



”Corporate Criminology“ – Causes and Prevention of Corporate Crime

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A. Introduction

A discussion about the most effective prevention of corporate crime (through punishment or alternative measures) requires some understanding of the causes of this type of delinquency. In this contribution I will give a summary of **important criminological theories** in this field. In order not to raise false expectations: as yet, there is no elaborate separate criminological branch called “Corporate Criminology” – but there are more and more attempts to apply existing theories to this field of delinquency.

Classical approaches contain Sutherland’s concept of **white collar crime** and his theory of **differential association**. The theory of **anomy**, the **techniques of neutralization** and the **control theories** will also be mentioned. Finally, some aspects of the **economic theory of crime** are discussed, which – at least at first sight - seems quite plausible for the explanation of crime within an economic context.

Some hints to the important question if we have **empirical evidence** that the different theories are valid will be added.

On this basis, it will be discussed in a next step what these theories can contribute to the general question, if and how punishment or alternative measures are promising ways of **preventing corporate crime**. Due to the lack of sufficient empirical research in this special field, a more qualitative approach is chosen.

B. The causes of corporate crime

I. Definition

Before taking a look at possible causes of corporate crime, the question of a definition of this term has to be addressed.

1. Starting point: “white collar crime”

In a lecture of 1939, Edwin Sutherland introduced the term “white-collar-crime”¹. Today, it has become one of the most discussed terms in criminological history. Sutherland used it to describe crime committed by a person of respectability and high social status in the course of his occupation². Critics argue that the term is illustrative, yet quite vague and broad, which is supposed to be one of the reasons of its success story. Furthermore, one could criticize that it is a mere description of a certain field of delinquency with no explanation whatsoever.

That is true, but it misses the point. Sutherland did not want to establish a new etiological theory. His aim was to put the focus on the fact that criminal acts are not mainly committed by persons of lower social classes (as was and partly is presumed even today), but also of members of the upper class and – in this case – the business world³.

However, for our purpose of finding a definition of corporate crime, “white collar crime” is not more than a starting point. The term is much too broad, as it obviously does not necessarily include the involvement of a corporation. Secondly, it includes also crimes committed by the described persons with no direct link to the economic system. For example: the murder or assault or simple theft of a person of high social status committed in the course of its occupation would be a white-collar-crime according to Sutherland but no economic or corporate crime, even if the perpetrator happens to be a corporate executive.

2. Further development: “occupational crime” and “corporate crime”

Due to the deficiencies in Sutherland’s concept, new terms and definitions were developed. Unlike Sutherland’s approach, these terms did not focus on the person of the criminal but on features of the criminal act.

“Occupational crime” is a crime committed by a person in the course of its occupation that is regularly aimed against the employee, e. g. a corporation – also a quite broad definition that goes way beyond the scope of corporate and economic crime.

“Corporate crime” is defined as a crime committed in the economic interest of corporations. In my opinion, two elements have to be added to this basic definition. First, quite trivially, a corporate executive must take part in the criminal act. Secondly, we should exclude crimes without direct relation to the economic success of the company and without the use (or misuse) of economical structures. The assassination of the CEO of a competing company that was ordered by a corporation might contribute to this company’s success. The link is quite weak, however, and to my understanding, the economic element is missing. It is no “corporate crime” in a narrow, economic sense.

¹ Sutherland, White-collar-crime, 1st ed. (1949), 2nd ed. (1961).

² Sutherland 1949, 9.

³ Kaiser, Kriminologie, 3rd ed. 1996, § 72 marginal no. 5.

Corporate crime can therefore be defined as *a crime that is committed “by a corporation” (through responsible executives) to ensure the corporation’s economic success by using structures of the economic system.*

3. Typical features

Even the narrow definition of corporate crime contains a quite huge range of different types of criminal acts. However, there are certain typical features of economic crime that can also be applied to corporate crime⁴. First of all, the crimes are often committed within anonymous structures of action and communication and within a framework of generally legal activities⁵. They are therefore not easy to detect; they are characterized by their **low visibility**⁶.

This effect is intensified by the fact that in many cases there is no personal contact between offender and victim which is also described as delinquency of **distance**. Furthermore, in many cases we do not have an individual **victim**, but collective ones like other corporations, agencies of the state or the society in general. According to the last detailed federal statistic of economic crime of 1985, only 19 % of the reported cases had an individual victim.

Corporate crime is a quite important part of economic crime: the before mentioned federal statistic showed that about 80 % of the crimes had been (fully or at least in part) committed within a corporation⁷. This is why in many cases law enforcement is not triggered by private complaints but depends from inquiries by the law enforcement agencies themselves.

These typical features have to be kept in mind for the question of possible causes, which I want to address now.

II. Possible Causes

1. Learning theories

The learning theories are based on the assumption that like all kinds of behaviour, criminal behaviour is the result of a learning process.

One of the most prominent learning theories is the **theory of differential association** by Edwin Sutherland⁸. He claims that criminal behaviour emerges when a person is associated with other people who behave in such a way and who value this kind of behaviour as positive. The learning process depends from the intensity of the contact with

⁴ For a short summary see Meier, Kriminologie, 4th ed. (2010), § 11 marginal no. 13 et seq. See also Kaiser 1996, § 72 marginal no. 3.

⁵ Eisenberg, Kriminologie, 6. Aufl. 2005, § 47 marginal no. 6.

⁶ Cf. Eisenberg 2005, § 61 marginal no. 24.

⁷ Eisenberg 2005, § 47 marginal no. 4.

⁸ Kaiser/Schoech, Juristischer Studienkurs, 7th ed. (2010), § 1 marginal no. 46 et seq.

these people. The most intensive interactions take place in small groups of people. The learning process includes the motives and techniques of deviant behaviour. It was developed for the explanation of all kinds of crime, but it can be applied to corporate crime as well⁹. Even big corporations are divided into smaller fractions where a certain group of people closely works together, which is one of the prerequisites of the described learning processes. There is a need for learning as well because new employees need the assistance from their more experienced colleagues. If certain patterns of behaviour are shown to them, they will accept and copy them in many cases, especially if the teaching person is a superior from whose good will the employee is dependent to some extent. Not only history, but also studies like the famous Milgram-Experiment¹⁰ have shown the overwhelming influence that authoritarian commands can have on people's behaviour.

A critical point is, however, that because of the variety and complexity of different ways of association and learning an empirical examination of the theory is hardly possible. It is also doubtful, if criminal behaviour is really – as Sutherland argues – valued positively by the acting persons and their surrounding or if it is just more or less willingly accepted for external reasons¹¹. The small empirical basis Sutherland offers to this point is not sufficient to prove this assumption and suggests only that there has been some changes in the values of businessmen after entering their companies. Furthermore, the question remains why the criminal behaviour of the “teaching persons” emerged in the first place.

Other learning theories might be applied here as well, for example the **theory of operant conditioning** by Skinner¹², that holds that behaviour is learned and stabilized if there are no negative consequences (like punishment) that outweigh the positive reactions (like the approval of colleagues and superiors for fitting in the companies structures and contributing to its economic success). Considering that a substantial number of corporate crimes are not detected this will be the case quite often. But the question why this simple mechanism is not blocked by restraints like moral conscience or the fear of punishment remains unanswered.

2. Theory of anomy

The term of **anomy** was coined by French sociologist Emile Durkheim; he used it to describe a state of lawlessness due to major social and moral changes. In these times, the otherwise normal and – according to Durkheim - even useful limited number of crime rises dramatically.

Robert Merton used this notion as a base for his **theory of anomy**¹³. According to him, crime emerges when there is a gap between commonly shared goals in a society and the legal means each member of the society has to achieve these goals. Merton argues that

⁹ Sutherland (1949, 234) himself applied it to white-collar crime; see also Schuenemann, Unternehmenskriminalität und Strafrecht, 1979, 19 et seq.

¹⁰ See the reference in this context by Schuenemann 1979, 21.

¹¹ Opp, Soziologie der Wirtschaftskriminalität, 1975, 72 et seq.

¹² Kaiser/Schoech 2010, § 1 marginal no. 42.

¹³ Merton, Sozialstruktur und Anomie (1957), in: Sack/König (eds.), Kriminalsoziologie, 2nd ed. (1974).

some people will react with what he calls “innovation”, meaning that they stick to the goals (for example wealth and social prestige) but choose illegal means to achieve them.

This theory seems quite suited for explaining property crime of members of lower social classes and could in this respect be supported by empirical research¹⁴.

Can it also contribute to the explanation of **corporate crime**? The offenders are in many cases rather wealthy members of the middle and upper class. They seem to have all what they need, but they still want more – can this also be explained by Merton’s gap¹⁵? We do not have empirical evidence for this, but it is worth to give this some thought.

First of all, we have to acknowledge that a considerable amount of “corporate crime” is committed within smaller firms struggling for their economic survival. At least in these cases the idea of economic strain seems to fit. Furthermore, we know that the notion of being better off is a relative term – people compare themselves with people of their own kind. In the business world with its fierce competition and benchmarks it is possible that the “cultural goal” is not only considerable economic success but maximized profit at all costs and the constant fight against competitors¹⁶. If this is true at least for some companies, we might also speak of a lack of legal means to achieve this goal.

Still, we have to answer the question why people willingly adopt these goals and follow them even at the cost of committing crimes. As we have heard before, according to Sutherland this is the result of a learning process that includes the internalization of motives and values within a group of people. But how can it be that the counteracting forces that usually keep these people from committing crimes do not work? This might be the result of the so-called techniques of neutralization or even subcultural influences.

3. Techniques of neutralization / Theory of subculture

The **techniques of neutralization** were first described by Gresham Sykes and David Matza in 1957¹⁷. In some respect their theory can be understood as a counterpart to the theory of delinquent **subculture**¹⁸. Whereas the latter suggests that deviant groups like youth gangs have their own set of values and rules that differs from the rest of the society, Sykes and Matza argued that most offenders do not reject social rules and values generally but justify their violation under the given circumstances. This process that enables the offenders to keep up a good self-perception can also be understood as a form of “rationalization”. The learning of these techniques is supposed to follow the pattern of differential association described by Sutherland.

Sykes and Matza distinguish five types of these techniques:

¹⁴ Opp, *Abweichendes Verhalten und Gesellschaftsstruktur*, 1974, chapter VI, part 1.

¹⁵ Kaiser 1996, § 72 marginal no. 25 et seq.

¹⁶ See the illustrative case reported by Zybon, *Wirtschaftskriminalität als gesamtwirtschaftliches Problem*, 1972, 14.

¹⁷ Sykes/Matza, *Techniques of Neutralization*, *American Sociological Review*, 1957, 664; see also Kaiser/Schoech 2010, § 1 marginal no. 49 et seq.

¹⁸ See for example Cohen, *Delinquent Boys*, 1955.

1. The denial of responsibility for the offence due to coincidence or vis major,
2. The denial of substantial harm for example in the case of rich corporations as victims
3. The denial of victimization because of the victims' responsibility or guilt;
4. The condemnation of the law enforcement personnel and finally
5. The invocation of "higher principles", for example some unwritten rules of juvenile subculture.

For corporate crime some of these techniques seem to fit quite well.

First of all, we can assume that within a corporation where many actions are performed by several people through division of labour the sense of individual responsibility fades. Employees on the middle and lower levels of a corporation might rely on the control and responsibility of the upper management¹⁹.

Secondly, as was said before, corporate crime is often committed against collective victims like corporations or the public and the damage is – for example in case of corruption – not as clearly visible as in ordinary crimes. Therefore, the denial of harm and victimization must be easier in cases of economic crime.

A crucial factor is the invocation of higher principles or values. On this point the theories of subculture and neutralization which at first sight seem to be antagonistic are merging. It is only a question of perspective and terminology if you consider a set of rules within a certain group of people that promotes criminal behaviour as a mere technique of neutralization or if we begin to speak of a "subculture". Fact is that many scholars hold that some sort of "business subculture" is existent that not only allows but even encourages deviation from the law in order to ensure economic success²⁰. Shover and Hochstetler speak of a "**culture of non-compliance**" with techniques of neutralization as a central element²¹. In a Swedish study of 2000, 80 % of the interviewed restaurant owners argued that their "industry subculture" justified crime²².

If this is true then it is also clear that moral appeals are not very likely to work well. On the contrary: if deviant behaviour is met with at least silent approval and understanding within the business world, potential offenders will not be deterred by informal social sanctions²³. If we consider the background of learning and neutralizing processes, we can assume that constant acceptance of criminal behaviour within the social environment of a person is a major factor in explaining future crime²⁴. Clinnard/Quinney speak (with empirical evidence) of the factor of "**group support**" that coins our behaviour²⁵. We have to come back to this point in the concluding section of this article.

¹⁹ Schuenemann 1979, 23.

²⁰ Kaiser 1996, § 72 marginal no. 26; Eisenberg 2005, § 58 marginal nos. 61 and 69; Clinnard/Quinney, *Criminal Behavior Systems*, 2nd ed. (1973), 134 et seq.

²¹ Shover/Hochstetler, *MSchKrim* 2007, 118.

²² Alalehto, *Journal of Scandinavian Studies in Criminology and Crime Prevention*, 2000, 156.

²³ Alalehto, *MSchKrim* 2007, 194 et seq.

²⁴ Shover/Hochstetler, *MSchKrim* 2007, 121 et seq.

²⁵ Clinnard/Quinney 1973, 213 et seq. with further references. According to Schuenemann 1979, 20, "group support" is just a special type of a neutralization technique.

4. Control theories

Control theories are somewhat special theories because they do not ask why anyone would ever commit a crime but why anyone would not commit a crime in spite of a given opportunity. They try to identify the restraining factors that help people control themselves.

One of the most prominent **control theories** is the one of Travis Hirschi. In his work “Causes of Delinquency” of 1969 he argued that there were four factors that could be identified (and that were supported to some extent by empirical research²⁶):

1. Attachment to others
2. Commitment to achievement
3. Involvement in conventional activities
4. Belief in the moral validity of rules.

At least one of these factors seems to be quite fragile with economic offenders: the moral validity of rules. First of all, if we assume that within the business world the deviant subculture I have described above actually exists, then the moral validity of the law is constantly corrupted. Another thing has to be kept in mind: the moral foundation of economic criminal law is not as strong and evident as the one of the so-called “delicta mala in se” like murder or rape where the harm is evident²⁷.

We should also take into account that complex types of delinquency like most economic crimes are not part of the socialization and education process of children and young persons that is also dominated by the core crimes – this might also be a reason for the somewhat blurred moral standards in this field. We can conclude that in this regard, internal control is quite weak and crimes are more likely to be committed.

On the other hand, from what we know of the average corporate offender, one may argue that all three remaining factors should lead to only few offences: we are dealing with settled members of society who have achieved considerable wealth and reputation, who have stronger social bonds and are typically involved in more conventional activities than other criminals. In short: they have much more to lose than “ordinary” offenders. The fact that these restraining factors obviously do not quite work in this strong way suggests that the fear of this loss is probably not overwhelmingly big. It depends from the perceived risk of detection and sanctioning after a corporate crime has been committed, which will be addressed later on.

Before that, I want to turn to a later publication of 1990 where Hirschi (together with Michael Gottfredson) put forth another version of a control theory, the **theory of self-**

²⁶ Akers, *Criminological Theories*, 2nd ed. (1999), 88 et seq.

²⁷ Nelken, *White-Collar Crime*, in: Maguire et al. (ed.), *The Oxford Handbook of Criminology*, 3rd ed. (2002), 845, 861: „narrow and constantly changing line between acceptable and unacceptable business behaviour“.

control²⁸. The authors claim that their theory – as a general theory of crime - is apt to explain “all crime at all times”. They argue that low self control, i. e. the disability of a person to postpone urgent and actual needs and desires, is the key factor for the understanding of crime. We have to keep in mind, however, that for Gottfredson and Hirschi crime is defined as “an act of force and fraud undertaken in the pursuit of self-interest”²⁹. This is a quite narrow definition and it is doubtful if it fits all economic crimes³⁰. Especially the neglect of long-term objectives that might be a strong factor (e. g. systematic bribery in order to ensure the companies long-term success) leads to an exclusion of at least some economic crimes³¹.

Apart from that, we should assume that persons holding “white collar positions” are not likely to commit crimes as this requires “educational persistence, willingness and ability to defer to the interest of others and attention to conventional appearance”³². These requirements do not meet the personal traits that according to Gottfredson/Hirschi lead to criminality. This is why the authors predict “a relatively low rate of offending among white collar workers contrary to the now standard view in literature”³³.

Due to the lack of empirical research, especially regarding the area of undetected corporate crime that is supposed to be quite huge, it is not possible to verify this assumption.

One point shall be mentioned, though, that leads in the opposite direction: empirical research has shown that one of the strongest factors that make up the variable of low “self-control” is the question if an individual is willing to take risks or if he is averse to risks³⁴. The first group is much more likely to engage in crime than the second one. Could it be that in order to get to higher levels of corporate management people have to be willing to take risks³⁵? If that is the case, then corporate managers are a selected group of persons with traits that are at least ambiguous and not only, as Gottfredson and Hirschi claim, restraining factors in regard to white collar crime.

I also want to at least briefly mention the **theory of control balance** by Tittle³⁶. It suggests that too much control but also too low control is a cause of delinquency. This seems to fit crimes of the powerful in general³⁷. For big corporations this might explain crimes of the upper management that is under no or inefficient supervision and it is

²⁸ Gottfredson/Hirschi, A general theory of crime, 1990.

²⁹ Gottfredson/Hirschi 1990, 4 and 13.

³⁰ Schulz, Beyond self control, 2006, 45.

³¹ Schulz 2006, 46 and 113 et seq.; according to Gottfredson/Hirschi, Theoretical Criminology 2000, 65, this exclusion can be neglected, as economic crimes with long-term objectives can be neglected.

³² Hirschi/Gottfredson, Criminology 1987, 960.

³³ Gottfredson/Hirschi 1990, 191. The question would then, of course, be, if the theory of self-control is able to explain white collar crime at all, s. Meier 2010, § 3 marginal no. 89.

³⁴ Schulz 2006, 152 et seq. A “risk criminology” that deals with these questions more thoroughly has yet to be developed, see Hoeffler MSchKrim 2012, 252.

³⁵ Vgl. Boers u. a., MSchKrim 2004, 490 et seq.

³⁶ Tittle, Control Balance. Toward a general theory of deviance, 1995.

³⁷ Kaiser/Schoech 2010, § 1 marginal no. 59.

argued that within economic crime there is still a lack of efficient oversight by state agencies³⁸.

This can be combined with the theory of **opportunity structures**: low external control means more opportunities for committing crimes without the risk of detection and negative sanctions. This connection is quite obvious, even though we do not know the exact explanatory power of low control and opportunity alone. If all people acted according to rational cost-benefit-calculations alone, then under these circumstances most people would commit a crime. This leads us to the economic theory of crime I now want to turn to.

5. Economic theory of crime

One of the basic foundations of the economic theory of crime is the rational-choice-approach. It suggests that corporate crime (like crime in general) is committed because the offenders believe that the expected benefit outweighs the possible costs³⁹.

For crime in an economic context, this assumption seems – in contrary to other types of delinquency like violent crime – quite plausible. These crimes are clearly committed in order to gain material but also immaterial benefit (higher income, bonuses, internal and external reputation). Apart from that, economic offenders are less likely to be affected by drug and alcohol abuse and are older and therefore (hopefully) more mature than the average street offender⁴⁰. This is also the result of a study of Weisburd et al. who examined the criminal careers of more than a thousand white-collar-criminals. Their conclusion was that in most cases the offenders seemed to follow a rational model of offending⁴¹.

The costs are - vice versa – the possible loss of internal and external reputation, the risk of civil action by victims and of course the risk of prosecution and sanctioning, with the prison sentence as the presumably most deterrent factor. If white collar crime is committed nonetheless, then – if we follow the idea of the rationally calculating person – the expected costs obviously do not outweigh the expected benefits. This might be a quite realistic assumption if we recall the feature of low visibility and the problems of detecting and prosecuting economic crimes mentioned above.

It is the question of a general deterrent effect of criminal law and criminal sanctions that we have to discuss here. In Germany, there is not much empirical data in this area. Probably the most important study is the one conducted in Goettingen by Schoech et al. His findings were that the height of the threatened sanction has no limiting, preventive effect on future crime, whereas the (perceived) risk of detection and the subjective

³⁸ Shover/Hochstetler, MSchKrim 2007, 116 et seq.

³⁹ Becker, Der ökonomische Ansatz zur Erklärung menschlichen Verhaltens, 1982.

⁴⁰ Shover/Hochstetler, MSchKrim 2007, 119.

⁴¹ Weisburd et al., White-Collar- Crime and Criminal Careers, 2001.

sensitivity to punishment are deterrent factors⁴². This was also a finding of foreign studies, for example concerning tax evasion in the U. S.⁴³

In a recent meta-analysis of existing research in this field, hints to deterrent effects of the criminal law were only partly found⁴⁴. It was quite strong for traffic crimes but very low for fraud. When the expected benefit of the illegal behaviour was taken into account, the threat of sanctioning became a more important factor. This is some proof for the thesis that in an economic context, calculation of the possible benefits and costs has some influence on people's behaviour.

Still, we have reason to believe, that deterrence by criminal law and criminal sanctions is very hard to achieve in the area of economic crime. Not only is the risk of detection quite low, as I mentioned above, but it is also a type of crime where comparably huge benefits can be achieved. High benefits and low costs – a mere economic approach would strongly suggest that this type of delinquency would happen everywhere and anytime in huge numbers, which is probably not true. So there must be other factors. New research within the rational-choice-approach has shown that people do not just tend to maximize their profits in a material sense, but also tend to keep in accordance with the rules and values of their surrounding⁴⁵ (of course, the resulting feeling of being a good and honest member of a group or society can also be counted as a benefit that is a factor of the calculation – for this person, then, the act is “rational”⁴⁶). However, if we accept that the terms “costs” and “benefits” are to be defined not in a strictly economic sense, but by the arbitrary individual preferences of single persons, then the explanatory power of the theory is weakened⁴⁷.

6. Social development

For some scholars, economic crime has risen in recent years because of social developments⁴⁸. First of all, there is a higher degree of mobility that enables more people to get in contact with each other, especially in the business world. This enhances the opportunities of committing crimes. It is a quite simple calculation: more business means more business crime.

In addition to that, the development of technology has contributed to this. Especially the internet has made it possible to gain huge sums just by a mouse-click. It is here where all

⁴² Schoech, Festschrift Jescheck, 1985, 1081, 1090; Dölling ZStW 102 (1990), 1, 3 et seq.; see also Sutherland/Cressey, Criminology, 10th ed. (1978), 330: „it is likely that even mild punishments would be effective deterrents for many crimes, especially white-collar crimes, if they were swift and certain”.

⁴³ Eisenberg 2005, § 41 marginal no. 22; Shover/Hochstetler, MSchKrim 2007, 122.

⁴⁴ See Doelling et al., Metaanalyse empirischer Abschreckungsstudien - Untersuchungsansatz und erste empirische Befunde, in: Loesel et al. (eds.), Kriminologie und wissenschaftsbasierte Kriminalpolitik. Entwicklungs- und Evaluationsforschung, 2007, 633.

⁴⁵ Eidenmüller JZ 2005, 216, 219 et seq.; see also Smettan, Kriminelle Bereicherung in Abhängigkeit von Gewinnen, Risiken, Strafen und Moral, 1992, 218 et seq.: relevance of the so-called „moral costs“.

⁴⁶ Meier 2010, § 3 marginal no. 17.

⁴⁷ Meier 2010, § 3 marginal no. 20.

⁴⁸ Shover/Hochstetler, MSchKrim 2007, 114 et seq.; Kaiser 1996, § 72 marginal no. 23.

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the problems of economic crime are cumulating: high benefits can be achieved with little effort; the expected costs are minimal as the expected risk of detection within the realm of the internet is probably even lower than in other areas of economic crime.

7. Conclusion

The explanatory power of the discussed theories for the field of white-collar-crime is, as has been shown, so far rather speculative.

It is necessary to distinguish between different types of economic or corporate crime⁴⁹. Empirical research should be conducted, for example concerning the question of values and attitudes that really dominate business cultures and the question how the risk of detection and sanctioning is perceived by business people. As I said before: a “Corporate Criminology” is yet to be developed.

However, based on the theories I have discussed, there is some evidence that the following aspects are (especially when they are combined) causes of corporate crime:

- Low belief in the moral validity of economic criminal law
- Low expectancy rate of detection and sanction
- High expectancy rate of similar crimes committed by others
- Learning effects within the culture of a corporation
- Neutralizing effects within the culture of a corporation

To my understanding, one major finding can be summarized as “**crime producing more crime**”. If criminal behaviour is regularly performed within a corporation without negative consequences, it directly affects all the mentioned points: it weakens the moral validity of the law, it lowers the expectancy rate of detection and sanctioning, it leaves the impression that “everyone does it”, it triggers learning effects for the new employees and it establishes neutralizing effects that are closely related to a business culture that supports criminal behaviour.

Even if empirical research still has to be done⁵⁰: the notion of a “spiral effect” of economic crime could be supported by these aspects.

This emphasizes even more the urgent need for the prevention of corporate crime. We can speak of a **double preventive effect**: the crime itself is prevented, but also the following “secondary economic deviance” as one might put it.

C. Prevention of corporate crime

What might the findings above contribute to the question if and how prevention of corporate crime can be improved⁵¹. The quite diverse possible causes of corporate crime I

⁴⁹ Meier 2010, § 11 marginal no. 28.

⁵⁰ Kaiser/Schoech 2010, § 9 marginal no. 35.

have mentioned clearly show that a one-dimensional approach (e. g. through enhanced punishment) is not a promising strategy. There are at least three dimensions of prevention that have to be combined.

I. Changes in opportunity structures

First of all, methods of so-called technical prevention should be used. If you change the opportunity structures for the commitment of crimes, then a reduction of crime is the logical consequence. We have the very prominent example of car thefts that have significantly dropped after the widespread introduction of immobilizer systems. We should therefore consider the possibility of comparable safeguards for business transactions, especially when the internet is used. My impression is that the matter of internet security that had been neglected for some time has now been acknowledged and is more and more taken care of.

Apart from internet security, when we deal with direct human interaction, things are more complicated. However, even here some measures might add to prevention in a comparable way. Examples are personal rotation on important positions which are vulnerable for corruption or the principle of “4 eyes”, meaning that always two persons are responsible for important decisions. These measures will, of course only work, if they are taken seriously and are not corrupted by an antagonistic business culture.

II. Changes in “Business Culture”

Therefore, it is also necessary to create or stabilize a business culture that encourages legal behaviour. If it is true that criminal behaviour is to some degree accepted or even encouraged by colleagues and superiors within a corporation, prevention has to start exactly there. This is of course a very difficult task. We do not know much about the emergence of such a “culture”, but like “culture” in a general sense, it will certainly develop during some period of time and can not be changed over night. In addition to that, we will have to distinguish between the official image a corporation wants to deliver and the ways things are “really done” within the corporation (we might speak of the danger of some underlying “second code” here). This emphasizes the difficulties in establishing rules of conduct or business ethics effectively. If these rules are adapted in order to satisfy public opinion and stock holders alone, but are internally thrown over by just an “eye-twinkling” of some superior, then these measures will not really change business culture in a positive way.

Still, in my opinion, they are not worthless. They do have some symbolic meaning that might at least in the long run influence people’s attitudes. Furthermore, these rules make it less likely that criminal behaviour is conducted openly within a corporation. This fact alone should lead to a reduction of learning and neutralizing processes.

⁵¹ I have discussed this matter more thoroughly in Kaspar, Die Möglichkeiten strafrechtlicher Prävention von Wirtschaftsdelinquenz aus kriminologischer Sicht, in: Bannenberg/Jehle (eds.), Wirtschaftskriminalität, 2010, 135 et seq.

Another point is to inform the public about the meaning and harm done by economic crime. Public notion of crime is still dominated by violent crime in the streets, burglary etc. Media reports of spectacular cases somehow have changed this one-sided view; white collar crime, especially in the form of corporate crime, has gained more and more public attention and outrage. This should – again: at least in the long run – influence public opinion and finally also the attitudes of businessmen themselves.

We should not be naïve though. Within a market economy with sharp competition, companies will always tend to maximize their economic success – which is especially true for big corporations with shareholders watching their performance closely. Like in other areas of delinquency, we should not rely too much upon moral grounds alone to withhold people from committing crimes.

A change in business culture therefore needs some incentives for the companies to do so. New legislation in the U. S. for example urges companies to install rules of Corporate Governance. Bussmann and Werle report that according to their research, companies do not so much fear criminalization but being excluded from the U. S. stock exchange⁵². In Germany, compliance with the Corporate Governance Codex is at least strongly suggested.

Another major factor is public opinion, especially among consumers. Their power has risen significantly due to enhanced competition between companies and the possibilities of information and mobilization through the use of the internet. We can see it happen many times: after some sort of misconduct, irregularity or criminal behaviour is detected within a company, some effort is undertaken to regain a good reputation and the stockholder's and consumer's trust. This happens regardless the fact that it is not clear at all if negative publicity really has long-term negative effects on the company's success. A recent Swedish study shows that the stock market value of suspicious companies did only drop for a short time after negative media reports, but stabilized in the course of a year after the reports⁵³.

Still, it is likely that the fear of such costs can lead companies to install efficient preventive measures. In this sense, public “shaming” with the possible loss of customers (through media reports but possibly also the publication of “black lists” of involved corporations) might be effective⁵⁴. A further economic incentive could be that companies on such lists are banned from public contracting for a certain period of time. These are promising ways but we should not only rely on them. As a third dimension of prevention, the criminal law and its enforcement are inevitable measures of prevention.

III. Changes in criminal law and law enforcement

⁵² Bussmann/Werle, Addressing Crime in companies: First findings from a global survey of economic crime, *BritJCrIm* 2006, 1128.

⁵³ Alalehto, *MSchKrim* 2007, 191 et seq.

⁵⁴ Karstedt, *MSchKrim* 2007, 78, 88.

According to the results of preventive research I have shortly mentioned, the **enhancement of punishment** is not a promising strategy. We have no evidence whatsoever that the threat of ten years of imprisonment will deter offenders from committing a crime, whereas the prospect of five years does not – we only know that among business people the effect of imprisonment is clearly most feared⁵⁵.

An argument in favour of long imprisonment might be that by enhancing the maximum punishment, the state would emphasize the importance and gravity of these crimes. That would be a mere symbolic legislation in order to influence public opinion, though. I am very doubtful if such a strategy that means a considerable extra burden for the affected offender could rely on the rather speculative aim of such an influence. The idea that the existence of criminal law with its threat of sanctions has some long-term impact on people's attitudes and values is not new. It is one of the basic assumptions of the so-called theory of positive prevention that is one of the most prominent penal theories in Germany⁵⁶.

However, the influence of the exact range of threatened sanctions should not be overestimated. Apart from murder, where the punishment of lifelong imprisonment is widely known, most people do not exactly know minimum and maximum sanctions of different crimes. Again, there is a lack of empirical research about the ways this influential impact of the criminal law exactly works. In my opinion, the fact that some behaviour is considered "criminal" and is therefore prosecuted is more important in this respect than the question of three or five years of imprisonment as the maximum sentence. Furthermore, maximum sentences in Germany for different types of serious economic crimes are quite grave. Fraud or breach of trust in serious forms with high damages, for example, can be punished with up to ten years of imprisonment (§§ 263 and 266 of the German criminal code).

Another strategy could be the **criminalization** of behaviour that so far has been considered legal or at least not a crime. Apart from new developments of technology, where totally new possibilities of deviant behaviour can emerge, this is probably not necessary. At least since the reforms of the 70ies and 80ies, when several economic crimes were added to the German criminal code, a quite dense net of offences exists that does not seem to leave major gaps.

As I said before, an important variable is the **risk of detection** and **prosecution** as it is perceived by potential offenders. This is the point where improvements have to be made in order to secure significant preventive effects.

First of all, due to the low visibility and the lack of individual victims in many cases, law enforcement agencies are dependent from insider information. The idea of **whistle blowing** should be supported⁵⁷ and not be mistaken with "denunciation" – a word many

⁵⁵ Benson/Cullen, *Combating Corporate Crime*, 1998.

⁵⁶ See also Shover/Hochstetler, *MSchKrim* 2007, 123.

⁵⁷ A lenier punishment for whistleblowers or „crown witnesses“ (see § 46b of the German Criminal Code) who contribute to an improved prevention or prosecution of severe crimes can be justified in my opinion, see Kaspar/Wengenroth *GA* 2010, 453 et seq and Kaspar, *ZRP* 2011, 159 – but this is very controversial.

people in Germany are very sensitive about. The danger of misuse of such an institution should not block the idea itself, which in my opinion is fundamental for the success of prevention. Another instrument that has to be discussed are safeguards against misuse, but this is a question of procedural rules that can be solved.

Another measure of course might be to enhance **personal and material resources** of the law enforcement agencies⁵⁸. Especially in the field of economic crime, law enforcement requires a lot of time, effort and expertise of the police and the prosecutors. This will, however, remain a mere wish as long as fiscal restraints exist and economic crime is not on top of the political agenda.

⁵⁸ Shover/Hochstettler, MSchKrim 2007, 122.