

Introduction¹

In January 2013, Aaron Swartz, a brilliant computer programmer and activist, died by suicide. At the time, Swartz's prosecution for engaging in computer fraud – Swartz had reportedly broken into JSTOR, the digital academic library, and had made its content available to the public – was nearing trial in a Boston federal court.² In the wake of Swartz's death, critics vehemently blamed the prosecutors spearheading his case for charging him in a way that threatened to produce a potential jail sentence of thirty years' imprisonment. The United States Attorney contended that Swartz in fact realistically faced no such sentence; indeed, the jail term prosecutors sought in exchange for Swartz's guilty plea was a mere six months.³ Amidst this back and forth, Swartz's case eventually receded into the background.

Nearly two years later, the Supreme Court heard arguments in the case of *Yates v. United States*.⁴ John Yates, a commercial fisherman, was charged with obstructing justice by disposing of a portion of the grouper he had caught while out at sea. Federal law prohibits the concealment or destruction of a “tangible object” to

¹ This discussion is informed by work I have published over the past decade, including *Insuring Corporate Crime*, 83 *IND. L. REV.* (2008); *Linkage and the Deterrence of Corporate Fraud*, 94 *VA. L. REV.* 1295 (2008); *Governing Corporate Compliance*, 50 *B.C. L. REV.* 949 (2009); *Cooperation's Cost*, 88 *WASH. U. L. REV.* 963 (2011); *Too Vast to Succeed*, 114 *MICH. L. REV.* 1109 (2016); *Insider Trading's Legality Problem*, 127 *YALE L.J. FORUM* 129 (2017); *Reconceptualizing the Whistleblower's Dilemma*, 50 *U.C. DAVIS L. REV.* 2215 (2017); and *Sorting Out White-Collar Crime*, 97 *TEX. L. REV.* 225 (2019).

² For a helpful discussion of the legal issues underlying Swartz's computer fraud prosecution, see Orin Kerr, *The Criminal Charges against Aaron Swartz (Part I: The Law)*, *VOLOKH CONSPIRACY* (Jan. 14, 2013), <http://volokh.com/2013/01/14/aaron-swartz-charges>. To see JSTOR's factual recounting of events, see JSTOR evidence in *United States v. Aaron Swartz*, JSTOR (July 30, 2013), <http://docs.jstor.org/summary.html>.

³ See Charles Arthur, *Aaron Swartz: US Attorney Says She Only Sought Six-Month Jail Term*, *GUARDIAN* (Jan. 17, 2013), www.theguardian.com/technology/2013/jan/17/aaron-swartz-attorney-defends-actions.

⁴ 547 U.S. 528 (2015).

subvert a federal investigation.⁵ Yates's case came about when a fisheries investigator boarded his ship and observed several pieces of grouper a few inches short of the size required by existing regulations. The investigator directed Yates to segregate the prohibited fish so that it could be weighed when the ship docked and Yates could be assessed an appropriate fine. When Yates's ship returned to port, however, the grouper in the ship's hold had magically grown in size. One of Yates's crewmen admitted that he had, at Yates's command, dumped the offending fish and replaced them with larger-size grouper. The obvious purpose in doing so was to avoid the fine.⁶

Yates's attorneys successfully persuaded the Supreme Court that undersized "fish" were not the "tangible objects" Congress had in mind when it criminalized the destruction of documents and other materials in anticipation of an investigation.⁷ Besides the inevitable fish puns, what caught the attention of at least one Supreme Court justice was the length of sentence Yates might receive if convicted: "What kind of mad prosecutor would try to send this guy up for twenty years?" Justice Scalia reportedly inquired during oral argument.⁸ Of course, Yates never realistically faced a twenty-year term. In fact, he received a sentence of just thirty days' imprisonment.⁹ Nevertheless, the fact that Yates *could* have received such a sentence played a role in convincing a majority of the Court that Congress narrowly intended its statute to include documents or digital material when it adopted the term, "any tangible object."¹⁰

Finally, consider Bridget Anne Kelly, a New Jersey official who conspired with others to shut down part of the George Washington Bridge and cause some "traffic problems" in Fort Lee – all to punish Fort Lee's mayor for not endorsing Governor Chris Christie's reelection campaign.¹¹ Kelly held a relatively low-level position within Christie's office, but the evidence easily demonstrated her participation in

⁵ 18 U.S.C. 1519.

⁶ Yates, 547 U.S. at 531.

⁷ *Id.* at 546. See also Debra Cassens Weiss, *Is a Fish a "Tangible Object"? Not in This Case, SCOTUS Rules in Parsing Post-Enron Law*, ABA J. (Feb. 25, 2015), www.abajournal.com/news/article/is_a_fish_a_tangible_object_sotus_rules_for_fisherman_prosecuted_for_under.

⁸ *Scales of Justice Meet Scales of Fish*, CBS NEWS, Nov. 6, 2014, www.cbsnews.com/news/scales-of-justice-meet-scales-of-fish-in-case-of-discarded-grouper. For further analysis, see Ellen S. Podgor, "What Kind of a Mad Prosecutor" Brought Us This White Collar Case, 41 VT. L. REV. 523 (2017).

⁹ Yates, 547 U.S. at 535.

¹⁰ Justice Kagan's dissenting opinion criticized the plurality for allowing itself to be swayed by these concerns. Agreeing that Section 1519 was a "bad law – too broad and undifferentiated, with too-high maximum penalties," she nevertheless concluded that it was "an emblem of a deeper pathology in the federal criminal code" and that Congress was the only authority who could redress that pathology. "If judges disagree with Congress's choice, we are perfectly entitled to say so – in lectures, in law review articles, and even in dicta. But we are not entitled to replace the statute Congress enacted with an alternative of our own design." *Id.* at 570 (Kagan, J., dissenting).

¹¹ See *Kelly v. United States*, 140 S. Ct. 1565 (2020).

the bridge-closing scheme. After she was convicted on a mix of fraud and conspiracy counts in 2016, Kelly's attorneys blasted the government for stretching the law to cover low-level individuals like Kelly.¹² Kelly was sentenced to eighteen months in jail, but to hear her attorneys tell it, she was facing a term of least twenty years for playing a bit role in an ill-considered prank.¹³ The Supreme Court eventually overturned her conviction because the property that was the supposed target of the offenders' scheme – moneys spent on a pretextual traffic control study – was too attenuated to serve as the basis of a mail or wire fraud prosecution.¹⁴

These examples underscore society's conflicting attitudes toward the body of law many of us have come to call "white-collar crime."¹⁵ On one hand, an unmistakable overcriminalization theme pervades popular and academic discourse. We seem to make a federal case out of everything – from a local fisherman's decision to dump fish into the sea, to the prank one set of public officials decides to play on another.¹⁶

At the same time, there is just as strong an impression that white-collar crime, particularly *federal* white-collar crime, is underenforced.¹⁷ Year in and year out, regardless of presidential administration, the federal government manages to overlook the most culpable players when it singles out businesspeople and politicians for prosecution. A few unlucky offenders find themselves at the end of the prosecutor's proverbial gun, but the rest appear to escape responsibility for their reckless behavior. How can that be so? This question is the focus of Chapter 1 of this book and prompts us to examine the multiple pathologies that cloud our understanding of white-collar crime.

Some contend that the odd juxtaposition of overcriminalization and underenforcement demonstrates nothing more than the instantiation of class difference and political power. Well-heeled corporate executives escape accountability for imposing massive costs on society while prosecutors celebrate convictions of bit players in tawdry conspiracy schemes. Government enforcement agencies punch down and suck up. From this perspective, the remedy seems remarkably simple: the government must commit itself to punishing the powerful more often, strengthening the

¹² See Kate Zernike, *Lawyers for Ex-Christie Aide Says She Was Made Scapegoat in Bridge Plot*, N.Y. TIMES (Oct. 19, 2016), www.nytimes.com/2016/10/20/nyregion/bridgegate-trial-bridget-anne-kelly.html.

¹³ See Ryan Hutchins, *Baroni Sentenced to 2 Years in Prison for Role in Bridgegate Scandal; Kelly Gets 18 Months*, POLITICO (Mar. 29, 2017), www.politico.com/states/new-jersey/story/2017/03/baroni-sentenced-to-2-years-in-prison-for-his-role-in-bridgegate-scandal-110811.

¹⁴ "The Government in this case needed to prove property fraud." *Kelly v. United States*, 140 S. Ct. 1565, 1571 (2020). "[P]roperty must play more than some bit part in a scheme: It must be an 'object of the fraud.'" *Id.* at 1573.

¹⁵ For a fuller discussion of the debate over the term "white-collar crime," see Chapters 1 and 2.

¹⁶ See Yates, 574 U.S. at 530; see also HARVEY Silverglate, *THREE FELONIES A DAY: HOW THE FEDS TARGET THE INNOCENT* (2011); MIKE CHASE, *HOW TO BECOME A FEDERAL CRIMINAL: AN ILLUSTRATED HANDBOOK FOR THE ASPIRING OFFENDER* (2019).

¹⁷ See, e.g., JESSE EISINGER, *THE CHICKENSHIT CLUB: WHY THE JUSTICE DEPARTMENT FAILS TO PROSECUTE EXECUTIVES* (2017).

penalties it imposes on corporate executives, and avoiding low-level prosecutions that do little more than prop up annual statistics.

This book draws a different set of conclusions. Class differences matter in white-collar crime, but they don't fully describe our government's enforcement efforts, much less explain white-collar crime's persistence. To our detriment, we have overlooked an alternative source of problems: our statutes and our legislature's unwillingness to meaningfully reform them. Our broken federal criminal code fuels alternative narratives of overcriminalization and underenforcement and leaves us bereft of the tools necessary to address related but distinct categories of economic wrongdoing. Regardless of how one views criminal law's mission, our white-collar statutes fail us as society. They undermine our criminal justice system's legitimacy and skew its signals. Rather than correcting or deterring wrongs, or generating healthy and prosocial norms, our white-collar penal statutes ultimately confuse and mislead.

A noxious mix of myths and misunderstandings has come to define federal white-collar practice, and as those myths and misunderstandings grow, they foreclose opportunities for intelligent discussion and meaningful reform. The middle section of this book surveys a series of pathologies. These pathologies have hampered our enforcement institutions' responses to economic and corporate wrongdoing. They have also obfuscated our understanding of what our enforcement institutions are trying to do and why they alternatively fail or overreach in spectacular fashion. As a result, our society often misunderstands the *laws* that purport to outlaw crimes of deception; the *sentences* and alternative punishments that the government imposes for violations of such laws; and the nature of *harms* caused by the various *offenders* who violate these laws. These misunderstandings explain why the government manages to look overly harsh and pathetically weak, all at the same time. They also suggest a very different set of remedies from those frequently touted on either side of our political divide.

ROADMAP

This book unfolds in three sections. The opening section (Chapter 1) surveys the competing claims that white-collar crime is “overcriminalized” and yet also “under-enforced.” To some degree, this debate is reflective of our society's deeper anxieties about criminal law and its place in modern American culture. But white-collar crime's discourse operates independently of that larger debate. Politicians who identify as opponents of mass incarceration are just as inclined to label corporate industry executives “criminals” and support the enactment of strict liability laws that threaten corporate officers with jail.

Chapters 2–6 examine a series of pathologies that hamper our understanding of white-collar crime and its enforcement. Chapter 2 begins by examining the data the federal government collects and disseminates on federal prosecutions and

convictions of “white-collar” offenses. For years, scholars have debated the meaning of the term “white-collar,” which was itself coined by sociologist Edwin Sutherland in his 1939 address to the American Sociological Society. Legal theorists imagine a set of offenses in response to the term, while criminologists and sociologists associate the term with a certain group of offenders. As Chapter 2 explains, even a broad “offense-based” definition entails profound difficulties for enforcement institutions. A lack of uniform language and technical interoperability between the criminal justice system’s various institutions all but ensures that the government’s data collection will be unreliable and prone to misrepresentation.

Chapters 3 and 4 explore two distinct but related lawmaking pathologies. Chapter 3 focuses on the federal code’s “flatness.” Unlike state law statutes such as homicide or robbery, federal white-collar crime statutes generally do not subdivide core crimes according to their severity or wrongfulness. There is no such thing as first-degree fraud or second-degree fraud in the federal criminal code. Instead, the code distinguishes frauds by the mechanism the offender employs (e.g., the mails or interstate wires), or by the offender’s victim (e.g., health care companies or banks). From a moral perspective, these labels are irrelevant and convey very little information about a fraud scheme’s size or danger to others.

Chapter 4 examines a different phenomenon, that of the “underwritten” crime, or the statute that relies on prosecutors and the judiciary to give it meaning. I refer to this generally as a form of criminal outsourcing.

Many scholars are well acquainted with the legality principle, which requires penal laws to be the product of duly-elected legislatures. That principle is itself aspirational; criminal law casebooks are rife with examples of federal and state judges who “make” criminal law more often than legislatures. Such lawmaking is easily on display in the white-collar context. But, as Chapter 4 demonstrates, criminal law’s “outsourcing” functions quite differently, depending on the circumstances. In some instances, the resulting “crime” (e.g., insider trading) is the product of multiple cross-checking institutions. In other instances, the legislature’s cedes much of its “lawmaking” power to a single institution (such as corporate criminal liability).

The usual concern with outsourcing is that it devolves too much power in the hands of the prosecutor. As the insider trading example makes clear, that fear has not always been realized. Neither the Department of Justice (DOJ) nor the SEC can simply declare a morally wrongful market practice “insider trading”; they must instead rely on lower and appellate courts, and eventually the Supreme Court, to develop delineate insider trading’s external boundaries.

Even if claims of prosecutorial power are overblown, there is still good reason to be concerned with criminal outsourcing, and it relates back to the discussion of flat laws in Chapter 3. When laws are “underwritten,” prosecutors and judges must devote their energies to fleshing them out and to determining the boundaries between criminal and noncriminal conduct. The question of subdivision – of how

to distinguish different variations within the same family of wrongdoing – falls by the wayside. Thus, if we want to fix the “flatness” discussed in Chapter 3, we must address Congress’s tendency to outsource its criminal lawmaking duties, a pathology that forms the subject of Chapter 4.

Chapter 5 pivots from a discussion of lawmaking to a consideration of white-collar crime’s enforcement. Using the 2008 Financial Crisis as its backdrop, Chapter 5 explores a familiar puzzle: Why is it that white-collar crime is so “broad” and yet often so difficult to prove? The answer lies in the recognition that white-collar crime often unfolds over two thresholds. The first is the line that separates innocence and liability, what one might call the *liability threshold*. The second is the line that separates viable from nonviable prosecutions, which is the *viability threshold*. The liability threshold is objective and transparent; we discover its boundaries by reading statutes and published judicial opinions. The viability threshold is opaque and more subjective. It reflects the government’s collective determination of the evidence sufficient to follow a case through to its bitter end.

For many white-collar crimes, behavior easily crosses the liability threshold but falls short of the viability line, creating a temporal and conceptual gap. Within this gap, wrongdoers do their very best to avoid detection and convince prosecutors to forego prosecutions. The “gap” is thus a kind of corporate and financial purgatory, where pressures to hide one’s wrongdoing increase, and where harms fester while they remain undiscovered. Many of the federal government’s enforcement policies are best understood as an effort to mind this gap; that is, to use tools like corporate leniency and whistleblowing policies to gather just enough information to move a few cases over the viability line. The problem with these gap-minding strategies is that they never quite *remove* or *narrow* the space between liability and viability. Accordingly, they promote the belief that the government is merely spinning its wheels rather than making real progress in redressing white-collar crime.

Chapter 6, a chapter devoted to popular perception, identifies a series of myths and misunderstandings that are at the heart of white-collar crime’s discourse. Reductive narratives about prosecutors, about the scope and nature of white-collar crime’s harms, about its offenders, and about its offenses and sanctions crowd out more nuanced accounts of what has occurred and what continues to take place. Regrettably, the institutions that have the most to lose from these misunderstandings are poorly organized to recognize, much less rebut, them.

With these pathologies firmly in mind, Chapters 7 and 8 urge a series of reforms best characterized as code-design. Whereas the scholarship of institutional design queries how an institution’s structure affects law’s implementation, the study of code-design asks how the shape and form of a statutory code affects its content, its enforcement, and its public understanding. If code-design matters (and I argue that it does), its remedies for white-collar crime go much farther than urging Congress to rewrite a few statutes or the DOJ to focus more intently on the “real” bad guys. A code-design approach interrogates the labelling of white-collar statutes. It asks how

they fit together, how they are defined, and how well they are subdivided to reflect proportionality and wrongfulness. Accordingly, the final two chapters of this book (Chapters 7 and 8) recommend a four-part agenda for reformers. For the sake of clarification, reformers should *unbundle* and *relabel* offenses that have been lodged under the same statutory umbrella. And for the sake of improving transparency and legitimacy, a good code should *consolidate* and *grade* statutes that define roughly the same conduct (fraud, bribery, and obstruction).

WHAT THIS BOOK DOES NOT DO

White-collar crime is a vast topic. Because my interest relates primarily to criminal prosecutions and federal criminal law, I generally do not take up pathologies in either the civil sector or in state criminal practice. Readers familiar with state and civil practice may nevertheless find that the problems described in Chapters 2–6 are generalizable to other contexts. Indeed, the remedial discussion in Chapters 7 and 8 has certainly been influenced by the vast literature on criminal code reform in the states. Moreover, although the complex relationship between federal and state enforcement agencies surely impacts the pathologies that are this book's focus, I nevertheless leave that examination for future research.¹⁸

Because so many scholars have already tackled white-collar crime's normative and philosophical underpinnings, I do not spend enormous amounts of time addressing whether a given instance of wrongdoing *should* be classified as a crime.¹⁹ Nor do I delve into the finer doctrinal details of fraud, bribery, and obstruction statutes. Others have already performed this feat, and much of my own knowledge of white-collar criminal doctrine has been deeply enriched by their insights.²⁰

By the same token, I write this book under the assumption that individuals who engage in crimes such as fraud, bribery, and obstructive misconduct do so for the

¹⁸ For an overview of federal–state interactions in criminal law enforcement, see Anthony O'Rourke, *Parallel Enforcement and Agency Interdependence*, 77 MD. L. REV. 985 (2018); DANIEL C. RICHMAN, *The Changing Boundaries between Federal and Local Law Enforcement*, in 2 CRIMINAL JUSTICE 81, 91–96 (2000).

¹⁹ For just a sampling, see, e.g., James Lindgren, *The Theory, History, and Practice of the Bribery-Extortion Distinction*, 141 U. PA. L. REV. 1695 (1993); STUART P. GREEN, LYING, CHEATING, AND STEALING: A MORAL THEORY OF WHITE COLLAR CRIME (2006); Samuel W. Buell, *What Is Securities Fraud?* 61 DUKE L.J. 511 (2011).

²⁰ I will not try to offer an exhaustive list, but those relatively new to this field would be greatly helped by reading: DANIEL C. RICHMAN, KATE STITH & WILLIAM J. STUNTZ, *DEFINING FEDERAL CRIMES* (2d ed. 2018) (cases and materials relating to federal criminal law and its interpretation, as well as fraud, bribery, and regulatory crimes); David Mills & Robert Weisberg, *Corrupting the Harm Requirement in White Collar Crime*, 60 STAN. L. REV. 1371 (2008) (helpful overview and critique of fraud, securities, and anticorruption law in the early 2000s); EDWARD J. BALLEISEN, *FRAUD: AN AMERICAN HISTORY FROM BARNUM TO MADOFF* (2017) (for an historical account of fraud's criminalization in the federal code and its enforcement).

usual mix of reasons first described by Donald Cressey's groundbreaking study of embezzlers: pressure, opportunity, and rationalizations, the dreaded "triangle" of factors that impels people to break the law and to usually do so in secret.²¹ Criminologists have posited additional theories of white-collar criminality, but the opportunity-driven fraud triangle remains the explanation with the most purchase, both in regard to fraud cases and in respect to the corruption and obstruction cases that often overlap.

Finally, despite the temptation, this book does not directly spend much time examining Donald Trump, his malfeasance while in the White House, or his company's alleged crimes.²² Although the Trump administration adopted a softer approach to corporate and white-collar crime, the pathologies that are the focus of this book easily predate Mr. Trump's presidential term and will extend far beyond it.²³ Moreover, Trump's politics and personality distract from the deeper, endemic problems that plague white-collar crime's institutions. Accordingly, I have made a deliberate decision not to focus on the obstructive behavior that served as the focus of the Mueller report, the extortionate behavior that triggered Trump's first impeachment, Trump's conduct in the wake of the 2020 presidential election, his alleged taking of classified documents following the close of his presidency, or the Trump Organization's alleged wrongdoing. Readers may find, however, the discussion in Chapter 5 particularly relevant to contemporary critiques of prosecutors who have failed, over the past several decades, to charge Trump and his contemporaries with violations of law. The story isn't always one of weak will or corrupt motives. Sometimes, our enforcement institutions fall into evidentiary ruts, searching for "badges" of wrongdoing that have made prior prosecutions victorious, even if those badges are nowhere to be found.

IS WHITE-COLLAR CRIME UNIQUE?

One might reasonably ask whether the problems described throughout Chapters 2–6 are truly unique. They are certainly the type one would expect to in any system built for preventing, identifying, and punishing crimes of deception. Deceptive

²¹ "The fraud triangle is a three-pronged theory of why some individuals commit occupational fraud." Leandra Lederman, *The Fraud Triangle and Tax Evasion*, 106 IOWA L. REV. 1153, 1156 (2021) (describing the concept's origins and evolution). DONALD R. CRESSEY, *OTHER PEOPLE'S MONEY: A STUDY IN THE SOCIAL PSYCHOLOGY OF EMBEZZLEMENT* (1953).

²² See Dan Mangan, *Trump Organization, Inaugural Committee Must Pay DC Attorney General \$750k over Claims of Misspent Nonprofit Funds*, CNBC (May 3, 2022), www.cnbc.com/2022/05/03/trump-organization-presidential-inaugural-committee-settle-dc-lawsuit.html.

²³ "[R]ecent statistics have demonstrated that penalties imposed in white collar cases have decreased during the Trump administration." Douglas K. Rosenbloom et al., *Hiding in Plain Sight: Obtaining Insurance Coverage in White-Collar Criminal Investigations*, 43 CHAMPION 48, 49 (Apr. 2019).

crimes are at once protean and elusive. As a result, they create challenges for both lawmakers and enforcers, and create additional problems on the back end for data collection and public discourse. Preventing and punishing deceptive misconduct is hard work.

Still, some of the issues described here could easily be ascribed to *federal* criminal law generally, and not just crimes of deception. Excessive prosecutorial discretion, pervasive transparency gaps, and troubling legitimacy deficits are all issues that have long undermined the criminal justice system generally (including its federal variant), leading many to question the “justice” moniker and call for changes in federal prosecutorial practice. Accordingly, I make no definitive claim on the singularity of white-collar crime’s issues. Some are white-collar-centric, whereas others may be reflective of broader and deeper infirmities. By the same token, although the solutions described in Chapters 7 and 8 have been designed to redress specific problems with federal criminal law’s enforcement of white-collar crime, it is quite possible that one could apply those concepts to other areas of criminal law. If so, I see that as only good news.

DISPELLING MYTHS, IMPROVING INSTITUTIONS

The move to institute greater transparency in criminal proceedings has become a prominent focus of criminal justice reform and animates much of the latter third of this book. It should surprise no one that transparency in its broadest form poses challenges for white-collar crime’s enforcement institutions. With only a few notable exceptions, the DOJ has traditionally resisted efforts to fully explain its decision-making, particularly decisions relating to its plea negotiations and charging decisions. One of the reasons for such resistance is that it fears that sunlight will undermine its effectiveness as an enforcer. Thus, reformers often call for “more transparency” and prosecutors often respond that they have provided as much transparency as they can.

One of the book’s core insights is that clearer and better laws, including laws that feature better labelling and modest statutory gradation, can mitigate this stalemate. When there exist three or five degrees of the same fraud or bribery offense and the government chooses to charge a defendant with the least (or most) serious version of that charge, the charge itself conveys readily usable information. Moreover, in the aggregate, a series of charges allows us to learn just how serious last year’s fraud “docket” was in relation to the docket that existed in the previous year. To be sure, gradation is no panacea for all that ails the criminal justice system, but it facilitates more accurate data collection and therefore a greater degree of transparency than currently exists.

Then again, if one believes federal prosecutors should act independently of public opinion and instead “do justice” according to professionally developed norms, then calls for transparency may simply be a fancy word for urging the DOJ

to improve its public relations and poll numbers. Popularizing white-collar enforcement institutions is *not* the aim of this book. There exists a world of difference between crudely currying public favor and improving the public's understanding of white-collar crime's laws, institutions, and enforcement challenges.

Government prosecutors cannot do justice if the public they serve misunderstands their processes and distrusts their motives. Policymakers should register alarm when a pernicious and reductive narrative takes hold, insisting that prosecutors are interested in little more than churning cases and revolving into more prestigious jobs in the private sector. It behooves us to figure out *why* the public has such a negative view of white-collar criminal enforcement. If this perspective is erroneous or incomplete, we should identify the phenomena that produce it and make it so difficult to dislodge.

Answering these question leads not only to the dispelling of persistent myths, but also to the improvement of the institutions tasked with investigating and punishing white-collar crime.