1. The characteristics of economic crime and criminals

William Tupman

INTRODUCTION

Economic crime is a relatively loose term, covering a wide variety of phenomena. All property crime and acquisitive crime is economic crime in the sense that it is crime aimed at making the perpetrator wealthier, but robbery and burglary are not normally included in the concept. Barry Rider’s overview of 1988 reviews the problems in a way that could be republished today with very little change. Looking at contemporary practitioners, the Economic Crime Command of the National Crime Agency include fraud, intellectual property crime, identity theft and counterfeit currency in their remit. But a list does not amount to a definition. The City of London Economic Crime Directorate, policing lead for fraud investigation in the UK, has fraud teams that target boiler room frauds, mortgage fraud, insider and illegal trading, ticketing fraud and identity crimes. The Federal Bureau of Investigation (FBI) white collar crime website pulls no punches in defining white collar crime as “Lying, cheating and stealing”. It goes on to say, more calmly, that “the term is now applied to the full range of frauds committed by business and government professionals”. The list of crimes that follow, however, widens the focus beyond this group. The Swedish Economic Crime Authority concentrates on accounting crime, tax crime, bankruptcy related crime, crime under the Swedish Companies Act, market abuse crime and crime against the EU’s financial interests. In Sweden, fraud is dealt with by the police and corruption by the National Anti-Corruption Unit. So economic crime means different things to different investigators. The remit of the Guardia di Finanza in Italy, for example, includes smuggling, as did the remit of the UK Customs until recent reforms. These transferred some powers and personnel to the Border Agency, which has now been abolished and replaced by the Border Force, which presumably deals with smuggling, with the

6 Ibid.

3 William Tupman - 9781783475797
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exception of people, and the Immigration Service. Other powers have been transferred to the Serious and Organised Crime Agency, now the National Crime Agency.

“Financial crime”, “white collar crime”, “corporate crime”, “crimes of the powerful”, “smuggling” and even “organised crime” are all concepts associated with economic crime. Crime against the economy itself – crime against the market and against a level playing field – is almost the ultimate crime in the neo-liberal playbook, but there is a contradiction in this approach as equally it should be impossible for there to be crime in a perfectly working market, so crime is a sign that states are impeding those perfect workings rather than that the offender is doing anything wrong. Unless, of course, a perfect market is an abstract concept, unobtainable in the real world.

The “USLegal” website defines economic crime as “illegal acts committed by an individual or group of individuals to obtain a financial or professional advantage”. This definition includes robbery, making it so broad as to make the term useless. We might as well fall back on the distinction between crimes against property and crimes against the person. If the concept is to be operationalisable, it needs to be narrower. Chizu Nakajima has reviewed international perspectives on financial crime and found no clear agreed definition of the concept.

Edwin Sutherland first used the term “white-collar crime” in a speech in 1939. He returned to it in a monograph in 1949, defining it as “crime committed by a person of high status and respectability in the course of his occupation”. The original text was censored because corporations threatened to sue, and all reference to individual corporations by name was removed by the publishers. The full text was only published in 1983. The concept was expanded by other academics to imply a separate category of crime to “blue-collar crime”, crime being traditionally seen as the preserve of the “dangerous classes” and involving violence or the threat of violence. Sutherland intended to point out that just as much crime was being committed by the well-to-do and that even when caught they were unlikely to suffer imprisonment as the blue collar criminal would. The definition has slipped over time to “financially motivated non-violent crime committed by business and government professionals”. “Crimes of the powerful” has become an alternative concept. David Nelkin provides the definitive contemporary review of the concept in the Oxford Handbook and releases this author to discuss individual issues in order to set the scene for the present volume.

Hazel Croall has looked at white collar crime in a comparative context. She argues that we can define by type of crime, by type of offender, by place of offences, or we

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can characterise it by ambiguous criminal status, low rates of prosecution and lenient punishment, but if we do, is it really crime? Croall also looks at white collar crime in the global context. She argues that there is a great deal of “harm” done by businesses, but that often this harm is neither technically nor legally a crime. It is easy for high status individuals and organisations to avoid prosecution. “Too big to fail”, “in the national interest” and “if the President does it, it can’t be wrong” are three phrases that have been used by high status individuals in the past as a defence of their actions. These issues will be further discussed in the sections that follow.

Following Croall, this chapter is structured by looking first at the types of crime listed under the headings “white collar crime”, “economic crime” and/or “financial crime”. It does this because there is no clear agreement on definitions of these concepts, and there is even disagreement as to what concepts to include. It then adds a category “types of victim” in order to introduce a discussion of the ambiguity of criminal status and the consequences for deterrence and rational choice, partly because of the way these have been raised in Sittlington’s PhD thesis, which discusses whether anti-money laundering legislation works, but has implications for policies against economic crime more generally. Finally, the chapter discusses types of offender.

CATEGORIES OF ECONOMIC CRIMES

Theft: Robbery and Burglary

Robbery and Burglary are definitely not white collar crimes, but possibly economic crimes. These are classic blue collar crime activities, but more complex in motivation in contemporary society. There are offenders who aim at short-term gain, stealing other people’s property to fund a lifestyle of hedonism, particularly at the weekend. There are more sophisticated “professional” criminals, who hold onto their “ill-gotten gains” to avoid detection and who are now vulnerable to the more recent approach of investigators who search out their assets and demand that they prove their provenance.

Theft from domestic premises transferred to theft from vehicles as stereos, GPS systems and other high-tech goods became part of motoring. Insurance companies began to develop ways to make this more difficult along with making the theft of the car itself harder. The response from offenders has been to develop a number of frauds: making agreements with the car owner to steal the car for a fee, after which a new car would be claimed on the insurance. More recently, claims for “whiplash” injuries have been organised. The move is a classic transfer from blue collar to white collar crime, but the perpetrators remain classically blue collar in background. There is also organised trade in luxury vehicles, with the stolen car being taken out of the country before it is even reported missing. As the divide between blue and white collar in the classic sense is blurring, there remains a more relevant divide between opportunistic and more organised crime.

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6 Research handbook on international financial crime

Smuggling

This involves the transportation of commodities or people across borders illegally, the people or commodities concerned either being excluded from entry, such as drugs or immigrants without visas, or the commodity carrying an excise duty which the smuggler intends to evade. As Kipling put it:

… Brandy for the Parson, ‘Baccy for the Clerk.

Laces for a lady; letters for a spy …

Duty evasion was historically the reason for smuggling, but drugs and people have become more profitable in recent years. The previous section, though, suggests that smuggling out of a country is becoming as important as smuggling in. Stealing something and moving it abroad can make detection and prosecution more difficult.

Fraud

The UK Serious Fraud Office (SFO) defines fraud as “abuse of position or false representation, or prejudicing someone’s rights for personal gain”. Fraudsters operate through all the communications media: the telephone, snail mail, email, social networking sites; anywhere they can communicate with people. They still use doorstep tactics, as well as places where people meet, such as bars and clubs. Growth in recent years has been in the area known as cybercrime. A high proportion of cybercrime is traditional fraud taking advantage of the communication possibilities offered by the internet.

The SFO website offers a “taxonomy of fraud”. This distinguishes seven types of fraud, or, more correctly, seven arenas where fraud occurs: individuals, corporate, charities and non-profit, market abuse, fiscal, public sector and supporting activities. It subdivides individual fraud into advance fee payments, investment frauds, non-investment and abuse of position of trust. It lists 14 different types of advance fee fraud, including the infamous “419” scams originating in West Africa, illustrating the cross-border nature of contemporary fraud.

This chapter is not the place to go through all the different types of fraud listed by the SFO. A similar list can be found on the FBI site, although not so artistically presented. Fraud as a category has expanded to be almost synonymous with economic crime. Investigative units are simply listing their areas of responsibility and struggling with how to subdivide them. There is a high degree of overlap between perpetrators and a need for more appropriate definitions of separate phenomena, so that appropriate legal and investigative frameworks can be put in place. Concepts are being stretched

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beyond the point of utility. This is, unfortunately, not unusual in criminology, where the media, self-proclaimed experts and law enforcement all seek to broaden definitions for their own purposes.

As an example, a quick examination of the taxonomy diagram will discover that corruption is hidden under the category of “supporting activities”. This may reflect a UK failure to engage with corruption on the basis that it isn’t a problem for the UK, which may have a Bribery Act, but has not engaged legislatively with corruption in all its forms.

The SFO taxonomy raises an interesting aside: more attention is given to the professional criminal frauds than to the white collar frauds. If a financial value were to be allocated to each category, the market frauds, market-fixing, insider trading, bribery to obtain overseas contracts and probably even procurement fraud would almost certainly be much more profitable than the 14 advance fee frauds and much more damaging to the economy. Not much has changed since Sutherland’s day.

**Corruption**

The majority of this subsection originates from a piece on corruption by the present author, starting from the idea that corruption can be summed up as the abuse of public position for personal gain.\(^{17}\) As with white collar crime in general, the people involved may be powerful, the offences they commit are poorly defined in law, they do not consider what they are doing to be illegal and their “crimes” are often considered “victimless”. When they are brought to court, prosecution frequently fails because of the complexity of the cases and the judicial process. The offenders may have good financial resources and so can retain effective defence lawyers.\(^{18}\)

Corruption can also be considered an element of many crimes rather than as a separate phenomenon in itself, which may account for the SFO approach above. It may be subsumed under fraud, nepotism and bribery, or indeed white collar crime itself, or organised and political crime. In the EU it is seen as lying at the far end of a continuum running from mismanagement, via waste, to fraud. Corruption can thus be seen as a precursor of other crimes, almost as a mirror image of money laundering, which can be seen as requiring a precursor crime to make the activity itself criminal.

The concept of corruption is based on the idea of “some ‘naturally sound condition’ from which corrupt acts deviate”.\(^{19}\) Transnational companies and politically exposed persons (PEPs) conspire to assert: “Your corruption is my normal business practice; your bribe is my mark of respect.” It can be difficult to draw a clear line between nepotism or insider dealing, on the one hand, and networking on the other. A contract in Nigeria may involve the overseas contractor paying the same amount as the price bid for the contract by an “agent”. Is it unfair to compare this to “full economic costing”,

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18 Ibid p247.

where a research funder can be charged over 100 per cent “overhead”? Career building in both the West and the East has long been characterised by patron–client relations. Equally, joining freemasons’ lodges, the Rotarians or golf clubs may take place in order to make contacts rather than to engage in the primary activities of these organisations. In China, without guanxi, nothing could be achieved.

Tupman has argued that it is useful to distinguish between “old” and “new” corruption. Before the creation of world trade, business practices varied from country to country. These were a response to the way in which internal trade developed and reflect each society’s differing cultural mores. When private companies began trading in countries other than those in which they originated, initially they had to adapt to the existing business practices of the country in which they wished to operate. As other external competitors came into the same market, the original traders used their knowledge of these practices to maintain their market position. This could be considered “old” corruption and reflects a world of barter in the absence of convertible currencies. Britain even went to war with China over its insistence on paying for luxury goods in opium rather than the silver demanded by the Chinese.

“New” corruption arises in the era of multi- and trans-national corporations when “external” companies seek to corrupt government officials to obtain a monopoly position, either as a supplier of goods and services or as a purchaser of a primary product. A global economy means that cash can be paid into the overseas bank account of a PEP to gain a contract at the expense of a competitor transnational corporation. So corruption involves “corporate crime” in this new context and probably money laundering too.

Money Laundering

“Follow the money” became the cry of governments seeking to pursue the “war on drugs”, and money laundering took centre stage. Like many of the concepts making up economic crime, this began with a narrow meaning: the process whereby criminals sought to bring the profits of their criminal activities into the legitimate financial world.

Partly because of the inclusion of terrorist funding, partly because of empire building by special investigative units, partly because the profits of drug trafficking made crime groups so cash heavy that they invested in new criminal businesses rather than making their money appear legitimate, “money laundering” has become a synonym for the movement of funds and assets from one jurisdiction to another. It now effectively overlaps with an earlier concept, “hot money”, the rapid movement of capital for speculative reasons, which is often not illegal, except when it originates in a country with legal restrictions on the removal of capital.

The Financial Action Task Force (FATF) has produced a framework of recommendations for the combatting of money laundering and terrorist financing.20 These effectively define the phenomenon.

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Cybercrime

As discussed above, a great deal of cybercrime involves the use of the internet as a means of communication in order to perpetrate classical frauds. Increasingly, the internet is becoming a medium for the purchase of goods, for banking, and is in the process of becoming “the internet of things” where even household appliances can be communicated with remotely. Other possibilities will emerge as this progresses.

There are other areas though where crime is growing: phishing, Trojan horses, worms and compound programs like Stuxnet. The placing of malware on computers to create botnets, which can be used to crash commercial and government websites in “denial of service” attacks, is a development of something that is new in cybercrime. Not all of these offences fall within the remit of economic crime. Many come closer to sabotage and even terrorism.

The increasing use of algorithms by investment brokers and financial players has already led to one “flash crash”. Increasingly, Flare and Stuxnet derivatives will be used by organised crime groups to reconnoitre financial systems and make money out of knowing that they are going to provoke changes in market prices. Bankers have already interfered with market prices and fixed foreign exchange rates. Criminals will have learnt that such things are possible and will be planning how to carry such operations out themselves for their own enrichment.

As further discussed below, cybercrime is now operating within the knowledge economy. Governments are stealing trade secrets from each other and placing surveillance malware deep within the computer systems of competitor states and states with which they are in conflict. The use of non-state actors in order to provide deniability has meant the spread of skills into organised crime networks, with the result that police organisations are concerned that they are falling behind the game. It has become a truism that it can take five years to discover exactly what crimes are being committed today. The Onion Router (TOR) or the “deep web” exists to protect anonymity, which assists criminals as well as intelligence services and dissidents.\(^{21}\) It was originally developed by the US Navy, but is now used by paedophile networks, drug traffickers and who knows whom. Its partner currency, Bitcoin, opens up new areas of potential financial crime, although it is a mistake to be alarmist about anything new. Most of these creations are neutral. It is those who use them who can be forces for good or evil.

Counterfeit Products

An area that has expanded in recent years is the trade in copies of manufactured goods. Fake Guccis, fake Rolexes, fake perfume, all do a roaring trade in tourist resorts around the Mediterranean and further afield. Designer goods are easy to fake and profit from because the price of manufacture is so much lower than the price at which they are sold. The same goes for music CDs and computer software, and manufacturers have had to work hard convincing police forces around the world to pursue traders and manufacturers of fake goods. As the trade moved onto the internet, efforts have become

more strenuous, with prosecutions of music download sites and threats to prosecute individual downloaders.

There is a more dangerous side to counterfeiting though. The trade in counterfeit drugs and medical equipment that do not work, counterfeit aeroplane parts, counterfeit car parts, all threaten life.

CATEGORIES OF VICTIM

The idea of categorising by victim, as Croall does, is in order to examine whether it is the nature of the perpetrator or of the victim that makes criminal prosecution and punishment more or less likely. She distinguishes between occupational white collar crime, where the perpetrator benefits at the expense of the employer, and corporate crime, where the corporation benefits but to the detriment of safety, the quality of goods or services, society and/or the environment. Perhaps a continuum could be created, she suggests, between legitimate and illegitimate, licit and illicit businesses.

Individual Members of the Public

Where the offence, such as fraud, is committed against individual members of the public, the individual amounts involved are likely to be too small to be worth investigating. There is little kudos to be had, although it should be noted that certain vulnerable individuals, such as elderly ladies, fall into a different category as a result of media interest. The Swedish Economic Crimes Agency makes great play of the fact that it investigates all economic crime and doesn’t “cherry-pick” unlike investigators elsewhere, using the SFO as an example. This is slightly odd, since the same site says that it leaves investigation of fraud to the police. There is a problem here: if national units concentrate on major crimes because of the expense of prosecution, who will deal with the smaller crimes, where the same problem of expense exists? Without prosecution, what happens to deterrence?

This may become different where the crime targets several to all members of the public, but again, the true picture may not emerge because victims feel stupid, so often do not report relatively small frauds. The police run preventative campaigns, but again, prosecutions are rare, and this is not always because of the status of the perpetrator. Another factor is that a good fraudster builds up the trust of the victim, who is often not aware of being tricked out of money or assets.

The Employer

Where the employer is the victim and the employee the perpetrator, the employer may be wary of reporting an offence to the police because of the danger to consumer and/or market confidence. The damage done by publicity may be greater than that done by the original offence. Equally, the employer has all sorts of disciplinary sanctions available if the employee’s skills are seen as worth keeping and the possibility is there of

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22 Swedish Economic Crimes Authority website op cit.
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stopping losses from wages until the money taken has been paid back. There is a suspicion that where a high profile case is prosecuted, the employee is being used as a scapegoat for the failings of the employer. Indeed, this is often part of the defence case.

The State

Theft of state property has been a serious crime in Communist countries from the outset. In capitalist countries, investigation is more likely where the state is the victim, but not necessarily in the procurement process. Outsourcing of government and public services has led to an ideological obsession with awarding contracts to private firms and not being too rigorous about regulating either the process of the award or the conduct of the contract. Private Eye now sells more copies on the strength of its investigative journalism into such behaviour than it does on the strength of its jokes. There does appear to be a line between what is considered to be an offence and what is considered to be “teething problems”.

The Market Itself

The thinking behind the identification of there being a threat to the market itself is well exemplified by a memo from the European Commission to the European Council and the European Parliament on the need for a policy on corruption. Five aspects of the interests of the Union are defined as being affected by corruption, and are primarily economic:

- the interests of the Union as being affected by corruption in that it
  - undermines sound decision making,
  - distorts competition and challenges principles of open and free markets, in particular the proper functioning of the internal market,
  - it damages the financial interests of the European communities,
  - it had various effects upon external policies in respect of a number of states receiving the systems, and
  - it is at variance with the transparent and open conduct of International Trade.23

There is a different moral emphasis from that found in traditional definitions of corruption that stress the dangers of immoral bureaucratic behaviour. Here, open markets, financial interests and trade are central. However, although both the corrupter and the corruptee are recognised, much of the legislation is aimed at the corrupter rather than at the set of relationships facilitating corruption in the countries where it occurs. Nevertheless, the EU document represents a movement in the definition of corruption towards the areas referred to above as “new” corruption.24

24 Taken from Tupman op cit.
ECONOMIC CRIMINALS

The essential question here is to what degree are those who commit economic crime still persons of high status and respectability? Have organised crime networks recognised the opportunities of fraud and moved in? There have always been confidence tricksters in ports and market towns trying to separate sailors from their wages and farmers from their cash. Have these people moved into the world of white collar crime on the back of the Internet?

If we take the West African 419ers, the emails originate from individual fraudsters trying to obtain a fee for access to unlikely sums of money. If the victim persists, then more organised gangs may become involved if they can be persuaded to visit the country where the funds are supposed to be. This is a crime committed by educated people, certainly, who are both literate and computer competent, but hardly high status. They are unlikely to attract police attention unless they are very careless.

Similarly, there is an argument that professional or career criminals move up the food chain as they achieve success. They may start off running a chain of prostitutes or street dealing, or even engaging in armed robbery, but once they have capital, they will move into drug trafficking and from there into white collar crime, because as the profits rise, the risk of being caught diminishes. Increasingly, professional criminals who survive and accumulate assets and wealth need accountants, lawyers and managers to run their financial affairs and conceal their assets. Once they are involved with professionals with a dubious sense of ethics, it becomes easy to set up shell companies and look to commit frauds in the procurement process or to sell counterfeit products and even move up to insider trading and market manipulation.

So the white collar/blue collar distinction has become blurred with the availability of investment cash from the drugs trade, the development of the Internet, the lowering of ethical standards and a recent decline in economic rewards for some professions. It is worth noting that the distinction will continue to exist for the vast majority, but that there is a significant overlap, which was exacerbated by the “Big Bang” in the City.

Corporate

The corporate category covers deliberate wrongdoing by companies. In recent years, banks have entered into deferred prosecution agreements with US prosecutors for moving money in defiance of sanctions and falsifying SWIFT codes, for money laundering for drug dealers, for fixing foreign exchange rates, and a variety of other offences. Fines have been imposed, but there is a sense that this is not an appropriate approach as the cost is simply transferred to customers. Most banks are covered by the “too big to fail” mantra, so it is difficult to impose appropriate penalties and create a regime to deter future offending.

The attitude of states towards bribery on the part of transnational companies has been ambivalent. There has been an attempt within the EU to ban tax exemptions for bribery as part of an overseas contract, but individual states still permit it, which in effect makes it legal.
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PEPs

A PEP is someone who is seen as representing a higher risk for bribery, terrorist financing or money laundering by virtue of their position within a state. The term was coined following the Abacha affair, and FATF makes recommendations for enhanced monitoring of any accounts held by a financial institution on behalf of such a person.

There are two major areas of concern: politicians and their families who siphon off a country’s aid budget into accounts held in overseas banks and individuals who expect a premium to be paid to them for the award of a particular contract, such as weaponry by a transnational company, thereby removing any sense of a level playing field in government procurement. Of increasing interest is the payment of large sums to terrorist organisations by wealthy individuals.

Rogue Insiders: Major and Petty

There have been a number of market traders recently who have allegedly gambled on particular trades and lost. In some cases they have bankrupted the company or bank in the process, in others the bank has been able to cope with the losses but has sacked the individual and called in the police claiming fraud, in contradiction to the point made above in the section on victims. Although each case has raised questions about internal oversight of employees, several have gone to prison. So there are cases where criminal sanctions have been used against white collar criminals, but only where the victim is the employer, not where the victim is the taxpayer, the government, a foreign government or the market itself. Nevertheless, these are not cases of exceptions proving the rule, but examples of situations where employers agree that imprisonment is an appropriate form of punishment and that deterrence is a good idea. The distinction between blue and white collar crime is not totally clear-cut.

There are now a series of red flags suggested for identifying potential minor fraudsters within companies, most of which seem to suggest that companies should look at their own employees in the same way that countries need to look at PEPs. Transparency of income and expenditure patterns are obvious mechanisms for the prevention of fraud and financial crime, although this obviously raises privacy issues.

Organised Crime Groups

Increasingly, the literature refers to networks of criminals rather than organised crime groups. The Camorra, `Ndragheta and the Sicilian mafia still exist, however, and have profited from the recent economic crash by being the only institutions in Italian society prepared to advance funds to struggling businesses. Research may one day show that they have been operating in similar ways in other parts of Europe. These networks are cash heavy, and putting companies in their debt with an eye to taking them over can begin as a form of money laundering. Money loaned becomes money used for purchase and eventually the previous owner becomes the manager. In the process the loan sharkers have made their “dirty money” respectable.

Organised crime networks are also moving into cybercrime and are being joined by governments in the form of their electronic intelligence departments. Governments
happily pass on the trade secrets of other governments to their multinational and transnational corporations, maintaining electronic surveillance in the name of “counter-terrorism” but actually quite happily undermining the free operation of the markets by providing commercially sensitive information to select companies. Cybercrime ultimately is about the acquisition of information in the “knowledge economy” that exists in the 21st century. The relationship between governments, corporations and cybercriminals is murky as cybercriminals are employed in order to conceal the ultimate origin of malware, denial of service attacks, “spoilers” that release films, music or even political announcements prematurely. Internet fraud appears as the tip of the iceberg, but yesterday’s criminals today own banks, oil refineries and goodness knows what else since the 2008 crash. If anyone has scruples about acquiring information about competitor planning for the future, it certainly isn’t them.

CONCLUSION

The listing of crimes, offences and perpetrators is hardly definitive. The overall conclusion of this overview is that categories are becoming blurred as corporations themselves become victims of insiders and organised crime networks. When corporations are demanding punishment for white collar criminals indulging in very similar behaviour to themselves, such as market manipulation, corruption of insiders, insider trading, interference with the existence of a level playing field, it becomes harder for them to also demand the right to engage in the same form of behaviour without penalty. The line between blue collar and white collar crime has become increasingly blurred. As Sittlington has shown, regulators, law enforcement and prosecutors agree that criminal sanctions are necessary to deter further wrongdoing. The only problem is to discover what would deter the offender – Bosworth-Davies would argue for “porridge, and lots of it”. Sittlington’s research shows, however, that it is the loss of assets that has a chance of deterring the professional criminal. He also shows that a division still exists between the criminal who steals to fund a lifestyle, consuming his or her ill-gotten gains as fast as they are obtained, and the professional who wishes to preserve his or her assets for an imagined future retirement. These comments on deterrence and rational choice apart, returning to the opening of this chapter, Rider’s warnings of the inadequacies of a hands-off regulatory approach back in 1988 are still relevant a quarter of a century later.

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25 Sittlington op cit.
27 Sittlington op cit.
28 Rider op cit.