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PENOLOGY AND CORPORATE CRIME

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Mr. Davids' article considers crime by major corporations in the light of the penal sanctions now available to control it. Statistical data and case-history information are joined with sociological analyses to support the thesis that present law is inadequate to cope with problems of commercial crime. Suggestions for a realignment of the pertinent legislation with current realities in this field are presented.

The principal business of penology is neither an historical task of discovering what societal reactions to crime have been in various times and places, nor the providing of systematic details of prison administration, but rather the evaluation of what happens after conviction in terms of preventing recurrence of the same acts.[1] The main criterion by which we can judge our "sanction law", as Arens and Lasswell discuss it,[2] is whether society tends to be safer after its application than before. By such a test, clearly, much of our present system of justice in the United States is a disturbing and costly failure.

There is no need for a discussion of ordinary, individual crimes and the deterrent effect of the usual penalties that our courts prescribe; this has been abundantly done by other writers. What is to be examined here is corporate crime in relation to the societal apparatus intended to control it. It will become clear that there is a pronounced discrepancy, a sort of cultural lag separating the ongoing reality of illegal activities by organized human associations from the laws and procedures now institutionalized against those activities.

Before we can look at this penal lag, a number of definitions and distinctions are in order. We must focus on our topic by pointing out the things that we shall not be looking at, as well as making sure that the units in which we deal are specifically understood. Let us begin with the obviously-appropriate concept of "white collar crime".

Although libraries may place together the well-known treatises of Sutherland, Clinard, Jaspan, and Cressey,[3] we find that they cover a number of different things. It is Sutherland's classic, which deals mainly with illegal acts by corporations against external entities (other corporations, the government or the general public) that is relevant here. We will only tangentially be concerned with crimes against the corporation by its own personnel, or with individual crimes which are of a routine business character and are folk-legitimized by the great principle "Everybody's doing it". These other categories will be dealt with here only as they contribute to our consideration of corporate crime in Sutherland's sense.

It should be clear that our approach herein is sociological as well as legal, so that our material will be channelled both by social science conceptions and by jurisprudential ones. Hence, we will not restrict ourselves, again following the lead of Sutherland and others, to officially-designated crimes dealt with by criminal tribunals, but shall also look at actions penalized or prevented by civil and administrative action.[4]

NATURE OF THE CORPORATION

Let us see why Wilbert E. Moore calls the corporation "that singular organization".[5] A corporation is the result of the creation of a new "legal

[1] Cf. SUTHERLAND & CRESSEY, PRINCIPLES OF CRIMINOLOGY 259–60 (5th ed. 1955).

[2] ARENS & LASSWELL, IN DEFENSE OF PUBLIC ORDER (THE EMERGING FIELD OF SANCTION LAW) (1961).

[3] SUTHERLAND, WHITE COLLAR CRIME (1949); CLINARD, THE BLACK MARKET (1952); JASPAN & BLACK, THE THIEF IN THE WHITE COLLAR (1960); CRESSEY, OTHER PEOPLE'S MONEY (1953).

[4] The procedural systems are often interchangeable. See Cressey's *"Foreword"* to WHITE COLLAR CRIME, *op. cit. supra* pp. iv–ix.

[5] MOORE, THE CONDUCT OF THE CORPORATION vii (1962). He and we are speaking of large business firms, not of family stores or non-profit organizations.

TABLE I

REPRESENTATIVE MAGNITUDE DATA OF FOUR MAJOR AMERICAN CORPORATIONS (as of Dec. 31, 1965)

	Name			
	Amer. Tel. & Tel.	Con. Edison	Gen. Motors	Gulf Oil Corp.
Output units	75,866,254 telephones in service	4,367,020 meters in service	7,278,131 vehicles sold in 1965	2,082,121 bbl. daily average
Employees	795,294	23,863	734,600	55,200
Total assets	$32,818,689,000	$3,387,006,500	$11,478,546,590	$5,210,833,000
Gross revenue 1965	$11,061,783,000	$ 840,240,274	$20,733,982,295	$4,185,253,000
Percentage increase of gross revenue since 1960	40% ($7,920,454,000)	28% ($655,812,826)	63% ($12,735,999,681)	32% ($3,212,205,000)
Source	Annual Report, dated Feb. 16, 1966 pp. 25–28	Annual Report, dated Feb. 23, 1966 pp. 26–31	Annual Report, dated Feb. 14, 1966 pp. 28, 36–37	Annual Report dated March 16 '66 pp. 2, 34–35

(Percentage of Increase figures computed by author.)

person", somehow independent of its founders, who obtained the necessary charter. The corporation often outlives its founders, and the British "limited" shouts the fact that its obligations and those of the men involved in it are two separate things. The historical-legal article by Laski shows how uncertain the Anglo-American law was about the exact status of corporations until recently, and in other sources we also find how perplexing is the tracing of financial or criminal liability in dealing with such collectivities.[6] It is nowadays recognized that corporations do accomplish meaningful acts that cannot be attributed to any individual man but have to be laid at the organization's door.

As Weber and other analysts of bureaucracy have taught us, bureaucratized corporations possess various structural advantages. Among these strengths is the superior scope and power of the fused thinking of many people who are experienced and competent to deal with a limited range of recurrent problems, and whose rational decisions are promptly and thoroughly translated into action. This means that a board of directors, or other legitimate groups constitutive of the corporation, can arrive at decisions which neither could have been thought through as thoroughly by the individuals involved, separately, nor serve their individual interests. This thinking and deciding can only be dealt with and traced into effects and repercussions on the collective level.[7]

Another structural strength, as we have noted, is the existence of a transitive-executive corps that, once informed of the authorized will of the corporation's thinking parts (management), puts these into effect without independent questioning and evaluation of the decision. Obviously this is so, and must be; what emerges, however, is an issue of responsibility/culpability identical to that so highly publicized by defense counsel at the Nuremberg trials.

A quite different virtue-turnable-into-vice of the corporation is the great volume of work in its specialty that it can accomplish. Through extensive division of labor and careful management to coordinate its various branches, the corporation is able to produce and distribute staggering quantities of goods and services. For some actual data on corporate magnitude, we need but select a few figures from the latest annual reports of our major corporations. If we settle for slightly older statistics, we can use Fortune's Annual Directory of the largest corporations.

In 1964 the United States had 55 industrial corporations with over $1 billion of annual sales. The rest of the world had 21 such firms. The top 500 U.S. manufacturers totaled 10,464,383 em-

[6] Laski, *The Personality of Associations* originally in 29 HARV. L. REV. 404, reprinted as selection 21 in HENSON (Ed.), LANDMARKS OF LAW 321–38 (1960). See, also, INBAU & SOWLE, CRIMINAL JUSTICE 486–92 (2d ed. 1964); and MOORE, *op. cit. supra* note 5 at 53–6 and 86–7.

[7] See ETZIONI, MODERN ORGANIZATIONS 29–30, 51–55 (1964); HURFF, SOCIAL ASPECTS OF ENTERPRISE IN THE LARGE CORPORATION 100–104 (1950).

ployees, an average of some 21,000 people each. There were also 25 insurance companies and 40 commercial banks in the U. S. with assets exceeding $1 billion. Furthermore, hefty percentage increases in sales and profits were registered by every manufacturing industry except Tobacco.[8]

One of the central consequences of the foregoing magnitudes is the substantive nullity of little disturbances or added cost in management decisions, since they can be entirely ignored when increases of overhead can be subdivided onto the selling price of millions or billions of product-units. As we shall see, the category of negligible little disturbances includes litigation and fines for most commercial crimes; on this scale of business, such deterrents become invisible.

The Underlying Personal Climate

There is more to the etiology of corporate offenses than internal structure and scope, however. Many portraitists of American life and value including Robin M. Williams, Robert C. Angell, and criminologists like M. B. Clinard or W. C. Reckless, have shown the inevitable correlation of dominant U. S. goals and norms with the long-term currents of ethical and moral change and with the tenor of commercial-industrial activity.[9] All of these things are seen as similar expressions of a single modern philosophy of life, shaped by urbanization, high mobility, a deep-rooted pragmatism, rationalization—and alienation.

It is not our task to review such analyses here, but again we find individual acts understandable in the context of, and as manifestations of, sociocultural forces and conditions to which those who plan our institutions should be alert. Clinard summarizes:

> It has been said that as urbanism has increased, as man's behavior has become more individual, competitive, and materialistic, and as his conformity to social norms has become less affected by informal group controls, greater opportunities and inducements appear to develop for behavior which deviates from accepted norms.[10]

Descending from the cultural to the psychological level, we can find the same trends characterizing contemporary American life expressed not as summary comments on the value system, but in terms of *The Organization Man* or the "other-directed" rat-racers of so many recent critics;[11] Cressey has woven this theme into his study of embezzlement.[12] These writers have shown the impact of modern, and especially big, business on personality. The late Senator Kefauver wrote:

> There is also some evidence that long service in an industry creates a distinctive kind of executive. As the officials of the leading corporations in an industry parade through a Congressional hearing room, they often seem to have been constructed from the same mold. Sometimes this similarity is not confined to the rather uniform way they view the industry's problems . . . On occasion it extends to general physical appearance, pattern of dress, and even sense of humor . . .[13]

While this thought is well expressed here, it is, of course, not new. Many social scientists, sometimes harking back to the remarkable insights of De Tocqueville, or to the biting, flaying descriptions of Thorstein Veblen, have documented the appearance in corporate personnel of numerous character degenerations. Robert K. Merton suggested some of the problems engendered by structures which pressure individuals into ritualism or innovative solutions, and thinking along this line has been developed by others.[14] The upshot of these analyses is that the deeds of people in com-

[8] Fortune Magazine 149–68 (July 1965); 169–80 (Aug. 1965). Private corporations which do not issue stockholder reports, are not included, so that the total are less than they would be with fuller information.

[9] Williams, American Society 372–96, 417–21 (2nd Ed. 1960); Angell, Free Society and Moral Crisis 133–35 (1965); Clinard, Sociology of Deviant Behavior 168–74 (1963); Reckless, Crime Problem 1–2, 335–41 (1961).

[10] Clinard, *op. cit. supra* note 9 at 76. Also see Quinn, The Individual in a Business Society 12 (1958) for vehement remarks on *Our Machine Civilization*, in which "life is being trivialized and emptied of meaning".

[11] The first is by Whyte (1956); *Other Direction* is from Reisman, Glazer & Denney, The Lonely Crowd (1950).

[12] Other People's Money, *op. cit. supra* note 3, combines individual factors with the invaluable rationalizations (what Sykes & Matza call *techniques of neutralization*) that are group-transmitted. See, for instance, 93–98. For a popular discussion, *cf.* Gibney, The Operators 252–75 (1960).

[13] Kefauver & Till, In a Few Hands 123–24 (1965). Also, Etzioni, *op. cit. supra* note 7, at 109–10.

[14] Merton, Social Theory & Social Structure 132, 140–46, 176–81 (Revised ed. 1957); Veblen is quoted at 141. We later refer to Kemper's article *Representative Roles and the Legitimation of Deviance*, which is in this tradition of structural analysis.

plex organizations struggling in a competitive, profit-making situation are neither accidental nor unpredictable, but emanate naturally from the functional situation and should be taken into account by decision makers, whether in management or government.[15]

Substantive Acts and Penalties

We now turn to specific business crimes that we can use in exploring legal lag, with the penalties whose sufficiency we will contest. Following Sutherland, the major areas of corporate offense are: restraint of trade; infringement of patents, trademarks, or copyrights; advertising misrepresentation; unfair labor practices; and financial manipulations. By inspection, these cover victimization of other firms, of creative individuals or competitors, of the general public, a company's own employees, or stockholders.[16] Obviously, Sutherland has found considerable evidence of wrongful behavior vis-à-vis every general category interacting with the corporation considered as an integral entity.

Since capital punishment is ruled out in the type of crime under consideration here (excepting that dissolution is sometimes authorized against combination in restraint of trade—which is the exact functional equivalent of execution for individuals), the only penalties to consider are imprisonment, (civil) damages, or (criminal) fines. Although an examination of the United States Code will show maximum terms of three or five years assignable for certain business crimes, I would argue that the imprisonment provisions of these statutes are mainly irrelevant for our purposes.

The scarcity of well-paid and well-connected gentlemen in prisons is sufficiently known not to require much documentation here;[17] suffice it to say that large corporations will never allow an executive of theirs to go to jail without the most strenuous efforts by well-organized teams of the best available lawyers, whether house counsel or firms retained for the emergency. Very few corporate decision-makers, in fact, go to jail even when the company is found guilty.[18]

This empirical fact, however, is overshadowed by some theoretical considerations. Imprisoning particular individuals whose malfeasance involved the participation of the collectivity in which they formed but a small part appears very inequitable and therefore discourages the imposition of punishment by judges and juries imbued with Anglo-American concepts of fair play.[19] Then, too, the malfeasants who may be found guilty and punished are promptly replaced by others who will, sooner or later (depending upon how long "the heat" lasts), carry on "business as usual".

Unless there is a definite change either in the structure of the organization or in the relevant conditions under which it must operate, even the imprisonment of a considerable number of executives is highly unlikely to stop permanently those acts which caused the furor. We remain, therefore, with the type of legal sanction that is frequent and meaningful in speaking of corporate penology: fines and damage awards. In general, and that is the way we use the terms herein, "fine" implies the outcome of criminal litigation with a finding of "guilty"; "damages" implies a restitutive or compensatory payment between private parties as the consequence of a non-stigmatizing civil action.

To dispose of the weaker deterrent first, we cannot say much about damage awards, which depend in each case on the magnitude of the tort discovered by the court. Only when the actual loss has been determined can punitive damages be assessed. Of importance here is the statutory provision for treble damages, which is intended—despite the absence of an official finding that culpable immorality has occurred and that penalty should be imposed—to discourage future torts of the same kind. For example, treble damages may be exacted for anti-trust violations or patent infringement.[20] But instead of exposing themselves to such suits by a plea or finding of "guilty", companies regularly plea *nolo contendere*, which is no evidence

[15] Compare this to the conclusion reached by Goffman in his Asylums 124 (1961).

[16] White Collar Crime, *op. cit. supra* note 3, at xv, 22.

[17] *Ibid.* 8; Reckless, *op. cit. supra* note 9, at 34–6.

[18] See *Increasing Community Control over Corporate Crime—A Problem in the Law of Sanctions*, 71 Yale Law Journal 280–306, 290–93 (1961). We refer to this key article repeatedly herein. Note that the use of incarceration for business crimes is expected to increase, according to Whiting, *Criminal Antitrust Liability of Corporate Representatives*, 51 Ky. L. J. 434, 474 (1963).

[19] Cf. Moore, *op. cit. supra* note 5 at 86–7, 144–6, on *Moral Dilemmas* built into the situation. Also, Arens & Lasswell, *op. cit. supra* note 2 at 121–2.

[20] See *Standing to Sue for Treble Damages under Section 4 of the Clayton Act*, an editorial note (with the F. T. C. symposium in) 64 Col. L. R. 570; the 18 pages show how difficult it is to exercise one's right to restitution. Also, *cf.* Corpus Juris Sec. under *Criminal Law*, etc.

TABLE II

REPRESENTATIVE MAXIMUM PENALTIES FOR BUSINESS CRIMES IN FEDERAL LAW

Offense	Fines up to:	Title & Section of U.S. Code
Conspiracy or combination in restraint of trade	$50,000.00	15, sec. 1
Restricting or monopolizing import trade	$ 5,000.00	15, sec. 8
Rebates or discounts to destroy competition	$ 5,000.00	15, sec. 13a
Refusing information or falsifying records against F. T. C.	$ 5,000.00	15, sec. 50
False advertisement	$10,000.00	15, sec. 54
Copyright Infringement (for profit)	$ 1,000.00	17, sec. 104
Food adulteration or misbranding		
first offense	$ 1,000.00	21, sec. 333
repeated offense	$10,000.00	21, sec. 333
Violating licensing restrictions for drug mfrs.	$10,000.00	21, sec. 515
Purposely impeding the NLRB	$ 5,000.00	29, sec. 162
Collusion between union leaders and management	$10,000.00	29, sec. 186
Mismanagement or concealing information on workers' benefit funds	$ 1,000.00	29, sec. 308

supporting damage actions on the basis of the questionable practices. Therefore, the injured parties can rarely prevail against the powerful lawyers of the offending corporation. We conclude our consideration of damages as deterrents to commercial wrongdoing by observing that the principle is substantively rational, but its effect is undermined by the unpredictability of the eventual cost of an unethical policy.[21]

We now turn to look at the fines that may be imposed for various white-collar crimes, being especially interested in the amounts specified as maximum penalties. Table II provides a convenient overview of this.

If we now compare the figures in Table I with those in Table II, leaving aside difficulties of formal proof, the latitude of judicial discretion, the inventiveness and agility of defense counsel, and other mitigating factors, we are struck by the complete insignificance of the available maximum penalties to companies of the first rank. The top penalty is the $50,000 one—a maximum set in 1955, but such a raise does not make much difference. With every passing year, the large corporations—those whose wrongdoings can have the most widespread effects on the economy and which set the pattern for lesser firms[22]—are more and more liberated from the Lilliputian restraints of law by their flourishing growth.

We cannot forget the real impact of procedural circumstances in evaluating the figures of Table II. With the aid of top-quality house counsel, nationally-respected law firms, and invaluable personal contact with leading members of the federal legislature and bench, corporations can make it so difficult for the Justice Department to exact even those tokens of victory, that the Government will decide to settle the case and seek more fruitful use of its scarce legal resources elsewhere.

Let us see how General Motors views the situation. In the Annual Report for 1965—cited above in Table I—we find a paragraph reading as follows:

> *Contingent Liabilities:*
>
> There are various claims against the corporation and its consolidated subsidiaries in respect to sundry taxes, suits, patent infringements and other matters incident to the ordinary course of business, together with other contingencies. While there is no way of determining the eventual liability for these claims and contingencies, the amount included in liabilities and reserves in the financial statements of the Corporation and its consolidated subsidies are, in the opinion of the management (and General Counsel with respect to certain suits), adequate to cover all settlements that may be made.[23]

Here, therefore, is a clear-cut case of Ogburn's cultural lag manifested in the law. Unless there is a radical adaptation of the sanctions for business

[21] *Cf.* YALE LAW JOURNAL, *supra* note 18 at 290, 2.96.

[22] On price leadership see KEFAUVER, *op. cit. supra* note 13 at 118–21.

[23] Verbatim from *Notes to Financial Statements* 32.

crimes to current reality, those sanctions will not be able to perform the job that Congress intended when it passed the historic Sherman and Clayton Acts to prevent large-scale economic injury to the public. Just so with the control of other offenses.

Etiological Considerations

From a theoretical point of view, Kemper[24] provides a link between Jaspan's *Thief*, who enriches himself at the expense of his employer, and the white collar criminal we are discussing.[24] Under the concept of "Parallel deviance", Kemper explains that employees find legitimation for the small larcenies they intend to commit in the large ones (contra Government or public) that their superiors constantly commit.[25] Although there be a floating mythology among the workers to rationalize their depredations (which are commonly listed as "shrinkage"),[26] it is to be expected that public revelation of large-scale wrongdoing above them will erase any feelings of guilt, or restraints on amount, that they might still harbor from Sunday school days.

There is a large area in the psychology of crime and punishment, moreover, which does not apply to corporate crime. As jurisprudential theorists have indicated, a criminal conviction even for minor offenses means that the individual has been identified by society as deficient in feelings of justice and fair play that presumably every citizen possesses. The formal condemnation of society, the moral opprobrium of conviction, may deter far more than the $25 exacted as penalty.[27] It is perhaps this painful societal repudiation that Anglo-American law provides so many safeguards against—in its presumption of innocence for each defendant and in the many procedural limitations hindering the prosecution—rather than the fine itself.

All of this, however, is inapplicable when we deal with a corporation, as various writers point out. Neither is there a specific, visible defendant to stand shamefacedly before the awesome judge who is issuing a verdict on his character and fitness to live in society, nor are the procedural safeguards which ensure fair play to the individual, with his limited resources, very necessary when the defendant commands more legal talent and financial resources than the prosecution office.[28] Once again, historic-minded thinking which tries to handle the corporation as if it were an ordinary person is completely disaligned from the contemporary situation.

Someone might argue, however, that the era of "robber barons" and "muckraking" is long gone. These things cannot be much of a problem currently with today's enlightened business management! The Nader scandal and strong rumblings from F. D. A. Commissioner Goddard[29] are strong evidence that Sutherland's work is far from obsolete, and that we certainly have not solved these problems.

Prevention and Control

What remains is to consider some of the ways by which this lag might be cut down, without substantive inequities due to emotionalism and righteous zeal. Given that the penalties must be revised, the procedures updated[30], and perhaps the very substance of the legal codes thought through and restated[31], in what directions should we head?

There are, as an analysis of the authors we have consulted shows, four principal strategies to control white collar crime. First is the internal, private-law method, which involves better "housekeeping" by management in each firm; second, the individualistic, psycho-moral approach, seeking to reduce deviance at the personnel level; third, the structural and preventive, involving social engineering to avoid collective crime; and fourth, the deterrent and punitive, showing how the penalties could be made to really hurt.

[24] *Kemper, Representative Roles and the Legitimation of Deviance*, 13 Soc. Problems 288–98 (1966).

[25] *Ibid.* 295–97.

[26] Gibney, *op. cit. supra* note 12 at 3–4; Moore, *op. cit. supra* note 5 at 160–61.

[27] Whiting, *op. cit. supra* 18, at 447; also Hart, *The Aims of the Criminal Law* in 23 Law & Contemp. Probl. 401 (1958), 405. See his discussion of why U. S. law is not prepared to cope with corporate crime, 422–23.

[28] Sutherland, White Collar Crime 43–4, 227, 232. Arens & Lasswell, *op. cit. supra* note 2, at 122, 202–3. See, also, Heller, The Sixth Amendment 10, 21–3, 142 (1951) on the relativity of procedural rights to historical circumstances.

[29] On the attempt by *G.M.* "to ruin" Ralph Nader, see *The Spies Who Were Caught Cold*, Time 79 (Apr. 1, 1966). On charges against drug manufacturers (who are old villains according to Kefauver, *op. cit. supra* note 13 at 8–75), see *F.D.A. Head Bids Drug Makers Act* 1, 24 in N. Y.Times (Apr. 7, 1966). A condensed text of his speech to the industry, at its Annual Meeting, is on p. 24, as above, and makes interesting reading.

[30] As Heller contends, *op. cit. supra* note 28, at 150–1.

[31] As the American Law Institute and American Bar Association are doing with their model acts, to which we shall refer shortly. Also see, for instance, *Model Law on Trademark, Trade Names and Unfair Competition*, International Chamber of Commerce (1960).

Jaspan and Moore give practical suggestions from the standpoint of good management techniques, and their ideas are relevant if corporations set out to clean their own houses.[32] The scope of this essay, understandably, does not permit more than a summary indication of the various approaches; details can be found through the citation of the sources in our footnotes. These authors correctly observe that private sanctions must be added to legal ones, since the latter do not succeed alone. Although there is nothing startlingly new in their recommendations, this method may well, in practice, achieve the most substantial results.

Clinard and Kemper view the problem as rooted in value dysfunctions, and discuss ways of increasing consensus and norm perception by developing codes of ethics, etc.[33] Quinn and Kefauver demanded Government action, with some interesting thoughts on publicity, checks and balances, and structural devices to prevent corporate offenses.[34] This approach certainly requires professional scientific attention (from sociologists, economists and political scientists) to produce realistic programs from these admirable but hazy proposals.

In the area of effective punishment, however, we have a number of incisive and sound proposals. Fines, to start with the simplest remedy, should be fixed not by absolute sum but proportionally, so that a certain percentage of capital, annual revenue, or any other criterion of size would be exacted, or one could establish a series of penalty brackets in a manner analogous to the progressive income tax.[35] The civil suit for damages, which under present rules is laden with uncertainties and difficulties, could be superseded by the Government's being empowered, upon proof of the alleged malfeasance to collect all of the ill-gotten gains that the offending company had achieved through the crime, with the particular injured parties recovering single damages out of the fund thus established in government hands. The residue after all claims had been settled would not remain with the malefactors, as it generally does today, but would be absorbed after a reasonable wait by the public treasury, thus rightfully contributing in some measure to the welfare of those who had been wronged.[36] Much greater use of dissolution decrees (i.e., corporate capital punishment) for recidivists is also suggested by the American Law Institute.[37]

So far as the culpability of corporate excutives for the wrongdoings of their subordinates is concerned—which has elicited a number of thoughtful articles in recent years[38]—the suggestion is made that the law should impose a responsibility of supervision on top management (as is done by child welfare statutes, etc.) so that they would be held liable not directly for the acts of their subordinates but for the misdemeanor of remaining in ignorance about their activities should these prove to have been unlawful.[39] Again, there is a clear need

[32] JASPAN & BLACK, THE THIEF IN THE WHITE COLLAR 233–54 (1960); MOORE, CONDUCT OF THE CORPORATION 53–6 (1962).

[33] SOCIOLOGY OF DEVIANT BEHAVIOR, 598–600; *Representative Roles, op. cit. supra* note 10 at 297–98. Kemper's analysis of deviance being unconsciously legitimated (for the workers) by executives leads naturally to his suggestions regarding honest disclosure and the rectification of differential reward. Clinard, in an older criminological tradition, seeks to make right and wrong more explicit by professional association self-policing and public education against acquiescence in criminogenic thinking. This is what is predominantly implied in Gibney's book.

[34] THE INDIVIDUAL IN A BUSINESS SOCIETY, *op. cit. supra* note 10 at 63–65, 74–78. Kefauver's proposals are less emotional; *op. cit. supra* note 13 at 196–98, 207–17 for his discussion of regulatory powers, better personnel, and data for Federal "Watchdog" agencies, and an informed electorate. He admits weaknesses in this approach, 209; the dysfunctions of bureaucracy also affect those intended to control other, bad bureaucracies. The effectiveness of government regulation is strongly challenged in the F. T. C. Anniversary Issue of the COLUMBIA LAW REVIEW, Vol. 64 (March 1964): Rowe, The *F. T. C.'s Administration of the Anti-Price Discrimination Law*, 415–38; and Blair, *Planning for Competition* 524–42. They complain that the actual consequences of F. T. C. action have been opposite to the pro-competition intentions of Congress, since business concentration and monopoly have not been halted.

[35] YALE L. J., *op. cit. supra* note 18 at 295; Model Business Corporation Act, prepared by the *Committee on Corporate Laws A. B. A.*, Philadelphia: Joint Committee on Continual Legal Education of the American Law Institute and American Bar Association, sec. 128 (*Penalties Imposed Upon Corporations*), 115. Other penalties may be devised along the same line; one that I have not seen is to prohibit advertising by the offender during a specified period. In a competitive situation, this will be felt as a very severe penalty and is easily checked on.

[36] YALE L. J., *supra* note 18 at 298–301.

[37] Both in the Model Business Corporation Act, *ibid.*, sec. 87–98 on *Involuntary Dissolution*, pp. 83–90 and in the *Model Penal Code*, Proposed Official Draft, Philadelphia: *American Law Institute* (July 30, 1962), sec. 6.04, 94–95. This, like some other crippling penalties, could be imposed in a competitive situation, but with public utilities—where the danger exists of leaving the public bereft of service—the law would have to direct its wrath at the guilty individual officers (unless another company could take over the franchise immediately).

[38] WHITING, *op. cit. supra* note 18; FORTE in 40 IND. L. J. 313 (1965); 10 ST. LOUIS U. L. J. 10 (1965). Cf. *Model Penal Code*, sec. 2.07, 35–8.

[39] YALE L. J., *supra* note 18 at 304–06.

for legislators to investigate these suggestions and put into practice those of them which can functionally succeed, but do no one an injustice.

In summation, we have shown a lack of congruence between two institutional spheres—big business and commercial/criminal law—that are supposed to maintain an effective functional relationship, with continuing importance for criminology and jurisprudence. Just in recent months we have again found the drug and auto industries under heavy fire from private and public critics, and the deleterious consequences of irresponsibility in such areas of business, obviously, may extend far beyond monetary injury. It has become clear that not only are the amounts of currently authorized penalties hopelessly inadequate to punish infractions by large corporations, but that the realities of corporate life and operations today demand a basic re-thinking in the areas of social control and legal responsibility.

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