1. Introduction

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Criminology traditionally focuses on crimes against property and person, on deviant behaviour, and on treatment of offenders. Dominating fields of study are psychiatry, psychology and sociology. Without diminishing the importance of the traditional research it is clear that crime in business, such as illegal pollution, tax evasion, infringement of brand name and so on requires contributions from other sciences as well. Obvious disciplines are business administration, economics and information technology.

The focus on deviant behaviour and treatment may explain why crime in business is neglected relative to its importance. Economic incentives to circumvent the law arise whenever a state imposes costly regulations. This is true for taxes and tolls, as well as for restrictions on, for example, trade or effluence. Obedience to law presumes supervision and various types of sanctions. If regulations are to be followed, a loyalty to the authorities also has to prevail. Laws and rules have, in other words, to be both ethically and economically defensible, and in line with the public sense of justice. Hence research into ethics, various fields of law, history and political science has important contributions to make to the study of crime.

An important obstacle in the fight against crime in business is the limited enforcement in an open society. Physical and human capital moves easily between territories, while crime control mainly remains national. Moreover, individual loyalties differ and change – norms are neither globally unified nor static. Hence new incentives to gain profit illegally arise. Indeed, the movement of people and capital, in combination with tax avoidance and new crimes in a global business community, may threaten the modern tax-based welfare state.

In sum, the variety and complexity of crimes in international business makes research into crime important on various fronts. This conviction motivates this book, which surveys recent contributions to the growing field of research into ‘economic crime’. By ‘economic crime’ is meant crime committed to gain profit within an otherwise legal business. The crime may damage private citizens, business and/or the public sector. The definition thus includes tax evasion as well as various forms of fraud and embezzlement in
New perspectives on economic crime

otherwise legal corporations. We disregard crime in organizations that have a
criminal motive and are illegal throughout, for instance illegal trade of drugs.

Our overview presents recent research on economic crimes in economics,
public law, environmental law, economic psychology and history. In these
areas the surveys below complement and extend traditional criminology.

In the next chapter Nuno Garoupa presents the state of the art in the
economics of crime following the seminal work of Gary Becker (1968)
applied to business. Firms should, according to the theory on optimal law
enforcement, be punished more severely than individuals if the firms are
wealthier, less risk-averse and cause more damage. Corporate crimes are
committed by corporations as well as by individuals. Yet a crime committed
within a firm is not necessarily in the interest of the firm. An important issue
examined is how the firm might align the interests of the employee with its
own. A principal–agent framework is shown to be suitable in the search
for useful insights into business crime. The chapter also surveys how a
corporation may also protect itself from becoming a victim of crime. A
controversial area mentioned is the corporate influence on rule making and on
law enforcement. There are also controversies in the reviewed literature
regarding the social benefit of criminalizing certain business activities such as
insider trading and anti-competitive regulations.

In Chapter 3 Cindy R. Alexander introduces the principal–agent perspective
on corporate misconduct and its implications for the design of sanctions and
prediction of misconduct. She explains how contemporary economists have
adapted the Becker model to incorporate insights on the different roles that
shareholders, directors and managers may play in corporate misconduct and its
prevention. Related empirical evidence has begun to emerge in the USA.
Crime appears to be less frequent among corporations in which insiders
(directors and officers) possess concentrated ownership. This illustrates the
importance of insider incentives and suggests corporate crime harms
shareholders. Evidence on the effect of board composition is mixed, however.
Participants in corporate misconduct appear to bear sanctions from the labour
and product markets as well as hidden internal sanctions and sanctions from
the justice system, which illustrates the role of external market forces in
disciplining misconduct. Stock prices indeed respond to crime news
anticipating external market sanctions. This reaction appears to reflect narrow
self-interest rather than altruism or other reactions to misconduct. News of a
crime against a third party with whom the corporation has no business, such
as environmental crime, is met by stock price movements not distinguished
from zero.

Chapter 4 by Anthony Ogus reviews the literature – legal, sociological and
economic – on the role of criminal law in the enforcement of regulation. It
maps regulatory enforcement systems and indicates how different forms of
intervention might be efficiently applied. The main focus is on economic deterrence theory. Moreover, it expands on the standard model to show how account must be taken of different stages in the enforcement process, and with different enforcement regime alternatives. The analysis suggests that the routine use of administrative charges should provide sufficient incentives for compliance with much regulation, particularly where the social costs of contravention are low. Where they are high, the threat of criminal sanctions may be necessary.

In Chapter 5 Michael G. Faure and Marjolein Visser provide an overview of the application of theories on the economics of crime to environmental criminal law. They begin by addressing the question of why criminal law should be used at all to deter environmental pollution. An inevitable question in this respect is whether other instruments, such as civil liability, would not suffice for the deterrence of environmental pollution. The chapter also looks at what the optimal penalties for environmental pollution would be. In practice it can be observed that there is an increasing interest in administrative penal law. Hence the question arises as to why, in some cases, administrative law might provide better results than criminal law. In addition, given that environmental crimes are committed mostly within the corporate sphere, it is necessary to ask whether criminal law should be applied to companies and/or to individual actors.

Chapter 6 by Karin S. Thorburn deals with issues related to fraudulent actions during financial distress. Within that perspective, she discusses corporate governance mechanisms designed to ensure that the profits of the firms are returned to their investors. There are signs that, under a weak governance system, the risk of expropriation by corporate insiders is substantial. Thorburn reports extant evidence on governance failures that result in fraudulent transfers and financial reporting fraud. Implications for governance of financially distressed firms are also discussed. The survey clearly point to a certain relationship between board characteristics and the occurrence of fraud for publicly traded firms: the more independent the board of directors, the better monitoring it provides and the lower is the incidence of corporate fraud.

Paul Webley provides in Chapter 7 an overview of the area of tax compliance by businesses, with a focus on economic crime. From a systematic review of economic and psychological theories in this area Webley identifies some robust empirical findings. These are that non-compliance by individuals is associated with the tax system being seen as unfair, with people having opportunities to evade, and with being younger, male and egotistical. If a person believes that non-compliance is widespread he or she is more likely not to comply and if the tax authorities provide a poor service non-compliance is more likely. Webley also reviews research on VAT compliance, employer
New perspectives on economic crime

evasion of unemployment insurance taxes and tax compliance by small businesses and wealthy individuals. The survey confirms the importance of fairness, legitimacy and good treatment by the tax authorities. Webley’s contribution also reveals that there are clear limits to our present knowledge about tax compliance, caused by the use of restricted samples, an over-reliance on self-report and limited theorizing about business compliance.

Since the 1980s crime has become an important field of historical research, but the specific field of economic crime has not yet attracted much attention. Finally, in Chapter 8, Dag Lindström reviews the main empirical findings in this field. Some historical studies indicate a growing number of violations against trade regulations during the beginning of the early modern period. From the sixteenth century onwards more systematic state intervention appears and new control systems are introduced. Violations against trade regulations and toll ordinances probably made up the major part of economic crime before the nineteenth century. During that century the scope of economic crime and the appropriate control systems went through fundamental changes as the tax systems and the legal and institutional framework of business activities radically changed.

To conclude, economic crime is not a new phenomenon. There has always been a conflict between private interests and public interests, crimes and enforcement. Global trade and limited power of the state is also an established fact. What is new is, on the other hand, is information technology and the speed in trade and business. Also new – with the exception of the work of Jeremy Bentham (1780) – is the economic theory of crime and its application to business activities. The contemporary economic analysis of crime was initially concerned with individual deterrence in a cost–benefit setting. That is, potential criminals are supposed to compare the illegal gain from an offence with the expected cost, including expected punishment. The cost–benefit analyst investigates the optimal law enforcement by weighing the costs of crime, the cost of policing and the costs of punishments. This approach has emerged as a normative comprehensive framework to prescribe optimal legal policies when individuals behave rationally. This approach can, as is demonstrated in the book, be beneficially applied to corporate illegal activities in business. The surveys also show that there is a vast area of unexplored research on economic crime which must be approached from different scientific perspectives.

REFERENCES