are set up to receive and process complaints from consumers. Usually these agencies have only civil powers. The criminal-justice system becomes involved only when these regulatory agencies want to press criminal cases, or where state attorneys general or local district attorneys have set up aggressive consumer-protection bureaus designed to make criminal cases against merchants who bilk the public.

If one wanted to increase the level of government effort in this area, the right strategy would probably involve some combination of: (1) increasing the volume of complaints made to the government by widely advertising the rights of consumers and establishing a convenient procedure for lodging the complaint; and (2) some proactive investigations of firms, bureaus, or industries that seem to generate a large volume of complaints. In setting up such a system, however, the government would, in fact, be going after insti-

situations that *systematically* violated clear obligations rather than going after the occasional, ad-hoc chiseler. Ad-hoc chiseling, as defined in this section, is probably beyond the reach of anyone but the institutions who employ the chiselers.

Individual Exploitation of Institutional Position

The Nature of the Offense. A third component of the white-collar-crime problem involves an individual's exploiting the power of an institutional position that confers control over valued privileges or resources to take advantage of another individual who has strong interest in how that power is used. Typical offenses include a personnel officer in government or industry who extorts a kickback from a potential employee for a favorable hiring decision or a fire inspector who demands a payment from the owner of a restaurant to grant him a license.

In actual cases, it may be difficult to distinguish these abuses of institutional power from "bribery," to be discussed later. Analytically, however, the difference is quite clear. In offenses involving exploitation of institutional position, the victim has a clear right to something the official controls, and the official asks for an additional payment to make the required decision. The individual confronting the institution is the victim. The representative of the institution is the offender. In cases involving bribery, the situation is reversed. The individual confronting the institutional representative would *not* ordinarily be entitled to favorable treatment. In this situation it is the organization that is the victim. Both the representative and the outsider profit from the offense.

Note that the experience of victimization is likely to be much different in exploitation of institutional position than for other offenses discussed so far. The reason is simply that power rather than deception is the vehicle used to victimize. An individual with significant power confronts another individual with less power and forces him to accept less (or pay more) than he has a right to expect. Because power is being used, the experience of victims is likely to be quite different. They could experience physical abuse and humiliation as well as economic losses. Moreover, it is likely that the long-term effects on the victim's sense of security will be devastating. Encountering power ruthlessly used to exploit a victim is a much different experience than simply being tricked or deceived.

Control Possibilities. In thinking about an effective response to such offenses, one quickly sees that they will be much easier to handle than chiseling. We have the same important ally—namely, the institutions themselves who are likely to have some interest and capability for detecting and

punishing the offenses. In addition, we are likely to get more help from victims who are more likely to notice that they have been victimized and to be indignant about their victimization. As a result, many of these cases will be handled administratively within the organizations whose representatives have exploited their positions. The general strategy to improve enforcement against such offenses would resemble the strategy against chiseling: (1) widespread advertising of rights and the establishment of a convenient complaint procedure; and (2) some proactive undercover operations by criminal-justice agencies in areas where one expects to see a great deal of "official extortion."

Note, finally, that it is likely that most of these offenses will be committed in the governmental sector. The government is generally in the business of distributing subsidies, privileges, and burdens to individuals in the society as a matter of right. Moreover, the government officials typically act in situations in which explicit rules are supposed to define fully the nature of the transaction but where there is in fact enormous *de facto* discretion. In the sheer magnitude of the government enterprise and in the tension between the expectation that the transactions should proceed according to explicit rules and the actual experience of their subjective nature, there are vast opportunities for victimization by officials. Thus while there may be contracting and hiring abuses in both government and private sectors, probably the largest number of these offenses will occur within governmental institutions.

Embezzlement and Employee Fraud

The Nature of the Offense. A fourth component of the white-collar-crime problem can be called "embezzlement and employee fraud." This component introduces an interesting new relationship among offenders, victims, and institutions. So far in examining offenses committed by people with institutional positions, we have looked at their capacity to victimize individuals *outside* the institution—that is, consumers, clients, and suppliers. Starting with this component of the white-collar crime, we will be interested in a second possibility: that individuals in institutional positions can victimize their own institutions rather than its clients, consumers, or suppliers. Embezzlement is the paradigmatic offense: an individual within an institution exploits his control over the assets of an organization to take them for himself. It resembles pilfering except that the mechanism is deception rather than trespass.

There is a significant conceptual problem in trying to calibrate the seriousness of these offenses. It is clear, of course, that large amounts of money can be stolen by embezzlers or people who pay payrolls. But who is the vic-

tim in these offenses? The answer seems to be the organization itself. Of course there are individual victims in the form of clients, or owners and managers of the organizations. But the losses will be distributed among a large number of such individuals. Moreover, these individuals may never discover that they have been victimized. In effect, the organization serves to diffuse and disguise the losses. In my view, the fact that the losses are distributed over large numbers of individuals and well disguised *does* mitigate the seriousness of the offense. We care less about an offense that distributes \$1,000 in losses among 1,000 relatively well-to-do organizational clients than a different offense that inflicts a \$1,000 loss on a single person with limited means. In effect, since the victimization involves only money, is distributed among a large enough group to make the economic loss to each individual quite small, and neither humiliates nor frightens the victims, these offenses may not merit a great deal of social concern relative to others.

I suspect that our most fundamental interest in this area is the symbolic issue of equity rather than the substantive problem of victimization. It seems outrageously unfair that the opportunity to steal efficiently should be as unequally distributed as everything else in the society. It seems wrong that people in privileged positions with a stroke of a pen can steal thousands of dollars distributed over large numbers of unseeing, uncaring people while a person with a less advantaged position must rely on the much less efficient procedure of going from individual to individual and either sneaking their property away or attacking them. Since it seems so unfair, we should show some zeal in attacking these offenses even though the substantive stakes associated with victimization are not all that significant.

Control Possibilities. Moreover, in thinking about effective methods of control, it becomes apparent that the criminal-justice system may not have to play a very large role. On one hand, we realize that it is virtually impossible for the criminal-justice system to detect these offenses. The vast area in which these offenses could occur and the difficulty of seeing the offenses in the enormous volume of transactions executed (and recorded) by an institution, make it hopeless for the criminal-justice system to patrol for these offenses. On the other hand, we realize that the institutions themselves have both a strong interest and a capability in preventing and detecting the offenses themselves. After all, the problem of employee theft in an old one, and accounting has become a very sophisticated mechanism in response. It is likely then that our ability to control these kinds of offenses will depend almost entirely on the strength of the internal-control mechanisms of the institutions themselves: Organizations with strong internal controls will rarely be victimized; those with weaker controls will suffer often.

This simple observation about the kinds of institutions that will be vic-

timized may imply that *government* agencies will be unusually vulnerable. They handle large amounts of money and for the most part have relatively weak accounting and auditing procedures. Thus the development of stronger accounting and auditing procedures within governmental institutions should probably be a high-priority matter in dealing with this component of white-collar crime. (It is for this reason that current legislation creating new offices of inspector generals in various federal departments should be welcomed.)

Note that our dependence on the interests and capabilities of the organizations themselves to deter and identify these kinds of white-collar crimes is not necessarily bad in terms of our *substantive* objectives. The organizations may do an excellent job of controlling the offenses. It may be bad, however, with respect to our *symbolic* objectives. The reason is simply that the victimized organizations may prefer to deal with the offenses privately and discreetly. This would be true if the organization wished to avoid punishing a valued colleague too harshly or if it would prove embarrassing to the organization to reveal its vulnerability. Regardless of the motives, however, if victimized organizations deal with offenders through firing, demotions, or other economic and personal humiliations, the criminal-justice system is cheated of its opportunity to show its willingness to punish such offenders in ways that are similar to our punishment of street criminals.

Thus to reassure ourselves that our criminal-justice system is prepared to punish people who use powerful organizational positions to steal as well as people who use force or stealth, we must find some way of dealing with the kinds of white-collar offenses that involve the victimization of organizations (and indirectly, their clients, owners, contributors, employees, or subjects) by people who occupy significant positions within them. Our ability to cope *substantively* with offenses of this type is particularly dependent on the internal-control systems of the governmental and economic organizations of our society. Our ability to cope *symbolically* with these offenses will depend on the willingness of the organizations to turn some of the cases they discover over to the criminal-justice system for prosecution. It is very difficult for the criminal-justice system itself to take any initiative in this area.

"Client Frauds"

A fifth component of white-collar crime involves stealing by economic *clients* or organizations that (in some sense at least) advance credit to their clients. Included in this component are credit-card fraud, insurance fraud, fraud by individual clients of welfare and medicare programs, and tax eva-

sion. These offenses belong together because they involve an organization that distributes liabilities over *its* resources to a large number of individual clients or debtors who may take advantage of their control over that liability to steal resources from the institution.

This component of the problem turns out to be a close analogue to the problem of embezzlement and employee theft. There is the same difficulty in identifying who has been victimized and the same sense that the victimization is not so serious. Moreover, one is tempted to conclude that the major portion of the responsibility for controlling these offenses ought to lie with the institutions themselves. Their business involves distributing their resources and credit to individual clients. If they are vulnerable to client fraud, they are not performing their fundamental tasks effectively. Hence they should not be able to rely on the criminal-justice system to do a major part of their job. Finally, it is likely that if we should use criminal-justice resources anywhere in this system, we should begin with protecting public and governmental institutions. In fact, it is likely that tax evasion is overwhelmingly the most important offense in this area of white-collar crime. So the analysis of employee fraud is almost exactly duplicated for the problem of client fraud.

'Influence Peddling and Bribery'

A sixth component of the white-collar-crime problem involves individuals with institutional positions selling their power, influence, and information to outsiders who have an interest in influencing or predicting the activities of the institution. Paradigmatic offenses here include kickbacks from contractors (who would not win the contract by merit) and SEC officials who sell information about planned SEC actions. In offenses like these, it is the organization that is victimized because its internal processes (which are presumably designed to allow it to perform its functions effectively and efficiently) are sabotaged by its own employees for their own interests. Unlike the case of embezzlement, it is not so much the institution's *assets* that are stolen, as its capacity to operate fairly and efficiently.

The victims of offenses of this type are the people who were competing with the interests that managed to achieve "undue influence" through their use of "bribery." It is less aggressive contractors who failed to buy off the contracting official or less aggressive lobbyists who were reluctant to pay crooked congressmen. Chances are, these people may suspect they have been victimized, but they may be unable to produce any evidence. In fact, these offenses will probably be extremely difficult to root out because no one who participates in the offense will have any incentive to come forward. Both the briber and the bribe receiver like things the way they are. Conse-

quently, our response will depend crucially on the institutions themselves, perhaps aided on occasion by competitors who suspect they have been victimized and an aggressive investigative press that thrives on stories of scandal. Were all these to act together, the criminal-justice system might have an opportunity to intervene.

Note that these offenses are likely to be most serious where they occur within governmental institutions. The reasons are both substantive and symbolic. Where the government makes policy decisions governing the use of its enormous resources and authority to accomplish public purposes, a great many people are affected. Losses and gains in individual well-being are registered throughout the society. For those who lose (and sometimes even those who win), it is crucial to their sense of well-being that they believe that these decisions were made fairly and equitably. When these processes are manipulated by corrupt practices such as influence peddling and bribery, it is likely that our citizens will suffer unnecessary substantive losses and that their faith in the fairness at our governmental system will be eroded.

Willful Noncompliance with Rules Regulating the Conduct of Economic, Political, and Governmental Institutions

The Nature of the Offense. The last component of white-collar crime is probably the most challenging. It involves situations where powerful institutions (or individuals acting on behalf of powerful institutions) willfully violate laws that restrain the institutions from doing social harm or that require them to do social good.

This area too is potentially vast. We now have a great many laws designed to guarantee the ultimate benignity of our economic, political, and governmental processes. For example, in the *economic* arena we have laws to promote competition, to require various products to meet rigorous standards of safety and efficacy, to restrain false advertising, and to obligate firms to use safe and clean production processes. In the political arena we have laws regulating the registration of voters, the accessibility of candidates to the media, the use of public employees in politics, and the financing of political campaigns. And in the *governmental* arena, we have laws designed to assure widespread participation in major public-policy decisions (for example, the Administrative Procedures Act and the Freedom of Information Act), to protect the privacy of individual citizens, and to prevent obvious conflicts of interest among governmental officials. Moreover, cutting across both governmental and economic institutions, we have laws designed to achieve broad social purposes such as those that establish man-

datory minimum wages, insist on nondiscrimination in hiring and selling, and protect long-term pension rights of employees. While most of the enforcement activity under these laws occurs through regulatory agencies relying on civil procedures, many of the laws do impose criminal sanctions for some kinds of violations.

The number and variety of these laws make it difficult to say much in general about the magnitude and character of the victimization that occurs as a result of criminal violations of these statutes. Clearly, losses in this area can be enormous. Price fixing is alleged to cost the consumer billions of dollars each year. Negligence in the production of lawnmowers, drugs, canned foods, cars, and airplanes, or willful disregard of environmental laws can result in substantial physical harm. And civil rights violations have struck at the very heart of our freedom, personal dignity and sense of security.

Moreover, a special kind of terror is associated with being abused and victimized by a large institution. One may find himself surrounded by others who are also victimized and peer into a future where no one comes to the rescue and the institution may become so pervasive and persistent that one ceases to experience his losses as victimization and accepts them as an unfortunate but inevitable feature of the world. Of course, things do not often get this bad. But when they do, the experience of the victimization is very severe. (Ironically, the experience may be so severe that it will be difficult to find anyone who will complain.)

Larded among spectacular offenses committed by negligent, clumsy, or willfully malevolent institutions, however, are a great many offenses that are less spectacular. The losses occur on a smaller scale with fewer portenses for the future. For these offenses, our stakes are likely to be more symbolic than substantive. Our symbolic stakes in these relatively insignificant cases arise from three different sources. One source is simply our desire to show our determination to regulate institutions in the areas where we have passed criminal statutes. We want to show that we were serious in imposing the new obligations and that the society has the will and the capacity to control its various institutions. A second source is indignation about the bad moral character of leaders of institutions who authorize cheating on their clearly mandated social responsibilities. We hate to believe that we are led and organized by people who will not accept the social responsibilities implicit in the laws. A third source is a desire to reassure ourselves about the fairness of the criminal-justice system. We want violations of criminal statutes to be punished regardless of the status of the offender or the seriousness of the offense. For all these reasons, we may sometimes want criminal prosecutions for willful violations of regulatory programs even for relatively trivial offenses.

Control Possibilities. In organizing a response to willful (or negligent) violations of socially mandated responsibilities, the criminal-justice system is again likely to play only a minor role. Much of the effective control over these offenses will depend on voluntary compliance by the affected institutions, and regulatory efforts managed largely through noncriminal investigations and sanctions. These mechanisms will act on a much larger scale than the criminal-justice system could ever hope to. In fact, the criminal-justice system will find it difficult both to identify offenses and offenders in this area.

The offenses may be relatively invisible for the same reason that embezzlement and client fraud are hard to see. The organization distributes the losses over a group of individuals large enough that no individual has a strong incentive to complain. Even if individuals notice they have been victimized, they may weigh the strength of their individual complaint against the power of the institution and quickly decide that the complaint is not worth the trouble. In fact, this situation is worse than the case of embezzlement and client fraud because in those cases we would at least rely on the institution itself to help us do the policing. In this case, however, the organization is no longer the victim, but the offender! So it has no incentive to help us locate the offenses. The only actor in a position to help the criminal-justice system identify offenses are the regulatory agencies who will occasionally encounter criminal misconduct in the course of their investigations. Given historically difficult relationships between regulatory agencies and criminal-justice agencies *and* given the general reluctance of regulatory agencies to threaten carefully nurtured relations with the regulated industries by referring cases for criminal prosecution, however, the regulatory agencies are not likely to turn many cases over to the criminal-justice system.

The offenders are likely to be relatively invisible because it will ordinarily be unclear who within the organization is responsible for the violations. Who, after all, are the guilty individuals if an organization's policy is to violate the laws? How will we know when officers of the organization were merely following explicit or implicit orders from supervisors and when they are assuming responsibility for their actions themselves? These problems are central to cases such as the price-fixing case in the electrical industry, the "black-bag" cases now being prosecuted within the FBI, and even the war trials at Nuremberg. The fact of the matter is that we do not now have a sensible, widely understood, easily applied rule that distributes legal and moral responsibility for organizationally sanctioned or motivated action among individuals within the organization. Without such rules, it is as hard to locate offenders as offenses in this area of white-collar crime.

Thus this last component of white-collar crime presents some of the

knottiest problems in the entire area. I suspect that our substantive and symbolic stakes are greater in this area than in any other component of white-collar crime. The material and psychological losses to victims are significant when viewed in both individual and social terms. Moreover, these losses occur against the backdrop of a widespread social concern about our ability to control the behavior of large institutions. We have tried to indicate our determination in this area by establishing criminal sanctions and lashing out at leaders of institutions who violated those statutes. But our actions in this area may appear to be capricious partly because it is difficult to detect the offenses, partly because trivial, technical offenses are included among the more serious and partly because it is difficult to assign guilt to individuals within large organizations. I suspect progress in designing policy to deal with this component of white-collar crime depends on: (1) deciding which few among the rapidly proliferating regulatory programs involve the most important social concerns; (2) determining how the regulatory processes should be coordinated with the criminal procedures to maximize our ability to guide institutions in the regulated area; and (3) developing a reasonable principle for assigning guilt to individuals in cases that go to criminal prosecution. Despite the importance of this component of white-collar crime, no one appears to be working on this agenda.

Conclusion

This broad survey of the social concerns and diverse problems associated with the concept of white-collar crime is far from sufficient to support the detailed design of a national strategy. Still a few strategic principles emerge.

The first principle is that we have both substantive and symbolic objectives in this area. The substantive objectives involve reducing the victimization associated with white-collar offenses. We want to reduce the number of people who are injured or frightened or who lose money as a result of deception or exploitation of a superior bargaining position. The symbolic objectives involve reassuring ourselves about the fairness and consistency of the criminal-justice system. We want to see evidence that the criminal-justice system will treat deception and abuses of institutional position as harshly as stealth and physical attack and that it is willing to punish privileged and powerful offenders as well as those who are relatively powerless. To some extent, of course, the concept of deterrence relates the two different kinds of objectives: Cases prosecuted largely for symbolic purposes may produce real substantive results. Analytically, however, the two objectives are distinct. A relatively greater commitment to one objective or the other would shift our white-collar crime strategy significantly. A commitment to substantive objectives would focus our attention on individual abuses of

institutional positions, and major offenses involving willful institutional noncompliance with socially established obligations. A commitment to symbolic objectives might leave more room for efforts directed against embezzlement and employee fraud. Thus, the two different kinds of concerns can powerfully influence the focus of a national strategy toward white-collar crime.

The distinction between the two kinds of objectives is important not only because it raises the crucial issue of which offenses are relatively more important to attack, but also because it raises a second crucial issue in the design of a national strategy: namely, a calculation about the appropriate division of labor between the criminal-justice system and all other mechanisms of social control in coping with white-collar offenses. To the extent that we want to achieve substantive results, we may want to keep *most* of the responsibility for the control of white-collar offenses within the larger and less-formal mechanisms of control that exist outside the criminal-justice system. To the extent that we want to achieve symbolic goals, we will be tempted to bring some portion of these cases into the criminal-justice system. Calculating the number of cases to be handled in the criminal-justice system that is at once large enough to achieve symbolic and deterrence objectives, and small enough to guarantee that other agencies and systems continue to feel responsible for *substantive* control of the offenses must be a key part of our policy toward white-collar crime. My feeling is that the right number of cases will be a very small number within the criminal-justice system. Given the vastness of the area, and the comparative advantage of other institutions in detecting and controlling the offenses, the interest of the criminal-justice system may turn out to be almost entirely symbolic. Thus, the second strategic principle is that the criminal-justice system should not become so active against white-collar crime that other agencies now assisting in the substantive control of white-collar offenses slacken their current efforts: our first line of defense against embezzlement must be continued vigilance by banks.

A third strategic principle that emerges from the analysis is that exploitation of a superior bargaining position is as important a mechanism of white-collar crime as deception. The experience of victimization is likely to be extremely unpleasant. Moreover, the mechanism seems to be at the heart of many of the resentments and fears stimulated by people who exploit an institutional position to injure us. Finally, I would expect this problem to grow as the society becomes increasingly organized and regulated. For all these reasons, I would urge that we pay attention to exploitation as well as deception.

A fourth principle developed in the discussion is that governmental and political institutions are scarcely immune from white-collar offenses. They are clearly vulnerable to embezzlement, employee fraud, and client fraud

just as private economic institutions are. And in the crucial area of individual abuses of authority, bribery, and willful institutional noncompliance, the problems within governmental institutions are likely to be at least as significant as within private. At a substantive level then, governmental and political institutions house a major part of the problem.

At a symbolic level, I think offenses within governmental and political institutions are even more important. The government has always had a slightly different moral status than private enterprise. We give it this status because we want the officials and institutions to feel more than ordinarily responsible. After all, they are dealing in two very abusable commodities—power and other peoples' money. Hence we insist on higher standards and ought to be more concerned when fraud, theft, and extortion appear in governmental processes than when they appear in private economic activity. Moreover, it is more than a little hypocritical for government agencies to attack private economic institutions for offenses that they ignore when they occur in governmental agencies. In short, far from being outside the scope of white-collar crime, offenses committed with governmental and political institutions are at the very core of the problem.

A fifth "principle" (more in the nature of a worry than an established principle) is that our current planning efforts and organizational development efforts may be targeted on the wrong piece of the problem. Our current efforts in this area are designed primarily to deal with fraud and embezzlement in both private and governmental sectors. I am worried that we will work hard in this area and ignore what appear to me to be the crucial problems of abuses of institutional position, bribery, and institutional noncompliance with social obligations. If I am right about the relative importance of these offenses in the general area of white-collar crime, it seems crucial to me that we begin thinking about the problem of criminal enforcement of existing social regulations as well as fraud and embezzlement. It is in this area that I think the most important programmatic challenges to a white-collar-crime-containment strategy may lie.

4

The Institutional Challenge of White-Collar Crime

Marilyn E. Walsh

The stated purpose of this volume is to explore the breadth of the social challenge presented by the problem of white-collar crime. This purpose was adopted in recognition of the fact that the criminal-justice system, standing alone, is neither uniquely challenged by white-collar crime nor uniquely responsible for its containment. Instead, white-collar crime tears at the fabric of a broad range of social, political, and economic institutions; and all these must share in some measure the responsibility and the burden of coping with it.

Mark Moore, the author of chapter 3, began by stating an intriguing premise. Increasingly, suggested Moore, the automatic response to victimization within and through basic institutions in society (his definition of white-collar crime) has been a monolithic one: that of extending criminal liability to such victimizing conduct. And all too often, continued Moore, the criminal-justice system has either fostered or acquiesced in this approach.

Such criminal-justice-system support or acceptance of a containment model dominated by criminal sanctions has been in apparent disregard, noted Moore, of two important implications of adopting this approach. First, use of the criminal sanction to control and preserve the benevolence of basic institutions shifts entirely the resources burden for such efforts to the public sector. Second, extensions of criminal liability into more and more areas of organizational and institutional misconduct only sharpens the symbolic significance of having such white-collar-crime cases vigorously investigated and prosecuted. This heightened symbolic need for action thereby increases the resource requirements for white-collar-crime control efforts to a point where the burden on the public sector is neither economically feasible nor politically likely. The criminal-justice system then, by unquestioning encouragement and/or acceptance of a *criminal*-containment policy for white-collar crime, has set itself up to fail. It has accepted the challenge and raised expectations that it can in no way meet.

Of particular interest in all of this, continued Moore, is the fact that the criminal-justice system has doomed itself to failure by neglecting to take proper cognizance of the one critical aspect of the white-collar-crime challenge it best understands, that is, the fact that a widely varied range of conduct is subsumed under the white-collar-crime rubric. Had the criminal