ROUTLEDGE REVIVALS

Regulating Fraud

White-Collar Crime and the Criminal Process

Michael Levi

Routledge Revivals

Regulating Fraud

First published in 1987, this book discusses white-collar or commercial crime which has grown to be a major issue in our society today. Looking at research from North America and Britain, the book explores the way fraudsters are treated. It draws on various disciplines including Economics, Law, Politics, and Sociology in order to show the frequency and impact of different types of fraud. In this book, Dr. Levi introduces the reader to the key areas of debate: What pressures influence the law on fraud? How do state agencies, self-regulatory bodies, or other professionals police fraud? To what extent is money-laundering and international organized crime breaking down the distinction between policing of the underworld and the upperworld? Dr. Levi concludes with the analysis of national and international policy trends in relation to fraud.

This book will be of interests to students of criminology, politics, and the sociology of law as well as to practicing lawyers and other professionals in the business sector.

This page intentionally left blank

Regulating Fraud

White-Collar Crime and the Criminal Process

Michael Levi

Routledge
Taylor & Francis Group

First published in 1987
by Tavistock Publications Ltd

This edition first published in 2013 by Routledge
2 Park Square, Milton Park, Abingdon, Oxon, OX14 4RN

Simultaneously published in the USA and Canada
by Routledge
711 Third Avenue, New York, NY 10017

Routledge is an imprint of the Taylor & Francis Group, an informa business

A Library of Congress record exists under ISBN: 87009994

ISBN 13: 978-0-415-82650-1 (hbk)
ISBN 13: 978-0-203-52933-1 (ebk)
ISBN 13: 978-0-415-82651-8 (pbk)

MICHAEL LEVI

REGULATING FRAUD

White-collar crime and the criminal process

TAVISTOCK PUBLICATIONS
London and New York

First published in 1987 by
Tavistock Publications Ltd
11 New Fetter Lane, London EC4P 4EE

Published in the USA by
Tavistock Publications
in association with Methuen, Inc.
29 West 35th Street, New York, NY 10001

Printed at the University Press, Cambridge

British Library Cataloguing in Publication Data

Levi, Michael
Regulating fraud: white collar crime and the criminal process.
1. White collar crimes
I. Title
364.1'68 HV6635

ISBN 0-422-61160-3

Library of Congress Cataloging in Publication Data

Levi, Michael.
Regulating fraud.

Bibliography: p.
Includes indexes.
1. White collar crimes—Great Britain. 2. Fraud—Great Britain. 3. Criminal justice, Administration of—Great Britain. 4. White collar crimes—United States. 5. Fraud—United States. 6. Criminal justice, Administration of—United States. I. Title.
K5215.L48 1987 345.41'0268 87-9994
ISBN 0-422-61160-3 344.105268

Contents

Acknowledgements vi

Table of statutes ix

Table of cases xi

Glossary of financial terms xiii

Preface
The academic context of this study xviii

1 Introduction 1

2 The impact of commercial fraud 18

3 Attitudes to commercial crime 57

4 Economic interests, law, and the politics of fraud control 76

5 The reporting and policing of commercial fraud 118

6 The prosecution and trial of commercial fraud 183

7 The sentencing of commercial fraud 211

8 Controlling the fraud business: current trends and future prospects 273

Bibliography 358

Name index 376

Subject index 380

Acknowledgements

Many people have given a helping hand in the lengthy preparation of this book. Among the multitude of academic colleagues who have been pressed into reading chapters in draft, often at short notice in what sadly turned out to be wildly over-optimistic deadlines, I am particularly grateful to David Sugarman for his critique of my original introduction. This spurred me on to produce the much fuller account of the legislative process that is now Chapter 4, though he is not responsible in any way for this final version. Many thanks are due also to Phil Fennell for his comments on an earlier draft of Chapter 4 and to Robert Reiner for his comments on the draft manuscript. The other distinguished commentators suggested little in the way of revision, so I will maintain their anonymity: this should protect them from any public embarrassment – though not private blame, for I am not one of those who hypocritically accept full responsibility for the deficiencies of others – if and when any critical reviews come out!

As for the research that went into the making of the book, I thank the Commonwealth Secretariat and Law Ministers for commissioning my research into fraud trials (and prosecution departments around the world for supplying the data); the Home Office Research and Planning Unit, accountants Arthur Young, and the Police Foundation for funding and sponsoring the survey of *The Incidence, Reporting, and Prevention of Commercial Fraud*; the Home Office Statistics Department and Fraud Squads in England and Wales, most particularly the Metropolitan and City of London Company Fraud Department, for supplying me with what must have seemed to be absurdly irrelevant data and for making constructive comments about it; and Lloyd's, The Stock Exchange, and the Securities and Investments Board, for some very helpful information about their enforcement procedures and sanctions.

On a personal as well as an institutional note, I am particularly grateful to Claire Austin of the Home Office and to James Morgan of Arthur Young for their time and efforts on the research study of *The Incidence, Reporting, and Prevention of Commercial Fraud* (1986); to Barry Rider of the Commonwealth Commercial Crime Unit and Jesus College, Cambridge, for his constant encouragement; to Commander

Malcolm Campbell, Chief Superintendent Mike John, and Chief Inspector Phil Whittick (and other colleagues in the Metropolitan Police Fraud Squad); to Superintendent John Todd of the City of London Fraud Squad; to Vince Carratu, of Carratu International; to David Chaikin of the Australian Attorney-General's Department; and to a number of other insiders in the public and private sector who prefer anonymity, for many stimulating conversations. Kevin Heal and Gloria Laycock of the Home Office Crime Prevention Unit, and Trevor Benn of the Home Office Statistics Department, also smoothed my path in this delicate area of research. However, none of the persons above bears any responsibility for the interpretation I have placed upon the data or upon the conversations that I have had with them: that is the author's burden alone.

The financial crisis in the higher education sector made it pointless to apply for my theoretical entitlement to sabbatical leave in order to complete this book. My thanks instead (and anyway), go to my wife and partner, Penny, and to our horse, Seven Up, for putting up patiently with my long absences at the word processor, on research trips away, and at those gastronomic rituals which professionals and businesspeople call 'working lunches' and which we academics would prefer to label 'fieldwork', because it sounds like even less fun. (I suppose that wild mushrooms in raspberry vinegar would be the closest I ever came to a field on any of these projects! Those who lament the paucity of research on upperworld crime might use culinary incentives as a redistributive mechanism to move criminologists away from their traditional concentration on juvenile delinquency.) My students deserve some gratitude for not pointing out too often that my office looks as if burglars had wrecked it: actually, my hope was to deter burglars by inducing them to believe that someone had got there before them. Indeed, I think that I have now found the definitive solution to the problem of office burglary though, like many solutions to crime, it may not have much general appeal to people other than those doing the recommending.

The editorial staff at Tavistock – Caroline Lane, Tamar Miller, and Juliet Aitchison – coped heroically and tolerantly with the gradual expansion of this book from the rather more modest scale I had originally anticipated. The constant drip of new data must have made their task seem like a Department of Trade and Industry insider dealing enquiry, even if they remain disappointed at my holding back on the ultimate foolproof fraud – I need something in reserve for my old age! Finally, though he played no part in these recent pieces of research, my thanks go to Richard F. Sparks both for first kindling my interest in fraud at Cambridge way back in 1972, when virtually no other criminologists (or, fraudsters themselves excepted, other *non-*

criminologists) were doing any thinking about it, and for the model he offered in the rigorous self-criticism and clarity of his own writing. If this work bears any comparison whatever with what he would have produced, then my efforts will have been worthwhile.

Michael Levi
University College, Cardiff.
January 1987

The author and publishers would like to thank the following for permission to reproduce copyright material: all Home Office material is reproduced with the permission of the Controller of Her Majesty's Stationery Office.

Table of statutes

Banking Act (1979)
Banking Bill (1986)
Banking Secrecy Act (1970)
Bankruptcy Act (1914)
Bankruptcy (Amendment) Act (1926)
Bills of Exchange Act (1882)
Building Societies Act (1986)
Car Tax Act (1983)
Companies Act (1948)
Companies Act (1985)
Company Securities (Insider Dealing) Act (1985)
Company Directors Disqualification Act (1986)
Consumer Credit Act (1974)
Contempt of Court Act (1981)
Copyright Act (1956)
Copyright (Amendment) Act (1983)
Criminal Appeal Act (1976)
Criminal Attempts Act (1981)
Criminal Justice Act (1982)
Criminal Justice Bill (1986)
Criminal Law Act (1977)
Customs and Excise Management Act (1979)
Drug Trafficking Offences Act (1986)
Estate Agents Act (1979)
Fair Trading Act (1973)
Finance Act (1972)
Finance Act (1985)
Financial Services Act (1986)
Food and Drugs Act (1955)
Forgery and Counterfeiting Act (1981)
Hallmarking Act (1973)
Health and Safety at Work Act (1974)
Insider Trading Sanctions Act (1984)
Insolvency Act (1976)

Insolvency Act (1985)
Insolvency Act (1986)
Limited Liability Act (1856)
Lloyd's Act (1982)
Omnibus Crime Control and Safe Streets Act (1968)
Organized Crime Control Act (1970)
Police and Criminal Evidence Act (1984)
Prevention of Corruption Act (1906)
Prevention of Corruption Act (1916)
Prosecution of Offences Act (1985)
Securities and Exchange Act (1934)
Securities Transactions Act (1986)
Taxes Management Act (1970)
Theft Act (1968)
Theft Act (1978)
Wages Act (1986)

Table of cases

Al Nahkel for Contracting and Trading Ltd. v. *Lowe* [1986] 1 All E.R. 729
Anton Piller KG v. *Manufacturing Processes Ltd.* [1976] 1 All E.R. 779
Attorney-General's Reference No. 1 of 1985 [1986] 2 All E.R. 219
Chief Constable of Hampshire v. *A. Ltd. and others* [1984] 79 Cr. App. R. 30, CA
Chief Constable of Kent v. *V and another* [1983] 1 QB 34
Distributori Automatici Italio SpA v. *Holford General Trading Co. Ltd. and another* [1985] 3 All E.R. 750
Gartside v. *Outram* (1856) 26 L.J.Ch. 113
Felton v. *Callis* [1968] 3 All E.R. 673
Initial Services Ltd. v. *Putterill and another* (1967) 3 All E.R. 145
J. Barber & Sons v. *Lloyd's Underwriters* [1986] 2 All E.R. 845
Nippon Yusen Kaisha v. *Karageorgis* [1975] 2 Lloyd's Rep. 137, CA
Preston v. *IRC* [1985] 2 All E.R. 327, HL
Prudential Bache v. *City Take-over Panel, Financial Times*, 6 December, 1986
R v. *Adams* (1986) *Crim.L.R.* 344
R v. *Aramah* (1983) 76 Cr.App.R. 190
R v. *Austen* (1985) 1 BCC 99, 258
R v. *Ayres* [1984] A.C. 447
R v. *Barrick* (1985) 7 Cr.App.R. (S.) 142
R v. *Billam* (1985) 82 Cr.App.R. 347
R v. *Campbell* [1984] BCLC 83, CA
R v. *Central Criminal Court ex parte Adegbesan and others* [1986] 3 All E.R. 113
R v. *Chatfield* (1986) *Crim.L.R.* 71
R v. *Colley* (1986) *Crim.L.R.* 72
R v. *Cooke* [1986] 2 All E.R. 985, HL
R v. *Corbin* (1984) 6 Cr.App.R. (S) 17
R v. *Cox and Hodges* [1983] *Crim.L.R.* 167–68
R v. *Ford* (1986) *Crim.L.R.* 483
R v. *Garner* (1986) *Crim.L.R.* 166
R v. *Ghosh* [1982] 2 All E.R. 689
R v. *Gilmore* (1986) *The Times Law Reports*, 21 May

R v. *Grant* [1986] 81 Cr.App.R. 324
R v. *Grant* (1986) *Crim.L.R.* 127
R v. *Gupta* (1985) *Crim.L.R.* 681
R v. *Howard* (1986) 82 Cr.App.R. 262
R v. *Horrigan* (1985) 7 Cr.App.R. (S) 112
R v. *IRC, ex parte Rossminster* [1980] 1 All E.R. 80, HL
R v. *Landy and others* [1981] 1 All E.R. 1181
R v. *Lima* (1986) *Crim.L.R.* 129
R v. *Miller* (1986) *Crim.L.R.* 127
R v. *Mossop* (1986) *Crim.L.R.* 72
R v. *Murray* (1980) 2 Cr.App.R. (S) 379
R v. *Navvabi* [1986] 3 All E.R. 102
R v. *Offord* (1986) *Crim.L.R.* 102
R v. *Poulter* (1986) *Crim.L.R.* 73
R v. *Silverman* (1983) 5 Cr.App.R. (S) 46
Re Civica Investments Ltd. [1982] 126 *Sol. Jo.* 446
Reynolds v. *Metropolitan Police Commissioner* [1985] 2 WLR 93, CA
Scott v. *Commissioner for the Metropolis* [1974] 3 All E.R. 1032
Tarling (no. 1) v. *Government of Singapore* (1980) 70 Cr.App.R. 77
Weld-Blundell v. *Stephens* (1919) 1 KB 520
Wilson v. *Clinch*, unreported, 1879

Glossary of financial terms

AIBD Association of International Bond Dealers: the organization of dealers in Eurobonds, first formed in 1969. They are members of the Securities Association self-regulatory organization.

AFBD The Association of Futures Brokers and Dealers. This Self-Regulatory Organization comprises firms advising, dealing, and broking in futures and options (except for individual stock options).

Big Bang The term used to describe the revolution in UK financial markets on 27 October, 1986, when The Stock Exchange abolished fixed minimum commissions on the sale and purchase of securities, and shifted from single capacity to dual capacity. More generally, the term also refers to the introduction of a new electronic price information system and to the entry of large American and Japanese firms into the UK securities business, when for the first time they have been allowed to become Members, i.e. outright owners rather than just minority shareholders of firms that are Members of The Stock Exchange. By contrast with the United States, where the Glass-Steagall Act forbids banks to underwrite corporate securities (including commercial paper) and Japan, where the Securities Law similarly forbids banks from underwriting securities, banks (both domestic and foreign) operating in Britain *are* permitted to underwrite and deal in securities, reflecting greater British confidence that banks can be trusted not to get themselves into financial trouble through these diversified tasks.

broker A recognized agent – personal or corporate – in securities, currencies, and/or commodities who acts as a middle-person between buyer and seller. In the UK, prior to Big Bang, he acted only as a retailer for a client and did not quote prices himself or operate on his own account in money markets. From 1986, he has been able to act as a broker/dealer rather than simply as a broker.

Chinese Walls In the brave new world of financial services, many of the major firms are conglomerates that have corporate finance and

specialist advice sections (such as on mergers/take-overs) traditionally associated with merchant banking. If those who work in the section on take-over advice – perhaps working for the target or the bidding company – talk to their colleagues in the securities dealing section, this might lead the latter to buy or sell shares (whether on their own *personal* account, for the financial conglomerate itself, or for the company for whom they are acting) in which they would not otherwise have traded. Consequently, firms in this position are required to set up so-called Chinese Walls, policed by corporate compliance officers, to *try* to ensure that the different sectors of the same company do *not* conspire with each other or even talk carelessly about deals. These are backed up by 'house rules' involving the threat of dismissal for those who are caught – if any.

cold calling As defined in s.56 of the Financial Services Act (1986), this means 'a personal visit or oral communication made without express invitation' for the purpose of inducing people to invest.

debenture In international markets, these are bonds secured only against the unpledged assets and general standing/goodwill of the company. In UK markets, however, they are bonds secured against the assets of a trading company, and rank higher in priority than ordinary unsecured trade debts.

dual capacity The ability to act both as agent (on behalf of clients) and principal (on one's own account) when dealing in securities. This is the aspect of post-Big Bang conduct that generates alarm about investor protection risks, for all Stock Exchange firms will be able to act with dual capacity if they wish, rather than as independent brokers and jobbers.

equities Shares in a company.

Eurobond A bond traded internationally in a Eurocurrency denomination; this is a currency held by a non-resident of the country of that currency.

Eurodollar US dollars that are held by non-residents of the US, normally in the form of a deposit with a bank outside the US or with the foreign branch of a US bank.

FIMBRA Financial Intermediaries, Managers, and Brokers Regulatory Association. A Self-Regulatory Organization for firms whose main business is that of an independent intermediary advising on and

arranging deals in life assurance and units in authorised unit trusts, and providing investment advice and management services to retail customers. Some members advise on and arrange securities transactions as an incidental activity.

IMRO Investment Management Regulatory Organization. The Self-Regulatory Organization for firms with investment management as their main activity. This includes the management and operation of regulated unit trusts, investment trusts, and pension funds.

insider dealing/insider trading This is defined differently from nation to nation, and in 1986, some countries such as New Zealand do not prohibit it at all under the criminal law. However, the essence of insider dealing legislation is to prohibit the use, when trading in securities is undertaken by certain categories of 'insiders' such as company directors, of price-sensitive information that is not known to the general public. Chinese Walls may minimize leakage to other sections of the company, but they will not prevent self-dealing by insiders, often via nominees (or 'tippees'). For example, directors who know that the market has undervalued or overvalued shares in their company or in a company for which they intend to bid may purchase (or sell) shares before the public is given information that will change the rating that is given to the shares. In Britain, this is prohibited by the Company Securities (Insider Dealing) Act (1985).

ISRO The International Securities Regulatory Organization, which in 1986 merged with The Stock Exchange to form The International Stock Exchange, whose SRO is The Securities Association.

jobber A 'wholesaling' firm that commits itself to buying from and selling to brokers particular securities at a price that it quotes. Acting as a principal rather than as an agent, it makes its profits on the spread between the buying and selling prices. This formerly specialized function has now been replaced by the 'market makers'. Since October 1986, all price quotes have been automated.

LAUTRO The Life Assurance and Unit Trust Regulatory Organization. The Self-Regulatory Organization for insurance companies and friendly societies in respect of their retail marketing of life assurance products and of the retail marketing by those who operate the schemes of units in regulated collective investment schemes. This is the only SRO whose members are permitted to sell investments by 'cold calling' persons who have not initiated contact with them.

Market Maker A Stock Exchange firm that commits itself to *always* being ready to deal in a range of stocks in which it is registered with the exchange.

RPB A Recognized Professional Body, such as the Institute of Chartered Accountants or The Law Society, whose disciplinary standards are recognized by SIB as adequate.

SEC The US Securities and Exchange Commission, a federal policing body with extensive powers, charged with supervision of the US securities industry.

securities A general term for financial instruments including bonds, shares, and stocks.

SIB The Securities and Investments Board. The organization given delegated powers by the Secretary of State for the Department of Trade and Industry (DTI) under the Financial Services Act (1986) to authorize (or not authorize) persons and companies to sell investments. In this capacity, it can license self-regulatory organizations (SROs), recognized investment exchanges (RIEs), clearing houses, and recognized professional bodies (RPBs). It can investigate and prosecute cases of fraud. It has the power to vet the rule books of SROs and direct registrants to ensure that they provide for adequate investor protection, and it can de-register them if they fail to meet the standards it requires. It has immunity from being sued for performance (or non-performance) of its regulatory functions. Its stated aim is to ensure uniformity to minimum supervisory standards throughout the financial services markets, though individual SROs can provide extra benefits – for example, compensation for investors – if they wish. Its members have to be approved by the Government and the Bank of England, and are principally representatives of commerce and industry: this has led to some controversy, not least when John Kay, the former head of the Institute of Fiscal Studies, a respected non-Left critic of government taxation policy, was *not* approved for membership by the Conservative Government in 1986. The rule book of the SIB has to be vetted by the Director General of Fair Trading to see whether its rules are anti-competitive, and the Secretary of State for the Department of Trade and Industry must then take the decision whether any anti-competitive element is outweighed by the need for investor protection.

single capacity The situation in which a securities dealer is able to act either as an agent or a principal, but not both.

SRO Self-regulatory organization. An organization that gathers together firms in a common area of activity – for example trading in financial futures – and has the task of approving which firms shall be authorized to deal in securities and of monitoring their integrity and solvency according to rules drawn up by itself and approved by SIB. Because of the breadth of their activities, major financial conglomerates are members of more than one SRO. Like the SIB, SROs have legal immunity from lawsuits in respect of their regulatory activities.

stag A dealer or investor who buys a new issue with the intention of selling it immediately at a profit on the issue price. Under some circumstances, where the securities are obtained by fraudulent means, this can be a criminal offence.

The Securities Association The SRO for firms dealing and arranging deals in securities of all kinds, including international bonds and equities, related matters such as warrants and options on individual stocks, and giving incidental advice and management in those areas. This was formed following the merger between The Stock Exchange and the International Securities Regulatory Organization.

Preface
The academic context of this study

> 'One of the things that most struck me about [the lecturer] at the time had been his casual use of the word 'criminal'. In my opinion, and, I think, in that of most modern lexicographers, a criminal is one who commits a serious act generally considered injurious to the public welfare and usually punishable by law. [Professor] Krom seemed to believe that anyone possessing the imagination and business planning skills needed to evolve a new way of investing time and money in order to make a profit, was automatically a criminal. The wretch need not have committed any illegal act to earn him the distinction. If he had been original and his orginality had succeeded, that was enough. For Krom he stood condemned.'
>
> Eric Ambler, *Send No More Roses*

This is a book about crimes committed by and against business: how common they are, what their effects are, how seriously they are regarded, what political, economic, and organizational factors influence legislation and the implementation of legislation against them, and how people think they could be and should be controlled. The controversial and ambiguous criminological term 'white-collar crime' in the sub-title of the book is used here in the sense employed by Wheeler, Weisburd, and Bode, who state that 'white-collar crimes, for our purposes, are economic offenses committed through the use of some combination of fraud, deception, or collusion' (Wheeler, Weisburd, and Bode, 1982:642). Such crimes come in many forms: they include acts as diverse as the setting up of businesses to obtain large quantities of goods on credit without intending to pay for them; the use of mail-order businesses to obtain money for goods that one does not intend to supply; the pocketing by brokers or other trustees of funds that they have promised to invest; the diversion of funds to one's own account by means of computers; the illegal use of private inside knowledge to make a profit on share-dealing; and the non-declaration of taxable commercial sales to the tax authorities. The control of employee pilferage and of 'corporate crimes' such as bribery and health and safety at work offences will be examined at various points in the text, but the principal focus will be upon fraud in business.

There is a growing tendency among 'white-collar crime' academics to differentiate between crimes *by* business and crimes *against* business: the

former are labelled 'corporate crime'; the latter 'white-collar crime' (D. Smith, 1982). But useful though this distinction is, it may overstate implicitly the homogeneity of 'crimes *against* business'. Even if one excludes from consideration many forms of business 'malpractice' that are either not criminal at all or whose criminality is ambiguous, to write about 'commercial fraud' is to write about a number of very different sorts of activities: there are frauds by businesspeople against each other; by businesspeople against investors – who by volume of securities traded are predominantly institutions or professionals – as well as against small investors, consumers, and tax authorities (who may be regarded as 'corporate crime' rather than 'white-collar crime' victims); and by directors and employees against their companies. Nor is the social-class composition of 'white-collar criminals' simple: they include members of 'the upperworld' and 'the underworld', and comparatively junior employees. Even upmarket-sounding crimes like insider dealing – where shares are bought or sold unlawfully on the basis of confidential inside information – may be committed by the company chairman or the company typist.

To seek to capture the motives, methods, and control mechanisms of all conduct falling within this category would take far more space (and cost readers far more money) than is feasible. Rather, the aim of this book is to examine some key empirical and theoretical issues in the impact and control of business crime, within the context of North American and European research carried out (1) into the incidence and impact of different types of fraud, and (2) into the functioning of commercial organizations and the multifarious parts of the criminal justice process. Much of the British research has been conducted by me during the 1980s, and is published here for the first time. Among the topics covered in relation to fraud will be the influences upon legislation against it, and the extent, the impact and perceived seriousness, the auditing, the policing, the prosecution, the trial, and both the formal and informal sanctions that are applied in respect of different types of fraud. I have tried to systematize and review salient sections of the scattered literature on these topics, much of which is comparatively inaccessible both to academics and to practitioners. It is my hope that this will help readers both to understand more clearly the issues involved in regulating crime in the upperworld, and to form their own views concerning how to deal with an aspect of criminality that not only involves the most intricate *methods* of crime commission but also is more closely embedded than are most crimes into the fabric of 'normal' commercial life.

An occupational hazard of specialized academics is to assume too much knowledge on the part of their audience. This is particularly the case when one is working in an interdisciplinary field which incorporates

accountancy, criminology, economics, law, politics, and sociology. However, in writing this book, I have tried to bear in mind the great variations in the backgrounds of what I hope will be its readership. I doubt that many businesspeople or practising lawyers and accountants will be familiar with theoretical accounts of the relationship between economic interests and law – discussed, and criticized, in Chapter 4 – but the analysis of pressure-group politics in commerce should be of interest (and even of practical use) to those outside the rarified circles of sociologists of law. Likewise, few students or colleagues in criminology, sociology, or law – other than those looking apprehensively or longingly at early retirement schemes, or searching for ways of funding their further studies – will be familiar with what the Eurobond market does, or indeed with much of the commercial context of business crime control. Consequently, I have tried to avoid the use of unnecessary jargon, and have provided a brief glossary of those economic terms that may be useful to professional people, to colleagues, or to students. If I have got the balance between clarity of writing and subtlety of analysis wrong, I apologize. But I have made the effort.

In Britain, business crime has been neglected by most academics and activists on the left as well as those on the right: it comes as no surprise to find no discussion of it in contemporary analyses of the crisis in policing, and it does not figure as 'crime' in the outpourings of the 'left realist' solution to 'losing the fight against crime' (Lea and Young, 1984; Kinsey, Lea, and Young, 1986). For the left, this probably reflects the political focus of *praxis* which makes 'poor man's law' a more relevant and worthy subject than 'rich man's law' (Cain, 1975:61; Sugarman, 1983:214). Similarly, authors on the right of the political spectrum have tended to be more concerned about public-order issues such as street crime, industrial picketing, and political demonstrations: Wilson (1975), for example, dismisses white-collar crime as irrelevant to what he sees (and thinks that the public sees) as the 'real' crime problem. This neglect has had several regrettable results for the development of criminology, sociology of law, and crime policy in Britain (though this is less true of the United States). Insofar as students, administrators, and the concerned public learn anything at all about 'crimes of the powerful', they tend to get their information and ideas either from the well-written, provocative, but grossly oversimplified account in the only current student criminology text in Britain to incorporate such material (Box, 1983) or from American work which – the Thalidomide and Third World pharmaceutical scandals excepted – tends to be very insular in its neglect of political and corporate malpractice outside North America: see, for example, J. Coleman (1985a); Ermann and Lundman (1982). Furthermore, much of the case study material focuses on conflicts

between big business, on the one hand, and workers, consumers, or the environment on the other, neglecting the conflicts *between* capitalists and between government and various groups of capitalists which are an important feature of the commercial world. In doing so, it contributes towards an over-coherent view of the interests of 'the powerful' and oversimplifies the nature of power relations in society.

It has become conventional wisdom in some criminological circles to lament the dearth of research on crime in the business world (Braithwaite, 1982a; Kramer, 1984). This is often bound up with criticism of the conservatism of what Lea and Young (1984) have referred to patronizingly as 'administrative criminology'. However, particularly in the United States, whether one is discussing offences committed by or solely against businesspeople, the research and public interest explosion has been impressive. Some of the empirical work on business crime has been of uneven quality, using variegated (and sometimes less than explicit) operational definitions of 'crime', but there is no doubt of its existence or of the important contributions it makes towards our understanding of the social and organizational processes involved in sifting 'white-collar crime'. (See, in particular, Clinard *et al.* 1979; Geis, 1984; Mann, 1985; Reiss and Biderman, 1980; and Shapiro, 1983). In the Third World, the principal focus of both functionalist and radical analysts has understandably been on political corruption, but there have been some intriguing forays into fields as varied as corporate crime in the pharmaceutical industry (Braithwaite, 1984) and breaches of professional ethics by lawyers touting for clients (Gandhi, 1982).

In Britain, there have been several valuable case studies of commercial and professional scandals by journalists, but academic analysis has been rather patchy. Nevertheless, contemporary work includes scandals and fraud perpetrated in the City (Clarke, 1981, 1986; Leigh, 1982), bankruptcy fraud (Levi, 1981), corruption (Doig, 1984), health and safety at work (Carson, 1981), pollution (Gunningham, 1974; Hawkins, 1984; Richardson, Ogus and Burrows, 1983), fraud on consumers (Cranston, 1979), exploitative landlords (Nelken, 1983), and workplace crime and the 'underground economy' (Ditton, 1977a; Henry, 1978, 1981; Mars, 1982; Mattera, 1985). As regards *fraud*, there is an intriguing bifurcation in the sort of offences that are studied. On the one hand, there is an understandable tendency to focus upon prosecuted and and unprosecuted crime in high places: that, after all, is the 'sexy' side of power, greed, and capitalism. On the other, there is a tendency to present subversively non-judgemental portraits of workers' 'fiddles' which are entertaining to read and easy for readers to identify with. Some regard these as proto-political acts: Mattera (1985:62)

asserts that fiddles 'are perhaps best viewed as a covert form of struggle by workers'. (See also Scraton and South, 1984.) This accords with a 'history from below' perspective in which employee theft and fraud are seen not as a burden upon business which, due to the 'excessive power of the unions', has to be tolerated, but rather as something akin to an heroic struggle by the workforce against the hegemony of bourgeois ideology and against capitalist expropriation of surplus labour value. In this book, I do not explore fraudsters' own perspectives on what they are doing (as was done in Levi, 1981), and to that extent the work is a 'history from above'. What it does seek to do is to describe and analyse the ways in which a wide spectrum of fraud offences – from high-level City scandals to worker and social-security fraud – are regulated (or ignored). It thus examines the way frauds are treated by different segments of powerful groups in the corporate, political, and criminal justice spheres.

It is paradoxical that for all the criticisms of the alleged narrow quantitative empiricism of American social science, in the 1980s, US sociology and criminology journals have included many articles on white-collar crime issues. By contrast, the readers of articles in the mainstream British sociology and criminology journals might be forgiven for being unaware of the explosion of research and writing on corporate and governmental crime: since 1970, in the field of fraud and white-collar crime, setting aside the 'underground economy' which *has* been a popular field for writing, the *British Journal of Criminology* has published only five articles – on the enforcement of factory legislation (Carson, 1970), the sentencing of tax offenders (Deane, 1981), 'regulatory agency policing' (Hutter, 1986), credit-card fraud in Canada (Tremblay, 1986), and the Roskill Report on fraud trials (Levi, 1986b); the *Howard Journal of Criminal Justice* has published three – on sentencing fraud (Levi, 1979), on class bias in prosecutions (Sanders, 1985), and on fraud prevention (Smith and Burrows, 1986); the *British Journal of Sociology* has published one on corruption (Chibnall and Saunders, 1977); and *Sociology* has published one, on research methods in white-collar crime (Braithwaite, 1985a). However, this is largely a reflection of the methodological difficulties of working in this field, the topics that have been of interest to British criminologists, and what areas the suppliers of research moneys have wanted to see examined. With the exception of an interesting small-scale analysis of fraud prevention in large organizations by two Home Office researchers (Smith and Burrows, 1986), the research reported here represents the *only* work on commercial fraud that has been funded by the British Government, and until the Economic and Social Research Council funded three business crime projects on its 1984–85 Crime and Criminal Justice Initiative,

there had been no *non*-governmental sponsored research into 'up-market' fraud either.

Criminological research and theorizing, then, tends to reflect definitions by 'the public' and by state agencies of what the principal social problems are. The moral and empirical definition of what the police, courts, and prisons are doing is an important arena for ideological struggle and interpretation, however, and those who oppose official criminal justice practices equally concentrate their attention on public order and street crime issues, albeit for 'demystificatory' purposes. It is interesting that the outlets for journal publications also tend to mirror the divisions in the legal process as defined by the state. Thus, the focus of the British and (apart from the Austrian *Kriminalsoziologische Bibliografie*) most European 'criminology journals' has been on the aetiology of criminal (and particularly juvenile delinquent) behaviour outside and inside the penal system, on penal reform and, more recently, on 'the police' (including, occasionally, some non-police agencies such as the Post Office). Since, as we shall see later in this book, the decarceration of business criminals has not been a major problem for the penal process, the 'domain assumptions' of these journals tend to exclude the topics of fraud and business regulation.

Very few British sociologists or psychologists have displayed much empirical interest in commercial crime. Instead, those – in Europe and Australasia, but less so in North America – who write about law-making and law-violation within the upperworld tend to have a legal background and will seek publication in socio-legal journals of varying degrees of radicalism, such as the *Journal of Law and Society*, the *International Journal of the Sociology of Law*, and *Contemporary Crises*; in the mainstream business-oriented law journals such as the *Company Lawyer* or the *Journal of Business Law*; and, since 1984, when more criminal lawyers began developing an interest in commercial crime, the *Criminal Law Review*. In the United States, particularly, there is a burgeoning interest in the area of 'regulation' among administrative lawyers and socio-legal scholars, but this too seems often to by-pass criminology and find its place in the specialized 'regulation' journals such as the *Law and Policy* and the *Negotiation Journal*, plus the less conservative University Law Reviews. So there is some kind of 'interaction effect' between past editorial policies, the images of journals, and the sorts of articles that are sent to them, which produces a self-fulfilling prophecy not unlike the processes involved in the creation and maintenance of 'problem housing areas': we both gravitate and are propelled towards those with whom we feel most comfortable. (For a critical general review of the development of British criminology, see Sparks, 1983.) American criminology seems to have overcome its label of being oriented towards petty juvenile

crime: whether the Europeans will do so remains an open question.

There is no automatic relationship between social harm and what the criminal law prohibits: anyone writing about 'crime in the suites' walks a narrow (if not frayed to the point of extinction) tightrope between the Scylla of being attacked for accepting existing legal and enforcement agency definitions of crime and the Charybdis of being attacked for using 'crime' as a term of propaganda to condemn alike both lawful and unlawful corporate behaviour to which the criminologist has taken exception. This dilemma is exemplified, on the one hand, by Nader's (1986:1362) criticism of Shapiro's study of the Securities and Exchange Commission (SEC) – which deals with securities fraud in the United States – as being a 'narrow book about a broad and important topic' and, on the other, by the complaints of Jones and Cassidy (1986) that Fisse and Braithwaite (1983) had treated legal definitions in far too cavalier a manner and had mislabelled their product *The Impact of Publicity on Corporate Offenders* when very few of the corporations discussed had been convicted. Orland takes to task the $247,000 government-funded study by Clinard *et al.* (1979) entitled *Illegal Corporate Behavior* in the following terms:

> 'The result is a study of neither corporate crime nor corporate wrongdoing. Rather it is a study of federal administrative regulation of large corporations. The Clinard tabulation of violations is nothing more than a collection of discretionary decisions to initiate formal or informal non-criminal agency procedures against a particular corporation for a particular event; it appears that less than 1% of these 'violations' involve accusations of crime as Congress, lawyers, and the courts have defined crime. . . . The Clinard study asserts that corporate crime is prevalent by pointing to a large number of incidents that have nothing to do with criminal law and even less to do with crime.'
>
> (Orland, 1980:500)

As Pepinsky (1974) has observed, there has been a tendency to redefine the field of 'white-collar crime' so that it refers to 'exploitation' rather than 'crime' (in the technical legal sense), though this was a danger – and/or, to many, a benefit – inherent in Sutherland's original use of the expression (1983). I have side-stepped *some* of these definitional debates by focusing primarily on the regulation of financial fraud rather than on the sorts of corporate acts that are dealt with by administrative agencies, almost entirely outside the criminal justice system. Nevertheless, analogies will be made between the treatment of fraud and that of corporate 'regulatory offences', and I have no doubt that my use of the term 'crime' in this book will meet with a critical fate not dissimilar to the works mentioned above: perhaps this is a testimony to the ideological and moral significance that is attached to the social label of 'crime'.

The preparation of this book has taken place against a background of

major changes both in the organization of the financial sector of the economy and in the criminal justice response to fraud. Despite these changes, and despite the inaccessibility and complexity of much of the research material – both documents and people – it would have been comparatively easy to write a book which focused exclusively on the regulation of commercial fraud. However, although this is not an *apologia* for the kind of sloppy thinking that is all too prevalent in the white-collar crime debate, there is a paradoxical sense in which the neat pigeonholing of crimes into different compartments can perpetuate their divisions and make it more difficult for practitioners and students to think laterally about issues of fairness and consistency. As a reaction to this, what I have aimed for is something more ambitious: to place the control of fraud within the context of the control of other forms of crime and the political economy. The chapters that follow will discuss (but alas, will not be able fully to explain) the ways in which 'social harms' in the business sector come to be criminalized, both in the 'law in books' and in the 'law in action', by legislators, judges, and law enforcement agencies.

The sorts of behaviours that constitute 'commercial fraud' (1) in criminal law, and (2) in the practices of reporting, policing, prosecuting, and sentencing, vary over time and place to a greater extent than do more 'traditional' sorts of property crime such as burglary and robbery. One of the aims of this work is to describe and to begin to account for *changes* in enforcement practices in Britain and in the United States, for it is important that we should not be trapped into a static and dated conception of commercial crime control as it was in the 1930s or even in the immediate post-Watergate era of the early 1970s: because white-collar crime was once neglected by law enforcement agencies does not *necessarily* mean that it still is neglected; nor, for that matter, can we assume that because it came to be more heavily policed in the 1970s (in the United States), this will always be the case in the future (see Sutherland, 1983; Katz, 1980).

The boundaries of criminology are in many respects artificial ones. The criminal law and its enforcement processes are only part of the means by which social regulation is accomplished: as both conservative and revolutionary writers from Durkheim and Marx onwards have observed, patterns of social and economic interaction, of routine social surveillance, play a key role in the creation of what Foucault (1977) has termed the 'disciplinary society'. All sectors of society are not subjected to equal measures or methods of surveillance, however, and some attention will be paid to disciplinary rules enforced (or not) by self-regulatory bodies; to settlements under civil law; and to the conditions under which civil and criminal law are activated. Public law

(such as criminal law) is commonly thought to be the sole arena in which the state asserts its independent interest. But private law is also the product of state intervention: the state determines the substantive and procedural rules under which civil disputes are resolved, and the very fact that the parties are permitted to resolve their conflicts without the state being represented explicitly does itself reflect a particular (if often unselfconscious) view of the proper boundaries of public policing.

Those studying 'rich man's law' should focus not only on criminal law but upon private law, particularly contract law, and upon informal settlements. Sugarman (1983) has shown how fruitful such a perspective can be, and in an ideal world – or at least one where university cutbacks did not rule out the possibility of sabbatical leave – I would have liked to have researched and written more about the interaction between civil and criminal law in the regulation of commercial life. Nevertheless, although I have written something about this interaction, limitations of space and time have led me to focus primarily on describing and accounting for the operation of the *criminal* justice system in relation to fraud and, moreover, to focus upon this relationship in the 'modern' period from the Second World War to the present, largely ignoring its detailed historical development. These important omissions must await further projects.

Nineteen eighty-five and 1986 have witnessed a large number of changes in legislation, in the organization of the financial sector, and in the organization of the business regulatory system in Britain. The wave of scandals currently sweeping the financial services sector in Britain and the United States has made it particularly difficult to decide at what point to finish the book, but in the belief that the main outlines of legislation and control systems in relation to fraud have now crystallized for the 1980s, I have drawn the line at April 1987, with the passage of the Financial Services Act (1986) and the House of Lords stage of the Criminal Justice Bill (1986). Quite apart from the civil law and historical aspects which I have deliberately omitted from the analysis, there undoubtedly will be points of detail that will alter. The most major possible change is that in the aftermath of revelations about how major figures in the City assisted Guinness – and perhaps other companies – in illicit share support operations during take-over bids, a collapse in the political viability of self-regulation by the City of London or a Labour victory in the general election may lead to the deprivatization of investor protection: the potential impact of this upon fraud is discussed in Chapter 8. But I hope that readers will agree that what I *have* dealt with does form a significant and interesting object of study in its own right. For, in both a theoretical and a practical sense, it is important that we should do justice to the subject of white-collar crime.

1 Introduction

Most crime, whether measured by official statistics or by studies of the 'dark figure' of unrecorded crime, is property crime. Most of the property crimes that come before the courts and which are reported by the media involve the involuntary transfer of goods or money, normally by stealth, more rarely by intimidation or violence. Fraud, then, is an unusual type of crime because the fraudster gets the victim to part with his property voluntarily, albeit (by definition) under false assumptions about the transaction. The fraudster may be likened to Milton's sorcerer, Comus, who exults in his ability to 'wind me into the easy-hearted man and trap him into snares'.

Fraud is often depicted as a 'new crime: as a 'twentieth century crisis' (Bequai, 1978). We shall examine the extent to which it may properly be regarded as a modern 'crisis', but it is a mistake to view it as a *new* phenomenon. Activities such as forgery and counterfeiting – particularly the debasement of coinage – were problems for the Roman and the Byzantine states, and in England, were prohibited as early as 1292 by the *Statutum de Moneta*: the Statute of Purveyors of 1350 made them treasonable offences. The obtaining of goods and money by false pretences has been prohibited under Anglo-Saxon common law and statute law since at least the middle ages. Insolvency frauds that would be considered as being substantial if they occurred today were carried out in the nineteenth century. (See Levi, 1981; Styles, 1983; and Sugarman, 1983 for some relevant historical discussion. Styles' analysis of the period 1550–1780 demonstrates the considerable amount of embezzlement and pilfering by 'out-workers' in the woollens trade that existed even before the era of the factory and the creation of an industrial proletariat.)

Yet to state that there is nothing new about fraud is not to show that it is not the *modern* crime *par excellence*. With some honourable exceptions (Hall, 1952; McIntosh, 1975), an aspect of crime too often neglected by criminologists is that as the forms of social and economic organization change, the forms of criminality change. It appears to be mere tautology to state that there could be no autocrime without the invention of the car, no computer fraud without computers, and no credit-card fraud

without credit cards, but the dynamics of crime are not simple truisms. Just as – however distressingly – not all those people who experience a 'need' to be rich will actually become rich, so too there may be a gap between the number of people who – if they are not prepared to go 'straight' – may need to change the pattern of their criminality and the number who will actually be able to achieve this goal. In reality, then, not all would-be fraudsters will be able to achieve their ambitions. However uncomfortable it may be for those who wish to blame *either* 'the offender' or 'the victim', if we wish to account for patterns of victimization, we must try to integrate both potential offender and potential victim conduct.

General changes in the distribution of goods and money can have major – and often unanticipated – effects upon crime: for example, improved protection for cash kept in safes has undoubtedly increased the relative attractiveness of armed robbery, as almost the only vulnerable points for criminals are cash in transit or in the tills. (The kidnapping of managers' families may not be sufficient, because as a security measure, the manager may not have the ability to open the safe on his own.) As the carrying of cash becomes less common – only the prevalence of the 'black economy' sustains its popularity! – intending criminals are forced towards the exploitation of 'plastic money', even though they may come by it as a result of traditional crimes such as muggings, thefts from offices, and burglaries. 'Long-firm fraud', in which sham businesses are set up as fronts to obtain large quantities of goods on credit from manufacturers, has long been a growth point for the more sophisticated 'villains' (Levi, 1981). During the 1980s, it has become a common pastime for 'retired' armed robbers in search of less physically and emotionally demanding activities (and lighter sentences). It seems, therefore, that for adults in all socio-economic groups, particularly if greater success is achieved in the prevention of autocrime and burglary, fraud will become the modal crime of the future.

Barriers to entry – whether technological or social – are an important feature of crime for gain. If one cannot make use of stolen 'plastic money' (or cannot find anyone to buy it), there is little point in mugging people whose disposable assets can be accessed only through their credit and cheque cards. If one cannot operate and obtain access to a computer, computer fraud is impossible. Unlike 'mugging', commercial fraud is not an 'equal opportunity crime' and to the extent that there is disadvantage or discrimination by class, gender, ethnicity, or religion in occupying particular roles, the opportunities for particular types of fraud are correspondingly restricted. Neither physical opportunity nor technical knowledge are *sufficient* to explain involvement in crime, but it is not solely because of their innately superior morality that there are so

few female and/or black management fraudsters in Britain or even in the United States! (See Carlen, 1985, and Zietz, 1981, for some relevant data on female fraud.) In short, opportunities for crime may exist in a theoretical sense, but people have to find ways of using cars, computers, and credit cards for crime, just as over the last century, they had to find new ways of cracking open safes as safe technology improved.

Sometimes, technological changes can make old kinds of crime more freely available. An example is the development in the mid–1980s of Quick Response Multicolour Printers, whose laser scanners are so sophisticated that they can even reproduce the tiny blue and red silks that are embedded in green US dollar bills and recreate the slightly raised ink of the engraving process. When these mass photocopiers become readily available – probably in 1987 – they will transform counterfeiting from a highly specialized craft to a form of crime that will be open to all. Organizational changes in markets also can make fraud easier: an example is the so-called 1986 'Big Bang' when The Stock Exchange in Britain shifted from 'single capacity' – brokers do not hold shares on their own account but act only for their clients, and buy or sell shares only through separate firms called 'jobbers' – to 'dual capacity', whereby the same firm can both make markets and deal on behalf of clients. Technological developments intended for ordinary commercial transactions can facilitate their tasks: examples include not only computers but also international direct-dialling telephones, telexes, computer-aided despatch systems, and facsimile senders, which all enable fraudsters to distance themselves geographically from their targets. The spread of offshore banking and investment schemes has benefited multinational corporations and fraudsters alike: provided that they have confidence that they themselves will not be defrauded, both are inclined to move to where costs and levels of regulation are lowest.

Economic changes are important, too, in altering the desirability of particular *forms* of fraud. In the mid–1980s, documentary fraud in the shipping of goods has taken over from faked insurance claims for allegedly lost vessels and from overstated claims for vessels sunk deliberately into trenches deep in the ocean. The reason is that due to the excess of supply over demand in the market, ships themselves have become so cheap that they are worth less than their cargoes. So as long as this oversupply continues, scuttling – at least without first offloading the cargo – will remain relatively unprofitable. The faking of documentation may require skills that the simpler 'scuttlers' do not possess, and this may constitute a technical barrier to entry for some (though not many!) potential maritime fraudsters.

The growth of recorded fraud and convicted fraudsters

The twentieth century has witnessed a vast expansion in recorded fraud and in the number of offenders who are officially dealt with for fraud. This is a trend that fraud shares with other forms of crime. There is a great deal of disagreement among historians over the extent to which rises in recorded crime reflect (1) 'true' increases in the amount of law-breaking, (2) the growing enthusiasm of state bureaucracies to claim competency at finding 'professional solutions' to crime, and (3) the increased willingness of victims of all social classes to use the police to deal with their conflicts, albeit that different crimes have different reporting and recording rates (Foucault, 1977; Gatrell, 1980; Reiner, 1985, Chs 1 and 2; Sparks, 1982).

There has been an increase not only in the absolute but also in the *relative* importance of fraud, which was a mere 0.5 per cent of indictable crime in 1898 but had risen to become 4.6 per cent of indictable crime by 1968 before falling to 3.8 per cent of 'notifiable offences' in 1985. (The offences included within the category of fraud remained fairly stable throughout the period up to the substantial changes in the law of fraud brought about by the Theft Act, 1968.) The number of recorded offences of fraud quadrupled between 1938 and 1968. Since then, the fraud figures have stabilized, although some of this stability may be more apparent than real, due to the 'crime-deflating' effects of changes in recording procedures in 1980, when the Home Office, in an attempt to improve consistency, directed that 'continuing offences' should be recorded as one offence rather than as a multiplicity of offences.

The current official recording procedure is that if someone steals a cheque book and cashes thirty cheques, it should count as one recorded crime rather than as thirty. Before this, informed sources suggest that if the cheque offences were cleared up, they would have been put down as thirty; if they were *not* cleared up, they would count as one! Even now, the situation is complex, and is expressed with modest understatement as follows:

> 'The recording of offences of fraud and forgery often requires difficult judgments to be made as to what constitutes one offence. Cases may involve a large number of instances of deception or forgery and sometimes, several offenders acting together, perhaps in different groups on different occasions. Because of these problems the recorded numbers are particularly sensitive to variations in recording practice.'
>
> (Home Office, 1985a:29)

The effects of these changes are impossible to quantify, but there is no reason to suppose that the drop in 'false accounting' from 5,227 in 1979 to 2,382 in 1980, and in 'other fraud' from 97,438 in 1979 to 93,187 in

1980, were due to a falling off in the amount of fraud. Bearing in mind the statistical *caveat* above, it is noteworthy that recorded fraud has increased by an average of 5 per cent annually since 1980. The figures are set out below in *Table 1*.

Given the unpredictability of the time-lagged effect on involvement in fraud and, particularly, on the filtering of cases through the policing and prosecution process, it would be hard to build up an econometric model of the relationship between fraud and the volume and/or profitability of business. Furthermore, problems of reporting behaviour and of policing resources and attitudes – discussed in later chapters – would bedevil the validity of any such model. However, not surprisingly, the increases this century in the number of recorded frauds have been accompanied by rises in the number of convicted offenders. At the end of the First World War, there were 1925 people convicted for fraud and false pretences, of whom 354 were convicted in the higher courts of Assize and Quarter Sessions. This figure rose to 2749 in 1938, to 2954 in 1948, to 4188 in 1958, and to 9267 in 1968 (of whom 1200 were convicted at the Assizes and Quarter Sessions). So the numbers convicted of fraud almost quintupled, while the numbers convicted of fraud at higher courts more than trebled, over the 50–year period to 1968. Again, changes in the Theft Acts (1968 and 1978) make comparison difficult, and the extensive range of offences in the Home Office classification of 'other fraud' is particularly unhelpful, but there has been a substantial rise in convictions over the past ten years, mostly for relatively minor frauds rather than for major scandals that attract media attention and which, as we shall see in later chapters, are seldom prosecuted. *Table 2* sets out the increase in numbers convicted of or cautioned for fraud during the past decade.

As I noted when considering the recent changes in recorded fraud, the effect of administrative changes has been to deflate rather than to inflate the *offender* statistics in this area. For example, approximately 140 offenders were 'lost' as a result of changes in indictable offences brought

Table 1 *Recorded fraud in the 1980s*

	1980	*1981*	*1982*	*1983*	*1984*	*1985*
frauds by company directors, etc.	30	30	24	45	71	37
false accounting	2 382	2 415	2 667	2 292	1 883	1 823
other fraud	93 187	96 065	111 290	109 615	112 214	120 758

Source: Home Office (1986d)

Table 2 *Offenders found guilty of or cautioned for fraud, 1975–85*

	fraud by company director	*false accounting*	*other fraud*	*bankruptcy offence*
1975	21	552	15 837	43
1976	27	599	17 138	58
1977	31	570	16 998	30
1978	39	622	16 002	42
1979	26	703	17 457	68
1980	44	765	20 636	95
1981	39	818	21 200	89
1982	53	715	22 826	70
1983	59	734	23 200	115
1984	69	687	23 149	122
1985	84	734	22 468	165

Source: Home Office (1986d)

about by the Criminal Law Act (1977). Although it is possible that these statistical rises in both fraud and fraudsters dealt with officially may be due to increases in the levels of formal social control of fraud, this does not appear to be a plausible explanation, particularly for the past decade. There have been no significant legislative changes bringing previously uncriminalized activities within the ambit of the criminal law. There has been a modest rise in Fraud Squad manpower nationally over this period – from 232 in 1971 to 588 in 1986 – but such squads tend to deal with lengthy investigations into relatively small numbers of people. Nor is there evidence of major changes in victim reporting policies, the *proactive* redirection of CID manpower into fraud investigation, or more active prosecution policies on the part of the police, the Department of Trade and Industry, or the Director of Public Prosecutions, that could enable one to explain away all the rise in fraud and fraud convictions as a mere artefact of reducing the 'dark figure' of fraud and unprosecuted fraudsters. There *have* been some slight changes in policing, as we shall see in Chapter 5. However, it appears that the rise in fraud is a real one. Indeed, this is consistent with the arguments set out earlier which seek to account for why fraud can be expected to become an increasingly popular form of crime.

The growth of fraud internationally

Internationally, a similar process of growth of recorded fraud and convicted fraudsters has occurred. Here, the absence of research makes

it harder to assess the extent to which changes in crime rates may be largely artefacts of changes in law or policing resources. However, the figures are interesting nonetheless. In Hong Kong, the Independent Commission Against Corruption has prosecuted 1478 persons for corruption in the private sector since its inception in 1974, with a conviction rate of 76 per cent. Prosecutions have risen from 17 in 1974 to 96 in 1976, to 113 in 1980, to 284 in 1983, and to 311 in 1984. In Eire, there has been a substantial rise in recorded fraud, which has doubled during the 1980s. North America and Continental Europe have also experienced a recorded fraud boom.

Fraud data from the United States are poor, partly because the Uniform Crime Reports – focusing as they do upon personal and household victimization of a more conventional kind – do not include it. However, in the period 1973–82, fraud experienced the largest percentage rise of any category of arrests (88.8 per cent); forgery and counterfeiting arrests came a close second (72.6 per cent); and embezzlement also rose 10.1 per cent over this period (US Department of Justice, 1985:464). It is largely an artefact of the differential nature of US federal, state, and local jurisdictions, but embezzlement and fraud was the largest single category of criminal case filed in US District (Federal) Courts in 1983: 22.1 per cent of all cases filed, compared with 6.7 per cent for forgery and counterfeiting; 9.8 per cent for larceny and theft; and 6.4 per cent for homicide, robbery, assault, and burglary combined.

In Canada, frauds accounted for 8.7 per cent of property crimes and 5.7 per cent of Criminal Code violations reported by the police in 1984. Credit-card fraud has increased by 25 per cent per annum since 1978. In 1984, it accounted for 13.25 per cent of fraud, and cheque-card fraud traditionally accounts for about 60 per cent of fraud in Canada. So three-quarters of recorded fraud is banking-related, generally of a relatively minor kind.

In Sweden, recorded fraud other than embezzlement increased from 14,653 cases in 1950 to 91,080 in 1984. Embezzlement has increased over the same period from 5469 to 8959 cases. The number of recorded frauds has actually dropped during the 1980s, possibly due to changes in recording procedures.

Elsewhere, the information is patchy. I have been unable to obtain from Interpol any data more recent than 1982, and it is far from certain that the numbers are compiled accurately. National classifications of the denotation or boundaries of fraud differ also. Indeed, it seems almost certain that the differences between the fraud rates per 100,000 population of the different countries set out below are the result of variations in classification systems (and in police resources and

recording policies), and that they do not provide a properly comparable data base. For example, to take advanced industrialized nations alone, it is implausible that citizens of Sweden should be on average 3 times as likely as those of Australia to be the victims of fraud; or that the Swedes should be 4 times as likely as the English and Welsh, and 44 times as likely as the Italians to be fraud victims! Consequently, it may be as well to focus upon the intranational change rather than international comparisons.

But bearing in mind these reservations, over the period 1977 to 1982 (except where stated, because 1982 data are not available), the rate of recorded fraud offences per 100,000 population rose most dramatically in Austria, from 212 to 264; in Belgium, from 4.5 to 14.6; in Korea, from 119 to 218 (in 1981); in Denmark, from 140 to 235; in Spain, from 21 in 1978 to 42 in 1982; in Finland, from 323 to 586; in Japan, from 61 to 89; in Lebanon, from 6 to 17 (in 1981); in Monaco, from 375 to 528; in New Zealand, from 415 to 646 (in 1981); in the Netherlands, from 25 to 39; in Scotland, from 208 to 309 (in 1981); in Northern Ireland, from 97 to 179; in Senegal, from 13 to 23; in Singapore, from 37 to 80; in Sweden, from 693 to 1168 (in 1981); and in West Germany, from 434 to 602.

On the other hand, the rate of recorded fraud per 100,000 population actually *fell* in the Bahamas, from 205 to 139; Chile, from 130 to 105; Taiwan, from 12 to 7 (in 1981); Israel, from 296 to 205; Italy, from 41 to 26; Malaysia, from 16 to 12; Qatar, from 12 to 6 (in absolute numbers of offenders, from 36 to 18!); and Zambia, from 79 to 9. So the global picture is not wholly consistent, but it does generally suggest a rise in the rate of fraud.

Perceptions of the growth of fraud

The rise in recorded fraud has been accompanied by business perceptions of an increase in the risk of fraud. In a 1985 questionnaire and interview survey, 8.9 per cent of respondents thought that fraud was very much more common now than ten years ago; 58.9 per cent thought it was much more common; and only 30.4 per cent the same. Only one person thought that fraud had actually decreased in the last decade. The survey sample (Levi, 1986a) comprised executives from security and financial director upwards to company chairman in 74 companies, sampled from the *Financial Times* index to provide a cross-section of all private-sector companies quoted on The Stock Exchange, and was carried out in collaboration with the accountancy firm, Arthur Young. Because of the small numbers, statistical analysis is of doubtful utility here, but there was no clear relationship between level of reported

victimization and perceptions of the growth of fraud.

In the telephone survey of 401 companies of mixed size by Consensus Research (1985) in November 1985, 54 per cent of respondents stated that they thought that company fraud had increased over the past five years; 28 per cent that it had stayed at the same level; only 1 per cent that it had decreased; with 17 per cent don't knows. However, it is important to qualify this by the observation that when asked how serious their *own* company's fraud problem was, only 4 per cent stated that they regarded it as very serious; 5 per cent fairly serious; 30 per cent not very serious; 61 per cent not at all serious; and 1 per cent don't know. Indeed, of the 65 companies who answered 'yes' to the question 'Do you think that fraud may *currently* be taking place in your company?', only 12 (18 per cent) described their company's fraud problem as either serious or very serious. Fraud problems, then, are something that do happen, but they happen to other people!

It is interesting that over two-thirds of the senior executives who responded to my survey (Levi, 1986a) thought not only that fraud in general had increased but also that some particular type of fraud had become a special problem in the last decade. Of those who thought this, the perceived growth areas mentioned were in computer fraud (45.5 per cent), credit/cheque-card fraud (25 per cent), expenses/embezzlement (9.1 per cent), and a smattering of others referred to by only one or two executives, including frauds in the spheres of commodities, property valuation, investment, tax, and consumer fraud. It is arguable that the executives do not have an accurate picture of the growth of fraud. Nevertheless, whether perceptions of increased risk are derived from direct experience or from the media and political attention that fraud has received during 1985 and 1986, the results of these surveys (and from research on attitudes to fraud discussed in Chapter 3) indicate that businesspeople do see fraud as a significant general problem in commerce today.

When interviewed, what did executives see as being the growing problems areas in relation to fraud? Only one person – an investment banker – mentioned computer fraud, stating 'computers are the things that really frighten me. This is because they are technical and therefore it might be difficult for somebody to understand what frauds are being perpetrated and also because of the scale on which a fraud might be perpetrated.' A more common area of concern was about corruption in purchasing. One industrialist stated that his competitors were doing far more than giving the odd side of smoked salmon or bottle of champagne, and this left him in both a moral and legal dilemma. A common distinction was made between dealing in Britain and overseas. It was stated that in Britain, unless your competitors were screwing you into

the ground by bribery, you should avoid it (and certainly purchasing officers should not solicit or accept bribes), but overseas, you had to pay large 'commissions' in order to do any business at all. We will examine the social and political implications of this later, but it is encouraging to see such cultural relativism in commerce! American-based corporations, who were also more ready to report frauds committed against them, expressed more disapproval of corruption overseas than did British-based companies: it is possible that this may be the result of conditioning by the Foreign and Corrupt Practices Act (1977). (See also the excellent American study of bribery by Reisman, 1979.)

The media and commercial crime

Although there is much dispute about the importance of the media in influencing legislation, policing, and public perceptions of and attitudes towards crime, there can be little doubt that press, television, and radio interest does play *some* role in defining (and thereby moulding) 'the crime problem'. Media interest in business crime has increased considerably since the 1960s. Despite the dominance of 'pro-business' Conservative governments and the absence of a strong popular radical press in most western countries, there has been – particularly since Watergate – a cult of *exposé machismo* in media circles that favours the making of programmes on abuse of power by businesspeople or politicians. Watergate; industrial accidents at Three Mile Island, Seveso, Karlskrona, and Bhopal; less serious radiation leaks at Sellafield in England; the 'Greenpeace affair' involving the sinking of the peace ship Rainbow Warrior by employees of the French Government operating from New Zealand; the 'Northgate' scandal involving the redistribution by senior US Administration figures of illicit arms sales income from Iran to the Contras in Nicaragua: these are just a few of the major news stories devoted to 'white-collar crime' in different parts of the world. (This is not evidence that the media have been taken over by communism, however: the leak of radiation from the Soviet nuclear reactor at Chernobyl in 1986 was given enormous coverage in the western media, who treated it as a symbol of communist secretiveness and inefficiency, and of the low value attached by communism to human safety.) In addition to specialist financial media and investment advisers – who have an interest in gaining kudos by protecting their readers from fraudulent investments – there is a strong and sophisticated muckraking element in parts of the British press (particularly *Private Eye, The Observer*, and, since 1985, the *Financial Times*); in the French press (*Le Canard Enchaîné*); and in the Australian press (*The Age*). However, although serious fraud reportage cannot exist without institutional

support, this activism depends substantially on individual reporters: for example, the departure of Barbara Conway in 1986 – to become Press Officer for the British securities watchdog, the Securities and Investments Board (SIB) – led to the almost complete disintegration of the *Daily Telegraph* coverage of fraud, at least until British and American insider dealing scandals enthused it and all the other media at the end of 1986.

Upperworld malpractices do not receive high coverage in all countries, and exposé journalism on British television and radio has suffered setbacks with the closure in 1985 of *Checkpoint, Watchdog*, and, for a time, *Rough Justice*. However, the British and American television viewer or the reader of the 'quality' or even of some of the 'tabloid' national press might find ample daily evidence to refute the assertion – still repeated in many key criminological texts (Box, 1983) – that because of the 24-hour news cycle and the fact they they are owned by 'big business', white-collar crime receives little or no attention in the media. This was an over-simplification even when Box wrote it, but despite the growing concentration of ownership of the press, it is even less true in the mid–1980s. During 1985, for example, there were few hotter press stories in Britain than the rescue of Johnson Matthey Bankers by the Bank of England at the taxpayer's expense, and the ensuing political scandal over alleged cover-ups. Nor has the Lloyd's insurance market been lacking in critical public scrutiny (Hodgson, 1986). The media and political outcry over these events have not been matched by the prosecution of those who have been, in the nice phrase of Clarke (1981), 'anathematized' (i.e. condemned), but it can hardly be claimed that this is due to a lack of pressure for such prosecutions. In November 1986, revelations of wholesale insider dealing by American financier Ivan Boesky – discussed later in the book – hit the newspaper and television headlines in the US and Britain, as did alleged smaller-scale insider dealing by some Britons (which *did* result in prosecution).

It is correct to observe that the media do not present the malefactions of the powerful as endemic, structural features of capitalism (Box, 1983): but, except in the sense that the pressures towards profit and/or low cost production in capitalist societies do not provide sufficient disincentives to prevent *all* pollution, industrial accidents, and consumer fraud, are they actually endemic? And if they are, are they not endemic to existing socialist societies too? There are assumptions here about the incidence and causation of corporate and governmental crime that require careful examination.

The examples given above reveal no clear link between the general political line of a newspaper or periodical and its propensity to publish

financial and political scandal, and it is mistaken to view 'the media' as a coherent 'institution'. Except at the most general policy level (such as opposition to communism), capitalism is a competitive form of economic activity. The few magnates who remain – though ironically, the newspaper technology that has destroyed the power of the print unions means cheaper start-up costs for independent and/or radical campaigning newspapers – are only too happy to see their competitors under attack for malpractice, and scandal sells newspapers. Personal and commercial vendettas may also play a part: the enthusiasm of the *Observer* during the period 1984–87 for stories examining alleged links between the Prime Minister's son, Mark Thatcher, and Omani and Brunei commercial developments, and for delving into the background of the Al Fayed family – who took over Harrods in 1985 – may owe something to the fact that 'Tiny' Rowland, whose company Lonrho owns the *Observer*, was frustrated consistently by the Thatcher administration in *his* attempts to gain control of Harrods. (This is not without a certain irony, for in the 1970s, Lonrho's activities were branded by Conservative Prime Minister Heath as being 'the unacceptable face of capitalism'.) It would be false to infer that this wholly explains that newspaper's interest – it has long had a tradition of commercial exposés – but it does show what can happen when members of élites fall out. Financial scandal in high places generally receives much less daily attention than other sorts of crimes – not to mention 'tits and bums' – but it is more expensive, time-consuming, and libel-prone to work up 'white-collar' than other types of stories.

Business crime stories – like scoops of all kinds – also suffer from a relatively short news-stand life, which means that the investment of time to reward is comparatively high. With the possible exception of the less news-dominated and more analytic newspapers such as the *Financial Times* and the *Guardian* in Britain, or the *Wall St. Journal*, the *Washington Post*, and the *New York Times* (in the US), if one cannot get a scoop or write a new angle on a story, it is unlikely to get published at all, at least in Britain. One of the structural problems in television and radio reportage of fraud is not only that it is easier for the media to live on a diet of crime-pap fed by the police and the courts, nor even that Britain does not have a Freedom of Information Act which makes investigative journalism easier in the United States: it is that pin-striped blood does not show up very easily on the walls.

This is *not* to deny that most crime news is working-class (or 'underclass') crime news, nor that there is a generally conservative ideological bias in the media, nor that business and political scandals are not covered up as a result of political influence, economic interests (say, from advertising revenue), fears of losing a cheap and ready supply of

news items from government departments or the police, and fears of being sued for defamation. The latter is a particular problem within the framework of UK legislation: to demonstrate the lack of simple unity between the state and commercial élites (discussed further in Chapter four), we should note that in 1985, a defamation writ was taken out against the Chancellor of the Exchequer by accountants Arthur Young in relation to statements made by him to the media about their alleged negligence in their role as auditors to Johnson Matthey Bankers. *Commercial* television has some excellent investigative documentaries, such as *World in Action*, and consumer programmes such as *4 What It's Worth*. But the enthusiasm of the BBC for investigative journalism was certainly dampened by the £75,000 damages and about £1 million costs it had to pay out in 1985, after the popular television programme *That's Life* branded a Harley Street slimming expert 'a profiteering, unscrupulous quack'. (Two doctors who had assisted the programme had to pay £25,000 also.) In 1986, it had to pay some £500,000 in out-of-court damages and costs to two Conservative MPs whom it had accused of being fascists. Books are sometimes withdrawn and their authors and publishers required to pay damages: this happened – temporarily – to the study of political corruption in the North East of England by Milne (1976) and to the study of Lloyd's of London by Hodgson (1984, now updated in 1986). The upperworld is not the only source of defamation actions, but damages (understandably) are likely to be higher where the 'victim' is someone of high status; and the wealthy can afford better lawyers, which is important in a legal system like that in Britain where there are no contingency fees (i.e. where it is a breach of professional rules for a lawyer to charge a fee proportionate to the sum obtained). For some earlier discussion of influences on publication of corruption in the British media, see Doig (1983) and Murphy (1983).

In liberal democracies, the perceived public acceptability of business, governmental, and police malpractice stories can change over time. It may be that until the Iranian arms deals, under Reagan – though not in 1985 or 1986 under Thatcher – the revival of patriotism and support for business as central cultural themes made exposé less popular among the media. However, unless the scandal concerns the direct owner or editor of the newspaper or television station (whether financially or in terms of a hoped-for title in the Honours List), or unless his actual or prospective business partners are affected, the *general* relative media neglect of business crime compared with other forms of crime is explicable more by laziness, investigative cost, the invisible nature of the crime and the deviousness of its progenitors, and by the difficulty of presenting it simply in the human terms expected by mass audiences, than by any élite conspiracy to suppress it. The exception to this is those societies –