

## WHO IS THE WHITE-COLLAR CRIMINAL?

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*White-collar crime is traditionally associated with high status and respectable offenders: the 'crimes of the powerful' and corporate crime. However, examination of one group of white-collar offences reveals that offenders were typically small businesses, employees, and those more properly described as 'criminal businesses'. While this could be attributed to the 'immunity' of the corporate offender from prosecution, it can be argued that such patterns of offending reflect not only enforcement policies but also wider structural and market factors. Thus, analyses of economic and white-collar crime may concentrate overmuch on the corporate offender, and make oversimplistic distinctions between 'corporate' and other varieties of white-collar offending.*

*Introduction*

From Sutherland's 'approximate' definition of 'white collar crime' as crime committed by persons 'of high social status and respectability in the course of . . . occupation' (Sutherland 1961), to more recent concerns with the 'crimes of the powerful', a stereotype of the white-collar offender has created an image of the high-status, respectable business or corporate offender whose crimes are underreported, rarely prosecuted, and therefore absent from official criminal statistics. This imagery is often used to 'demystify' the stereotype of the 'lower class villain' (Chapman 1968), but can arguably create an equally misleading stereotype. The definition of white-collar crime has always been problematic, particularly its inclusion of 'high status' offenders. Some white-collar offences are committed by offenders clearly not of 'high status and respectability', such as motor repair fraud (Geis and Maier 1977; Braithwaite 1978; Leonard and Weber 1977), and Levi (1987) describes 'upperworld' and 'underworld' offenders along with junior employees. An extremely wide range of criminality is included in the category, encouraging 'typologies'. For example, distinctions have been made between 'corporate', 'employee', 'professional', 'occupational', and 'blue-collar crime' (see e.g. Quinney 1977); Sutton and Wild (1985) point to the neglected area of 'small business crime'. 'Crimes against capitalism' can be contrasted with 'crimes in the course of capitalism', with the latter enjoying greater leniency (Pearce 1976; Levi 1981, 1987). Box (1983) argues that crimes against corporations must be distinguished from crimes by corporations, and from criminal corporations. Despite these important qualifications, depictions of white-collar crime frequently assume corporate crime and refer to the 'crimes of the powerful'. It will be demonstrated here that one broad category of white-collar crime encompasses offences falling within several of the above categories, and that many offenders could not be described as 'powerful', high status, or even respectable.

This paper is based on a study of 'crimes against the consumer' that examined offences under aspects of consumer protection legislation (Croall 1987), which aims to protect the health, safety, and economic interests of consumers. Offences include the

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adulteration of food, selling food from unhygienic premises, the use of misleading descriptions of goods and prices, and the sale of goods with short weight or measure. These offences are typical of white-collar crime as traditionally characterized in that they are committed by persons 'in the course of trade and business', and consumers are diffuse victims, poorly organized and often ignorant of their victimization. Although the net profits from illegal practices may be substantial, the loss to any one consumer is often small, leading to the underreporting of offences and a lack of perceived victimization. Offenders are often assumed to be large corporations making huge profits at the expense of the consumer by placing profit above health and safety considerations or by 'conning' consumers through misleading marketing and advertising strategies. Thus Braithwaite and Condon (1978) comment that 'apart from workers the main victims of "institutional violence" are consumers', and Box (1983) argues that 'whether we are consumers or citizens we stand more chance of being robbed by persons who roam corporate suites than we do by those who roam public streets'.

While not denying the large toll of human misery caused by corporate crime, it will be suggested that such imagery is far from the reality uncovered by empirical investigation. Attending cases in court, the observer is immediately struck by lists of seemingly trivial and routine cases involving dirty milk bottles and mouldy food. Particularly noticeable is the absence of corporate offenders and the prevalence of small shopkeepers, restaurateurs, market traders, and second-hand car salesmen. This could suggest that the 'powerful' are more immune from prosecution, as the characteristics of convicted offenders may reflect enforcement decisions rather than 'real' crime rates. It will be argued, however, that while smaller businesses may be more vulnerable to enforcement, other factors are involved. This has several implications for the depiction of the white-collar criminal, which arguably disguises the wide variety of white-collar offending.

### *Sources of Information*

'Official data' are available in annual reports of the Office of Fair Trading and of individual Trading Standards, Environmental Health, or Consumer Protection departments. However, the Office of Fair Trading merely tabulates annual prosecutions by category of offence (Director-General of Fair Trading 1984), and local reports cite only the name of an offender or company and broad categories of offences. Information about offenders is even sparser. Offenders may be described as a 'company', which could be a small ('one-person') retail outlet, a subsidiary of a large corporation, a local concern with two or more outlets, or a national or international corporation. Accordingly, a variety of methods were employed to obtain more 'qualitative data'.

Additional information was initially gained by observing cases in court. In all, fifty cases were observed, this total representing almost all cases appearing in three areas over a period of fifteen months. All enforcement departments involved were subsequently approached and further details of cases obtained. Through court observation and subsequent visits to enforcement departments, informal contacts were built up. In addition, all chief officers willing to co-operate were interviewed about the policies of their departments. A further enforcement department granted access to prosecution files, enabling a larger sample of cases. This latter department was

'strategically' chosen as it was undertaking a well-publicized 'crack down' on offenders that resulted in a large number of prosecutions. One further department was also visited and its annual report used in compiling figures. Thus through court observation, use of files, annual reports, and discussions with officers, the rudimentary information obtained from overall statistics about the nature of offences was supplemented by a variety of data. For food offences, use was also made of the *British Food Journal*, which contains press reports of prosecutions on a national basis and an annual review of prosecutions.

All the areas studied were urban and metropolitan boroughs; this had certain implications for the range of offences, but it is not felt that this affects the overall conclusions.

### *The Offences*

The aspiring exposé theorist would find an initial examination of crimes against the consumer very disappointing. In court and in the few newspaper reports of cases, offences appear overwhelmingly trivial, there are few 'moral panics', and only a small number of prosecutions annually. Underlying this surface triviality, however, lie persistent practices, some fraudulent and others threatening consumers' health. Each major offence group will be described followed by an analysis of the characteristics of offenders.

#### *Trade Descriptions offences*

The largest group of prosecutions under the Trade Descriptions Act of 1968 is for false description of goods, with smaller numbers being prosecuted for false price indications and false statements about services. Thus, in 1982/3 there were 1,484 prosecutions under the Trade Descriptions Act, 1,178 for false descriptions of goods, 142 for false price indications and 164 for false statements about services. (Director-General of Fair Trading 1984.) Motor vehicles and large items are frequently involved in prosecutions, as are misleading 'flash' and 'bargain' offers. These mislead the consumer by comparing a 'sale' price with a 'normal' price which may never have been charged, or indicating a 'special offer' when the price has not been reduced. Such practices are often regarded by traders as involving 'normal marketing strategies', justified on the grounds of competition. In the areas studied, 45 per cent of Trade Descriptions prosecutions were for 'flash' or 'bargain' offers.

The cosmopolitan nature of the geographical areas investigated was reflected in the wide variety of cases, including a false description of the services of a model agency which was in fact a 'clip joint', and an 'unbeatable' roulette system. While offences may on the surface appear rather trivial and are covered by strict liability, many involve fraud and dishonesty, and others systematically mislead the consumer. Indeed, one chief trading standards officer interviewed felt that there was an element of dishonesty in all cases prosecuted.

An example of a fraudulent practice is 'clocking'—the practice of turning back odometers, thus giving a false indication of mileage', estimated by the Director-General of Fair Trading to cost the consumer 'millions of pounds a year', which has assumed the proportions of a widespread fraud (Cranston 1984). A chief consumer protection officer

(*Monthly Review*, 1983: 91/6) cites one case where a trader made £100,000 illegal profits in ten months. Fraud and deliberate organization are present in other offences. For example, the 'passing off' of cheap scents as being expensive brand names was described by the *Observer* (13 Dec. 81) as 'big business', and the sale of falsely described 'gold' jewellery, the false use of hallmarks, and counterfeiting also involve fraud.

### *Weights and Measures offences*

In 1982/3 there were only 455 prosecutions under the Weights and Measures Act 1963, more than half involving short-weight food and drink. Bread, meat, and alcoholic drinks were the main items concerned (Director-General of Fair Trading 1984). As there are few prosecutions under this legislation, it is difficult to make generalizations. While in general offences appear trivial—one file recorded a magistrate's comment that the offence was 'not really very serious'—this is not sustained on closer examination of the nature of offences. Selling goods with short measure often implies a degree of deliberateness, and one charge may conceal systematic practices. In the hotel industry, 'fiddles', including the sale of short-measure drinks, are so institutionalized that they represent part of an 'informal reward structure' (Mars 1973; Mars and Nicod 1984). Bakers are also common offenders, as bread falling short of the legally required weight involves extra profits. Large companies can be involved; in one case, an assortment of pricing and short-weight offences resulted from the practices of a large chain responsible for catering at occasional sporting matches. Staff were employed casually and little control exercised over prices charged.

Weights and Measures offences can also involve defrauding the government. In cases involving excess froth in beer, the publican pockets excess tax on the 'extra' pints generated (*Which?* Apr. 1983, p. 139).

### *Food offences*

Offences under the Food Act 1984 involve food 'not of the nature substance or quality demanded', which includes food containing foreign matter or mouldy; food 'unfit for human consumption' (mainly, old and decomposed food), and food-labelling regulations. The latter involve breaches of information and compositional standards and foods containing excess preservatives or additives. While routine cases involving dirty milk bottles, mouldy pies, and out-of-date items may make offences appear trivial, underlying many practices are threats to consumer safety, fraudulent practices, and other methods of 'misleading' the purchaser. In 1982/3, there were 1,822 prosecutions for food offences: 955 for food 'not of the nature, substance, or quality demanded', 219 for food 'unfit for human consumption', and 648 for breaches of food labelling regulations.

Food laws are principally concerned with the potential danger of bad or damaged food. Many will remember the Spanish cooking oil scandal where the use of industrial oils in cooking oil claimed over 200 lives and seriously crippled many thousands more, and the well-publicized use of anti-freeze and methyl alcohol in wine. In 8 out of 256 cases analysed from reports in the *British Food Journal*, actual injury resulted from the presence of 'foreign bodies' (including metal, glass, stones, sticking plasters, sawdust, and wood), one victim requiring surgery to remove a piece of metal. Nine further cases

involved victims being 'generally ill', including a case where paint was used in a child's birthday cake. Other cases causing concern involved stones or metal being found in baby foods, and the supply of 'unfit' meat to schools and hospitals.

Fraud is also involved. A large number of prosecutions resulted from 'meat rackets' where meat taken from knackers' yards intended for pet food, and also kangaroo, horse, and goat meat were passed into the legitimate meat trade. When frozen, such illegal meat is similar to legal meat and is thus easily substituted. According to the Institute of Environmental Health Officers (1981), so widespread was this trade that it was estimated to amount to about 2 per cent of the meat market; therefore 'the majority of people have at some stage eaten products made from unfit or knacker meat'. Other 'frauds' included what the *Daily Mail* (1 July 1984) termed 'The Great Food Racket'—a highly organized trade in food from major stores past its sell-by date sold by various other outlets and market stalls. The use of additives, meat substitutes, and water in excess of legal limits in processed foods, which appears rather 'technical', also involves practices criticized as fraudulent (see e.g. Cannon and Walker 1985).

### *Food hygiene offences*

A further group of offences are those under food hygiene regulations, estimated to have constituted 28.1 per cent of all food offences in 1984 (*British Food Journal*, 1984). Offences mainly involve the presence of dirt and grease in food preparation or storage areas, and also include the absence of hot water, suitable clothing, sanitary facilities, first-aid boxes, and smoking by employees in food establishments. More serious cases involve infestation by insects or the presence of mice and rodents. In one of the worst cases, a small supermarket was found to have 'mice, moths, biscuit beetles, larder beetles, cockroaches and slugs . . . filthy shelves, rusty tins and toilet walls smeared with human faeces'. Other cases involved restaurants, some with a very high reputation. The underlying concern of the law is to prevent the spread of disease, particularly through food poisoning. Given that cases in court are often preceded by a long history of warnings, visits, exhortations, and threats, negligence is often a strong factor. Cutting costs may also be involved, as the cost of equipment or structural alterations to improve hygiene may be high. Thus, hygiene offences are far from trivial, especially when the dangers of food poisoning are considered. Offences are not often directly related to food poisoning, due to the difficulties of establishing the 'chain of evidence' necessary to link a case of illness to the establishment concerned. None the less, 6 out of 144 hygiene cases analysed from the *British Food Journal* involved food-poisoning outbreaks. In one case, a bride and groom had to spend their honeymoon recovering from the wedding reception. In extreme cases, food poisoning can cause death, as shown in the case of the Stanley Royd Hospital, where an outbreak of salmonella killed nineteen patients (*Guardian*, various, 1986). Thus the potential impact on the victim of hygiene offences is severe.

From this brief account it can be seen that offences are extremely varied, involving differing degrees of seriousness and impact. In many respects, offences display features commonly associated with white-collar crime. In court, cases appear routine and trivial, are often dismissed as 'accidents', attributed to 'human error' or sabotage, and intention is denied (Croall 1988). However this surface triviality masks more persistent

and often deliberately deceptive practices. The 'ideology of individualism' by which the criminal law seeks to blame individuals for individual offences can mask the real nature of offending (Braithwaite and Condon 1978). One group of summonses involving underweight loaves, 'flash offers', or dirty premises fails to reveal the persistent nature of offending, the fact that some practices are regarded as 'normal trading practice', or the long history of warnings and visits by enforcement officers. However, in other respects, offences depart from the accepted image of white-collar crime. Many did not involve large, well-known companies, but small corner shops and other proprietors who bear little resemblance to the stereotype of the white-collar criminal.

### *The Offenders*

Table 1 illustrates the prevalence of small businesses among the establishments prosecuted: restaurants, food stores, grocers, bakers, butchers, and garages. Other businesses included a night club, a roulette system, two large department stores, and a mock auction. Such a distribution undoubtedly reflects both the nature of the geographical areas studied and enforcement policies. For example, one department was undertaking a crack-down on restaurants, another on street-market traders. Overall, the range of establishments is similar to that found by Cranston (1979), and the pattern of offending in food offences is consonant with analyses in the *British Food Journal*.

TABLE 1 *Main Types of Establishment Prosecuted, by Main Offence Categories*

	Food	Hygiene	Trades description	Weights and measures
Food stores/ grocers	12	4	1	0
Dairies	4	0	0	0
Bakeries	8	0	0	2
Restaurants	5	29	4	0
Bars	3	0	3	6
Butchers	7	2	0	3
Garages	1	0	6	0
Wholesalers	2	0	0	0
Supermarkets	4	1	3	0
Street markets	0	1	4	3
TOTAL	46	37	21	14

### *Size of businesses*

Court observation enabled further exploration of the size of offending businesses. About half of all establishments prosecuted were described as companies; however, out of 57 defendants seen in court, only 9 were large companies.<sup>1</sup> A further 6 were medium-

<sup>1</sup> As information about the size of businesses was not always available, a 'common sense' definition was employed. Companies identified as 'large' were in fact defined as such on the basis of their being 'household names'—for example, supermarket or catering chains and large food manufacturers. There is thus inevitably some underestimation of larger companies as their scope may not have been sufficiently described or their name not recognized.

sized companies, and 33 were small businesses. Twelve employees were prosecuted, some 'managers'.<sup>2</sup>

The information in files and reports was less detailed, but none the less a broadly similar picture emerged. Out of eleven Weights and Measures files, only two concerned large companies. Slightly more large companies appeared in hygiene prosecutions, a feature perhaps of the area studied, which contained a large number of restaurants and hotels belonging to chains of national repute. In only four cases involving unfit food were large companies involved: two food manufacturers, a supermarket branch, and a large bakery. The most 'typical' offenders were therefore small establishments.

Unfortunately, due to the scarcity of comparative data, it is difficult to estimate the representativeness of such figures. In general, results were similar to those found by Cranston (1979). An analysis of cases reported in the *British Food Journal* gave the distribution shown in Table 2. The proportion of large companies is slightly greater, but they are still in the minority. Proportionately more appear in the 'nature, substance and quality' of food category, which would be expected as foreign bodies are more likely to originate in the manufacturing process. Many well-known companies were involved, including large chains of restaurants, supermarkets, and food manufacturers. However, the majority of offenders were again individual food stores, restaurants, butchers, meat suppliers, market traders, and corner shops.

TABLE 2 *Cases Cited in the British Food Journal, 1982-1984, by Offence and Size of Company*

	'Unfit' food	Food not of nature etc. demanded <sup>a</sup>	Hygiene
Proprietors	37	34	86
Companies (size unspecified)	23	64	38
Large companies	22	71	19
Managers/employees	5	0	1
TOTAL	87	169	144

<sup>a</sup> Food not of the nature, quality, or substance demanded by the consumer.

### *The ethnicity of offenders*

Of the individual offenders for whom details were available, there were in all 15 Asian defendants, 15 English, 1 Chinese, 1 Italian, and 1 Irish. A further 16 were companies, for which such characterizations are inapplicable. Details were more difficult to establish for cases not directly seen. Files made no reference to ethnic status, but this could on occasion be deduced from the description of the business, for example, 'Indian restaurant' or 'kebab house'. In the 34 files involving hygiene, while in 20 cases the ethnic origin of the proprietors was unknown, 7 of the remainder were Asian and a further 4 non-English. This is likely to be an underestimation, as only those known to

<sup>2</sup> The discrepancy in total numbers between 50 cases seen and the number of defendants was due to multiple prosecutions.

be non-English or Asian were counted as such. The owners of many other corner shops and small supermarkets could be assumed to be from diverse ethnic backgrounds.

This is not unique to the area studied. In annual prosecution surveys in the *British Food Journal*, the same characteristics are noted each year. In 1978 hygiene prosecutions were seen as 'mainly a problem of Asiatic caterers', and in 1984 the continuing rise in hygiene prosecutions was attributed to increasing foreign ownership of food businesses. From reports received by the *Journal* of hygiene prosecutions in 1984, two-thirds of restaurants were foreign owned, mainly 'Asiatic', as were the majority of take-aways (*British Food Journal*, Mar.-Apr. 1984).

### *Criminal businesses*

Offenders varied from the conventional picture of the white-collar criminal in another respect. Some, particularly those involved in more 'serious' offences, could not be described as 'respectable' but rather as 'criminal businesses', in that their activities were organized primarily around illegal ends. The large-scale meat frauds and 'passing off' trades indicate 'illegal businesses', and perpetrators can be described as 'shady operators' (Sutton and Wild 1985). Large legitimate corporations, as we shall see, are the *victims* of such frauds rather than the perpetrators.

Thus, while large companies are not totally absent, and their numbers, as will be seen, are likely to be an underrepresentation of their rates of offending, the above analysis suggests that significant numbers of white-collar criminals are small businesses, and a further minority of offenders could more properly be described as 'criminal businesses'. Employees are also involved, sometimes being charged along with companies. Before discussing the significance of these findings, the likely effect of underreporting of offences by victims and the activities and policies of enforcement agencies must be considered. In common with other regulatory offences, the well-documented compliance strategy of enforcers (see e.g. Hawkins 1984; Cranston 1979) leads to few prosecutions in relation to detected offences. To what extent therefore does the relative scarcity of the corporate offender result from such processes?

### *Reporting Trading Offences*

The attitude of the victim is a vital factor affecting the reporting of any offence and is crucial in respect of the crimes under consideration. Thus, while consumers are not likely to purchase an obviously faulty product, eat in a restaurant which has insects all over the floor, and can tell if a bag of potatoes marked '5 lbs' only contains 2 lbs, they cannot test the contents of food; nor do they inspect the kitchens of apparently clean restaurants or weigh bread. Even if they could test the contents of food they would most likely not be aware of the standards laid down for the particular food item, which can be extremely technical. Serious offences are no more likely to be obvious as they may be undetectable by individual consumers, as in the case of the addition of excess water to processed food, or the use of substitutes in meat products. Thus one can safely assume that large numbers of victims are unaware of their victimization, even where serious and persistent offending may be involved.

Many offences, even if detected, are unlikely to be reported. Frequently, there is only a minimal effect on individual consumers, and they may seem too trivial to warrant



further action, as for example the purchase of a mouldy sandwich. In other cases, consumers may consider themselves responsible for their own victimization. If, for example, food 'goes off' the day after it is bought, a consumer might think that he or she did not store it properly. Indeed this is often the case, and is one factor inhibiting formal action. The deficiencies of cheap goods bought at a sale or market stall may be dismissed as a 'bad buy'. In this respect the seriousness of a complaint is relevant, as, for example, action is more likely to be taken if a major item of expenditure is involved. This is illustrated by the predominance of cars, major household appliances and furniture in complaints reported (Director-General of Fair Trading 1983).

If action is taken it may not involve enforcement agencies, and complaints not treated as potential offences. Harvey (1982) lists many possible avenues of redress including Citizens' Advice Bureaux, MPs, legal advice from solicitors, and, as only one avenue among many, the relevant Local Authority department. Many consumers complain directly to the shop or manufacturer concerned (Cranston 1979). Thus, the number of offences drawn to agencies' attention is likely to represent only a tiny proportion of the 'real' volume of offences, and those eventually reported may not necessarily be the most serious.

### *Enforcement Policies*

The proactive role of enforcers is therefore crucial, and this in turn is affected by departmental policies, the technicalities of the offence, and by manpower and resource considerations. Departments had different policies and priorities: the frequency of inspections varied, and different groups were 'targeted' for attention. One department carried out 'purges' of particular problems at different times—for example, concentrating on the weight of 'punnets' of strawberries in the summer and on toy safety at Christmas. Another department was engaged in a crack-down on food establishments which involved inspecting all establishments over a period of time and prosecuting all offenders, leading to a 'crime wave'. Technical factors are also important. As production of consumer goods and food processing becomes more complex, more technical knowledge and equipment is needed to check compliance, and many of the most serious offences only come to light in this way. Such testing and the 'test purchases' involved are very costly, and resource and manpower considerations are crucial. Thus, enforcement policies clearly affect the pattern of offences eventually reaching the courts.

One major question is to what extent different groups are more likely to be the 'target' of enforcement officers. This could occur in different ways. In analysis of non-white-collar crimes, lower class offenders are the most likely targets of law enforcement activities, partly due to their higher visibility; and within the lower class, certain groups, for example, black unemployed youth, are more likely to be stopped, searched, and arrested (see e.g. Smith and Gray 1985; Reiner 1985). In general, this results from a combination of factors such as the presence of greater numbers of such groups 'on the streets', the use by police of stereotypes associating unemployed status and ethnic characteristics with 'deviance', and the occupational culture of policing, which contains a degree of racism and thus affects such stereotypes (Reiner 1985; Lea and Young 1984). To what extent might this also be the case with trading offenders?

While regulatory enforcement is often differentiated from 'policing', there are

similarities. In their inspection role, officers proceed very much like police, calling on establishments according to their own discretion. Thus, they may be drawn to those that they associate with offending on their 'patch', and some talked of having 'black books'. High street and corner shops are easier and quicker to inspect, and their operations are more 'visible' than those of a food manufacturer. Officers recounted one case when they were drawn to an establishment by the height of boxes of fruit off the ground; in another they were attracted to an establishment by its smell. Hutter (1986) reports an instance in which enforcement officers noticed unsafe building work on a premises near one they had visited.

Cranston (1979) found that officers' stereotypes affected their decisions. Second-hand car dealers were seen as 'rogues', and coal merchants also suffered an adverse stereotype. This meant more frequent inspection of premises, and if inspection revealed a problem, a greater likelihood of prosecution as these types of traders were considered persistent offenders. Such assumptions may well vary according to the area concerned, with departments having a conception of 'normal offenders' (Sudnow 1965). Chief officers, when asked about the main problems in their areas, referred to particular groups. One officer referred to market traders as 'villains', and another to a tendency to prosecute car dealers and coal merchants to 'teach them a lesson'. Some, though not all, felt that Asian shopkeepers were also a particular problem. Departmental policies involving 'crack downs', 'purges', or 'blitzes' on particular groups are also crucial, as indicated above, and have been found to affect patterns of offending elsewhere (Braithwaite and Vale 1985).

In respect of the ethnicity of offenders, similar questions arise. The *British Food Journal* (1981) emphatically denies any claims of racial discrimination: 'occasionally ill-informed meddlers suggest an element of racial prejudice, but the facts . . . [the amount and seriousness of charges] . . . speak for themselves'. In some of the areas studied, there was clearly a perception that Asian restaurants and shops dominated hygiene offences. Claims of discrimination, occasionally made by offenders, were strongly denied, although the problem was recognized and discussed. Some officers saw the proliferation of Asian traders in court as inevitable given the nature of the areas, all characterized by high concentrations of ethnic minorities and large numbers of foreign-owned shops and businesses. Others considered that they constituted a special problem. Ignorance of regulations and different cultural standards of hygiene were some factors mentioned in connection with this. This is echoed somewhat crudely by the editor of the *British Food Journal* (Mar.-Apr. 1985) who attributes the predominance of 'foreign-owned' businesses in hygiene prosecutions to 'indifference, obsession to outwit those in authority, ignorance of what hygiene really means, and language'. Such strong sentiments were not encountered in this research, although as there was no participant observation, their absence cannot be taken as definitive; the attitudes of chief officers may not be shared by those 'on the street'. Several departments have attempted to tackle perceived problems with ethnic-minority businesses. Many publish hygiene regulations in the languages of ethnic communities, some have appointed officers from such communities, and run special educational programmes targeted at particular types of business (*Environmental Health*, Sept. 1980 and Jan. 1982).

A further question is the extent to which enforcers may be more sympathetic towards corporations. Some argue that large companies are 'shielded' by enforcers' partiality towards high-status offenders. Cranston (1979) found different attitudes towards large

companies in different departments. One department had a policy of *only* prosecuting large companies; another fought shy of such prosecutions, fearing a complex defence. In this study, some aspects of 'differential treatment' did emerge. One senior environmental health officer felt that some officers might be afraid of being 'grilled' in court by the barristers brought in by large companies. Another department acknowledged this problem and brought in specialist prosecuting staff for important cases. Others showed a certain pride in having brought particular large concerns to court. In one department, large companies were singled out as a group more likely to be prosecuted as 'they should know better', and another chief officer felt that instead of pursuing 'villains', small concerns that in his view would 'never comply', they should 'go and chase after big firms'.

One area noted for a strong attitude to prosecution admitted to using more stringent tactics for large companies, especially chains of restaurants: if conditions in one restaurant of a chain were unsatisfactory, others would be visited. If the problem was found to be common to all outlets, then an approach to top management was made. One senior officer proudly recounted having berated a prominent businessman about the state of his kitchens. Prosecution would follow if action was not immediately forthcoming, sometimes despite high-level intervention by the company through prominent local councillors. Another prosecution attracted a newspaper comment to the effect that 'premises which enjoy public prestige should not be prosecuted just to show an example'.<sup>3</sup>

Adopting different policies for large concerns did not always work against them. Thus whereas small establishments may be inspected on a random basis, without warning, arrangements have to be made in advance for the inspection of large establishments, because of the technicalities involved for the development concerned. This does not indicate leniency—to quote the chief officer, 'they can hardly run round cleaning the whole factory'—but such differential treatment may well have the effect, however unintended, of making the smaller concern more vulnerable to inspection and prosecution.

An important consideration in any public service department is the deployment of scarce resources and the consequent need to allocate priorities. Hutter (1986) found that environmental health departments with scarce resources devoted less attention to proactive work. Most departments in this study complained that manpower shortages made their inspection and testing duties less comprehensive than they would wish. This could affect the pattern of prosecutions in various ways. Departments acknowledged that testing programmes were limited. These include detecting substitutions or excess water content in processed foods, and the safety or quality of consumer goods, both involving manufacturers. Thus, the low priority accorded to expensive testing programmes could result in proportionately more offences of larger concerns escaping detection.

Both the victim's propensity to report offences and the decisions and attitudes of enforcers do therefore affect the pattern of prosecutions. Large companies and serious offences, not necessarily related, are likely to be underrepresented; however, it could equally well be argued that many small concerns commit offences which are undetected by consumers and enforcers alike. Such an underrepresentation does not

<sup>3</sup> Specific quotes and examples must be withheld in order to preserve the anonymity of the area.

appear to arise out of the 'capture' of enforcement agencies by business, for which little evidence could be found. Rather it results from differences between large and small businesses which affect their vulnerability to enforcement and may also affect their propensity to offend. Nelken (1983) suggests that the pattern of prosecutions and the characteristics of offenders results from an interaction between structural factors, the law, and its enforcement. These 'structural' factors will now be discussed.

### *Structural Factors and Patterns of Offending*

Nelken's (1983) discussion of harassment legislation illustrates the importance of structural factors. The law was aimed at wealthy landlords and at illegal evictions known as 'Rachmanism', but in practice, large landlords could 'minimise the extent to which the law impinges on their activities'. Residential landlords, letting only one or two rooms, were most regularly prosecuted. Large landlords could vet tenants carefully and had resources to employ legitimate means of getting rid of unwanted tenants, such as 'winkling out' (offering large sums of money as an inducement to quit). They could also afford to improve properties, justifying an increase in rent which tenants could not afford. Smaller residential landlords, often Asian, had fewer of these resources at their disposal and frequently shared accommodation with tenants, leading to potential friction. Large landlords are thus 'protected' by the scope of legislation, in part because they are large and do not *need* to use illegal tactics; in other words, the 'application of universal standards produces unequal results' (Nelken 1983).

Similar processes can be identified for trading offences. A statutory defence is possible if a company can establish that it has a 'system of checking' that abuses do not occur. Such systems include the (often expensive) scanning machinery used in dairies and food manufacture, the employment of quality-control staff, and in respect of pricing, a system whereby price schedules are communicated to all outlets. These, however, require both resources and manpower, and equipment may be too costly for smaller companies. In court, the ability to establish such 'systems' clearly distinguished between large and small businesses (Croall 1988), and Cranston (1984) and Borrie (1984) both argue that large companies can more easily persuade the court that systems are present. They also employ legal and scientific staff to ensure that breaches of regulations do not occur, and to advise on the complexities of the law.

Small companies are more vulnerable. Many small traders may be ignorant of the precise details of regulations. They are more likely to receive goods pre-packaged, and to use cash-and-carry warehouses which, according to environmental health officers, makes them more likely to receive unsatisfactory goods. Low profit margins may make costly equipment difficult to afford. They are also less likely to establish an elaborate system of instructions and checking. In a small supermarket, written instructions about pricing or stock rotation are inappropriate, whereas large companies produce circular letters to management as a matter of course. Further, many face problems with hygiene regulations due to the cost of structural alterations. The *British Food Journal* (Mar.-Apr. 1984) comments that many problems in food shops are due to inadequate space for food storage, and many offenders complained of the capital needed to structurally alter kitchen areas. While not discussing hygiene specifically, Aldrich *et al.* (1981) found that the accommodation of Asian shops was often substandard, frequently located in deteriorating buildings and combining retailing with residence. This, they

add, is a problem not only of the Asian shopkeeper but also of the 'independent white retailer'. In addition, many small food stores rely on providing a large range of goods, yet may not be able to ensure adequate rotation. The special requirements of ethnic populations, such as special meats and cooking techniques, may create even more problems. The problems of installing and cleaning 'tandoor' ovens were mentioned in court cases, as were habits of storing dried vegetables in sacks, attracting infestation. Ignorance of regulations may compound these difficulties, although on the whole, despite some variations between different groups, ethnic businesses appear no more ignorant of business matters generally (Aldrich *et al.* 1984).

The role of 'market forces' has recently attracted attention in analyses of white collar and corporate crime (see e.g. Box 1987; Clinard and Yeager 1980). In respect of small business offending, some offenders have been portrayed as 'victims of circumstance', where the necessity of competing with large corporations creates a 'criminogenic market' (Sutton and Wild 1985). In their analysis of fraud in the motor industry, Leonard and Weber (1977) argue that large motor manufacturers, operating in an oligopolistic market, control dealers through franchises and exert pressure for sales. However, pricing arrangements result in minimal profits from such sales, leaving servicing and second-hand car sales as the main area of profitability for such dealers. This encourages a variety of illegal activities, such as altering odometers and tendering false accounts of services. Thus unethical actions of dealers and mechanics are 'coerced occupational crime'. Braithwaite (1978) offers a similar analysis of used-car fraud in Australia, where salesmen pressured mechanics to alter odometers. Intense competition also encouraged false or deceptive advertising. Dealers interviewed were clear about their motives: the desire for profits. Car dealers were found to have no independent code of ethics, and, according to Braithwaite, were 'groping in a moral fog'. He concludes that the 'used car dealer is a rational human being responding in a normal way to a market and society which has built into its structure of social relations a propensity to take advantage of the other'.

While it would be impossible to analyse fully market considerations relevant to the many industries involved here, food retailing could be a market where structural factors may affect illegal activities. Large supermarkets can obtain favourable prices from food manufacturers for 'bulk orders' (Smith 1982). These price reductions can then be passed on to the consumer. The small grocery, dependent for supplies on the wholesaler or the 'cash and carry', not the manufacturer, cannot compete. Therefore profit margins are reduced if prices are not to be higher. This could create certain pressures—for example small grocers may be dependent on selling all goods irrespective of whether or not they become out of date. Similarly, they may be tempted to stock too large a range of goods for their available space, creating possible hygiene problems. Aldrich *et al.* (1981) argue that 'irrespective of ethnicity, small retail business is characterised by high failure rates and rapid turnover', thus many shopkeepers are likely to be 'preoccupied with survival'. The constraints within which such businesses operate may well contribute to some offences, and it is possible that fuller analysis would find other 'criminogenic' market situations.

Legal factors also play a part. The role of the 'system' defence has already been mentioned. Further, the brunt of enforcement, and therefore prosecution, falls at the point of sale, not production. A small corner shop found selling an offending item is liable to be prosecuted for failing to exercise 'all due diligence'—a more difficult task for

a small concern. It is difficult to institute a third-party defence as this would require proof that the defect was caused through omissions on the manufacturer's part. This difficulty is compounded by the manufacturer's 'system'. As consumer complaints and inspections of establishments more often involve the actual seller, the latter is thus more vulnerable.

All these factors would in any case lead to an underrepresentation of large companies as offenders, without considering the enforcement process. They reflect the superior resources of large companies, the operation of 'market forces', and the nature of legislation, which puts the onus of enforcement mainly at the point of sale, and requires proof of 'systems' as a defence.

### *Discussion*

A combination of enforcement policies and structural factors affects the distribution of offenders. This has significance not only for the stereotype of the white-collar offender but also for comparisons between different 'types' of offending, which indicate more clear-cut distinctions than those emerging from empirical investigation. Within the broad category of 'crimes against the consumer', some offences involve widespread and deliberate frauds, others negligence shading into culpability, and others consist of misleading the consumer through 'normal trading practices'. Small businesses constitute a large proportion of offenders, other offences could be classified as 'employee' crime, and yet other offenders are 'criminal businesses'. Corporations are the victims of many offences, along with consumers. There is a clear difference between the large food manufacturer systematically adding water to processed food in excess of the legal limits, and the organized 'fiddles' of employees which may involve adding water to gin. One can also differentiate between the large manufacturer negligent in respect of quality control, the small shopkeeper preoccupied with the struggle for survival leaving out-of-date food on the shelves, and the market trader who obtains supplies of questionable food which he markets quickly for a quick sale. While not wishing to enter into tortuous definitional debates or attempting yet another typology, some general patterns of offending can be identified.

It has been argued that small businesses are likely to represent a significant group of offenders, and that this is not only the result of selective enforcement. However, Sutton and Wild (1985) recognize that small businesses are not a homogeneous category and identify two 'models' of small business crime: an 'interactional or agency view, which interprets their activities as individual, small-scale confidence tricksters' or 'shady operators'; and a 'structural' view in which they are seen as 'victims of circumstance'. In their view, neither model fully explains the complexities of small business crime, but they do provide a means of distinguishing broadly different types of offenders.

Sutton and Wild identify 'shady operators' operating on the fringe of the market, 'peripheral individuals manipulating the system' who conform to a 'con-man' or 'confidence trickster' image. These include the 'phantom capitalists' described by Levi (1981) in his study of long firm fraud, and the 'fly by night' operations and 'shaky businesses' involved in consumer fraud depicted by Rothschild and Throne (1976). Producers and sellers of falsely hallmarked jewellery or fake perfumes, counterfeiters, and traders in the various meat rackets could also be characterized as 'shady operators'. Such systematic offending is clearly distinguishable from the occasional offending of the otherwise legitimate business, and victims are consumers

and legitimate manufacturers alike. Other analyses of criminal organization (e.g. McIntosh 1974) point out that such activities are 'rational' economic behaviour in a favourable market. Thus, such offenders are likely to form a significant minority in much economic crime.

The second group discussed by Sutton and Wild are the 'victims of circumstance', businesses whose marginality may leave them preoccupied with a 'struggle for survival'. Their offences are likely to be affected by economic factors, coupled with neglect (or ignorance) of the finer points of the law. Negligence, often of a persistent nature, characterizes such offences. Because they cater largely for lower socio-economic groups, their victims are likely to be those least able to protect themselves. While 'marginal', such businesses show little signs of disappearing (Ward and Jenkins 1984), and are thus likely to continue to be a significant group of offenders within categories of white-collar crime. Indeed Box (1987) argues that in a recession such criminality may well increase.

Another group of offenders are 'employees'. Due to the well-known difficulty of attributing blame to any one level within a company, prosecution of employees could be seen as a denial of corporate responsibility. In attempting to 'blame' employees, many companies attribute offences to 'human error', 'carelessness', 'staffing difficulties', and occasionally to 'sabotage' (Croall 1988). These excuses can be interpreted as 'techniques of neutralisation' (Box 1983), as it is ultimately the responsibility of management to ensure that 'human error' is designed out of production processes. Such arguments may however oversimplify the relationship between corporate responsibility and employee 'deviance'. Excuses may have some basis (Clinard and Yeager 1980), and many offences can be attributed to a lack of regard for safety precautions by workers, which may in turn be related to work processes and managerial policies. Industrial sociologists point out that many 'accidents' are caused by the form of work organization in large enterprises. Braithwaite (1984) suggests that the lack of discretion accorded to workers arising from tight regulations surrounding the manufacture of drugs can lead to alienation, carelessness, and even sabotage. Ditton (1972) describes well the boredom of working on a mass production line producing cakes and bread, where workers resorted to day-dreaming and, as an 'escape' occasionally dipped other workers in the confectionery mix—obviously running the risk of 'foreign bodies' entering it! As much food is now mass-produced, these factors may account for seemingly 'accidental' offences. Sabotage can also be related to work organization and can be an indication of poor industrial relations or boring work (Taylor and Walton 1971).

Other offences described as 'employee crime', such as overcharging or watering down alcoholic drinks, may be related to managerial policies and pay. Ditton (1974, 1977) found bread salesmen's 'fiddles' to be related to managerial systems, and in part motivated by a perceived desire to secure a 'fair day's pay'. In the hotel industry, widespread fiddles are accepted as a means of improving low earnings (Mars 1973; Mars and Nicod 1984). Such employee offending is deliberate and economic in motivation, and both employer and consumer are the ultimate victims. It is therefore misleading to separate consideration of 'employee crime' from corporate crime, or to dismiss employee offences as an attempt by corporations to escape responsibility. Corporate policies may produce the conditions in which employees may neglect safety and quality regulations or engage in 'fiddles', a more complex relationship than often assumed.

The prevalence of offending by small businesses and employees does not detract from the significance or impact of corporate offending, which may also be related to market and organizational factors (Clinard and Yeager 1980; Box 1983, 1987). Of relevance to this study is the example of food-manufacturing, an extremely competitive business where the search for cheap food substitutes and 'efficient' techniques has been subject to criticism. Consumers may be misled in respect of the quality and content of food, much of which contains additives and preservatives which may damage their health (see e.g. Cannon and Walker 1985; Croall 1987). Similarly, pressures on processing plants may lead to a neglect of safety considerations, contributing to the presence of 'foreign bodies'. Organizational 'defects', such as communications failures, have also been isolated as factors in corporate offending (Hopkins 1980); and as explained above, other corporate policies may lead to neglect of regulations by employees.

It could of course be argued that the relative absence of corporate offenders provides another example of business avoiding the criminalization of its activities. While analysis of the relationship between business, the criminal law, and its enforcement lies beyond the scope of this paper, it is suggested that such an absence is not solely a result of corporate influence on law-making. On the other hand, it does not indicate high levels of 'social responsibility' on the part of large corporations. Box (1988) argues that 'corporate crime need not occur', in that in addition to influencing regulation itself, corporations may engage in law evasion—for example, manufacturing substandard goods in countries with less stringent regulatory codes. Similarly McBarnet (1988), discussing tax evasion, details many practices of large concerns which comply with the *content* but not the *intent* of the law. Many of the offences described occur at the fringes of the law, and one could point to numerous instances where 'normal trading practices' adversely affect the consumer. There are many loopholes in the law which regulate some practices but not other, similar ones. Thus even 'legal' bargain offers may be extremely misleading, water may quite legitimately be added to food through modern processing techniques, and some mass-produced food, consisting of little more than 'additive cocktails', could well be said to involve legalized adulteration (Cannon and Walker 1985; Clutterbuck and Lang 1982). Deceptive packaging has often been criticized as the sale of 'empty space', and is seen as one of the major gaps in consumer protection legislation (Smith 1982). Thus, consumers can be quite 'legitimately' deceived by practices which routinely breach the 'spirit' if not the letter of the law, yet the arguments often advanced that corporations are the 'real' criminals due to their immunity from legal controls and enforcement may simplify an extremely complex relationship between criminal law and business.

The relative scarcity of corporate offenders renders problematic other assumptions about white-collar offenders. Such offenders are almost universally assumed to be treated more sympathetically in the criminal justice system due to their superior resources and status. In court there may be clear distinction between large and small businesses in terms of defences and mitigation offered, with larger businesses being more able to persuade the court of their responsibility (Croall 1988). Sentences, often described as 'derisory' (see e.g. Levi 1984), had differing impacts, as a 'trifling' fine to a large corporation could represent a substantial amount to a small business, even threatening its survival (Croall 1987). Thus the assumption that the white-collar offender enjoys 'benign' treatment is not universally applicable to all offenders. Indeed, given the wide variety of offenders, for many the grounds for such sympathy may not exist.



In conclusion it can be argued that the predominating image of the 'crimes of the powerful' perpetrated by the corporation or high-status, respectable business offender can both disguise the variety of white-collar crime and exaggerate the distinction between 'conventional' and white-collar crime. Classifications differentiating between corporate and employee or small-business offending and distinctions between crimes against corporations, crimes by corporations, and criminal corporations may also be misleading, as any one category may include many varieties. In addition, attempts to explain offending in relation to market factors must recognize that these may have a differential impact on different groups of offenders within the same offence category. Box (1987) argues, for example, that the ability of large corporations both to affect regulations and to evade the law may produce higher levels of small-business crime related to the economic exigencies of the recession. Thus, models attempting to explain such crime must take account of the complexities of market and structural factors as they affect different groups of offenders—corporations, employees, small businesses, and indeed 'criminal business'.

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