

## On the Plausibility of Corporate Crime Theory

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The Australian National University was graced with a lively series of seminars in 1986 in which Donald Cressey presented his latest thoughts on white-collar crime. The first volume of *Advances in Criminological Theory* published the most striking contribution from those presentations, "The Poverty of Theory in Corporate Crime Research." One of us suggested to Cressey in 1986 that we might submit a critique of his paper to *Advances in Criminological Theory*, in the hope that we might replicate the stimulating exchange at those Canberra seminars. His tragic death intervened and we abandoned the idea. Now we suspect this was the wrong decision.

There is a sense in which "The Poverty of Theory in Corporate Crime Research" is a critique of the younger Cressey by the older Cressey. In characteristic style, Cressey catalogued the failings in his earlier work on juvenile gangs, La Cosa Nostra "families," prisons, and corporations. The failing he attributed to his younger self was that of treating organizations as if they were unitary persons.

Donald Cressey was a great criminologist. He had his influence because he was majestically contentious, unreservedly iconoclastic. No one revered Edwin Sutherland more than Donald Cressey; yet in "The Poverty of Theory in Corporate Crime Research,"

Cressey accuses Sutherland of being "unthinking," "assaulting his own common sense" by anthropomorphizing corporations. Some insight into this irreverence is revealed in John Laub's oral history, where it is reported that Cressey perceived his influence on criminology as "mostly in getting people going on things. I like to go in and get something started and stirred up. Then I leave it and let other people worry about the details" (Laub, 1983:16).

Cressey was at his provocative best in his last article, in which he delighted in the mischief of attacking both the younger Cressey and the older Sutherland for failing to be true to the promise of the younger Sutherland. But if we are to reap the true harvest of Cressey's intellect, we do not have to take one side or the other; rather, we must perceive the dialectic between the younger and the older Cressey.

In playing our part to enliven this dialectic, we cannot but be struck by the ironies of Cressey's intellectual history. Sutherland's theory was in important ways a reaction against the psychological ascendancy in criminology during his lifetime. Cressey's great theoretical contribution was to build on differential association in a way that transcended the empty theoretical divisions between psychology and sociology. His masterly presidential address to the Pacific Sociological Association thirty years ago staked out the challenge for criminological theory (Cressey, 1960). This was to develop a theory that explained not only why some individuals engaged in more crime or different kinds of crime from other individuals, but also why some structural contexts show higher crime rates and different crime patterns than others. Cressey was decades ahead of his time in formulating criminology's agenda for integrating micro and macro levels of analysis. He was frustrated in his lifetime by the failure of his criminological peers to pursue integrated micro-macro explanations, and particularly frustrated by the crude methodological holism of most of his sociological contemporaries. This frustration, we suspect, led Cressey to adopt more extremist methodological individualist positions in order to jolt and provoke us. Only Don Cressey could give a speech entitled "Everybody's Wrong" (Colomy, 1988:256). So let us be provoked in the hope that we will ultimately find the individualist-holist synthesis or which Cressey himself yearned.

The thrust of "The Poverty of Theory in Corporate Crime

Research" is to call into question seven assumptions that are common in corporate crime research:

1. Corporations are like real persons.
2. Corporations act.
3. Corporations have intentions.
4. Corporations have legal and ethical responsibilities.
5. Corporations can commit crime.
6. Corporations can suffer from punishment.
7. The same theory can be applied to individual and corporate criminals.

It is also important to understand what Cressey did not want to say. As a matter of public policy he did not want to abandon the "legal fiction" that corporations are persons because "this legal fiction is essential to fairness" (Cressey, 1988:34). If corporations were not assigned the legal characteristics of persons, no one could sue them or make contracts with them. He also rather equivocally concedes the practical necessity of holding corporations criminally liable for wrongdoing perpetrated by their executives, given that these executives are "masters at using the corporate form to mask their misbehavior" (1988:36). Our contention will be that corporate criminal responsibility is defensible as more than just an expedient legal fiction. Second, we will defend the position that sound scientific theories can be based on a foundation of corporate action, and that some theories of individual action can also usefully be applied to corporate action.

### Corporations Are Like Real Persons

Cressey's contention here is that "anyone who tries to understand white-collar crime is severely handicapped by the fiction that corporations are disembodied political, social and economic persons who behave just like ordinary men and women" (1988:34). Cressey correctly points out that first, corporations can do many things individuals cannot: "They can buy and sell each other legally, as though the 'person' being sold were a slave" (1988:34). Because the makeup of a corporation is different from that of a human being, it can do things that are not humanly possible, such

as growing from infant to adult in a year, securing immortality. Second, in other ways the corporation is less than a person: it cannot feel human emotions.

This much is unexceptionable. Many of us have been guilty of slipping into a forgetfulness of the fundamental differences between corporations and human beings under the seductive influence of the simplifying language of corporate personhood. But this does not mean that there are no ways in which corporations and human beings are similar. What matters is whether there are some theoretically relevant similarities. For some purposes, we can usefully model individual human conduct as rational goal-seeking behavior. For some purposes, we can usefully model corporate conduct as rational goal-seeking behavior.

Some philosophical debates about what the theoretically relevant differences and similarities are between individuals and corporations have been difficult and perplexing. Peter French (1984, 1986) contends that corporations are moral persons because they manifest intentionality, while many other philosophers contend that much more than a capacity to act intentionally is required for moral personhood (Dan-Cohen, 1986; De George, 1986; Ladd, 1986; Donaldson, 1982, 1986; May, 1986). Corporations clearly have a different metaphysical status from individuals: being formed for limited purposes, they do not have the same status as ends in themselves as do human beings (De George, 1986:60). Corporations are not moral persons in the sense of enjoying all of the rights that human beings properly enjoy, such as a right to life (Ladd, 1986). But we do not have to regard corporations as moral persons to hold them responsible for their actions.

The important question for criminological theory is not whether corporations are moral persons but whether corporations are capable of criminal action and whether they can properly be held responsible. A theory of criminal responsibility need not and should not depend on the metaphysical status of moral personhood. Our task is to develop a theory of what it means to be criminally responsible, and then to ask whether corporations are capable of the kind of action that that entails. But first we must ask whether corporations can act at all, something that Cressey called into question.

## Corporations Act

In adopting the view that corporations do not act, that only individuals act, Cressey not only questions the idea of corporate crime but casts doubt on the whole enterprise of organizational sociology. Cressey shares the methodological individualism that Hayek formulated as follows: "There is no other way toward an understanding of social phenomena but through our understanding of individual actions directed toward other people and guided by their expected behavior" (1949:6).

Methodological individualism as advocated by Hayek (1949) and Popper (1947) amounts to an ontology that only individuals are real in the social world, while social phenomena like corporations are abstractions that cannot be directly observed. This ontology is spurious (Lukes, 1973). The notion that individuals are real, observable, flesh and blood, while corporations are legal fictions is false. Plainly, many features of corporations are observable (their assets, factories, decision-making procedures), while many features of individuals are not (for example, personality, intention, unconscious mind) (cf. McDonald, 1987). Both individuals and corporations are defined by a mix of observable and abstracted characteristics.

Clifford Geertz contends that "the Western conception of the person as a bounded, unique, more or less integrated emotional and cognitive universe, a dynamic centre of awareness, emotion, judgment, and action organized into a distinctive whole . . . is a rather peculiar idea within the context of the world's cultures" (1983:59). Reflecting upon his anthropological fieldwork, Geertz cites Balinese culture, wherein it is *dramatis personae*, not actors, that endure or indeed exist:

Physically men come and go, mere incidents in a happenstance history, of no genuine importance even to themselves. But the masks they wear, the stage they occupy, the parts they play, and, most important, the spectacle they mount remain, and comprise not the façade but the substance of things, not least the self. Shakespeare's old-trouper view of the vanity of action in the face of mortality—all the world's a stage and we are but poor players, content to strut our hour, and so on—

be understood as movements of molecules. At all of these levels of analysis, reductionism is blinkered because the whole is always more than the sum of the individual parts; in each case there is a need to build upon reductionism to study how the parts interact to form wholes. In the case of organizations, individuals may be the most important parts, but there are other parts, as is evident from factories with manifest routines that operate to some extent independently of the biological agents who flick the switches. Organizations are "socio-technical" systems (Emery, 1969), not just aggregations of individuals. More crucially, however, organizations consist of sets of expectations about how different kinds of problems should be resolved. These expectations are a sediment of the individual expectations of many past and present members of the organization. But they are also a product of the *interplay* among individuals' views. The interaction between individual and shared expectations, on the one hand, and the organization's environment, on the other, continually reproduces shared expectations. In other words, an organization has a culture which is transmitted from one generation of organizational role incumbents to the next. Indeed, the entire personnel of an organization may change without reshaping the corporate culture; this may be so even if the new incumbents have personalities quite different from those of the old.

The products of organizations are more than the sum of the products of individual actions; while each member of the board of directors can "vote" for a declaration of dividend, only the board as a collectivity is empowered to declare a dividend. The collective action is thus qualitatively different from the human actions that, in part, constitute it. "Groupthink" (Janis, 1972) and the group risky-shift phenomenon (Wallach, Kogan, and Bem, 1964) also illustrate how collective expectations can be quite different from the sum of individual expectations. A number of psychological studies suggest that group decision making can make members of the group willing to accept stupid ideas or hazardous risks that they would reject if making the same decision alone (but see Janis and Mann, 1977:423).

Cressey underpins his questioning of the concept of corporate criminal liability by suggesting that organizations do not think, decide, or act; these are all things done by individuals. So we are told that it is a crass anthropomorphism to say that the White House decided upon a course of action, or that the United States

declared war. Instead we should say that the president decided and that the president and a majority of members of Congress decided to go to war. If saying that "the White House decided" connotes that "the White House" would decide in the same way as an individual person, then we are certainly engaging in anthropomorphism. Yet people who decode such messages understand that organizations emit decisions just as individuals do, but that they reach these decisions in a rather different way. They fully accept that "the White House decided" is a simplification given that many actors typically have a say in such decisions. Nevertheless, it is probably less of a simplification than the statement "the president decided." Indeed, it may be fanciful to individualize a collective product. The president may never have turned his mind to the decision: he may have done no more than waive his power to veto it, or he may have delegated the decision totally.

Similarly, it makes more sense to say that the United States has declared war than to say that the president and a majority of Congress have decided to do so. A declaration of war commits many more individuals and physical resources to purposive social action than the individuals who voted for it; it commits the United States as a whole to war, and many individuals outside the Congress participate or acquiesce in making the commitment:

A man does not have to agree with his government's acts to see himself embodied in them any more than he has to approve of his own acts to acknowledge that he has, alas, performed them. It is a question of immediacy, of experiencing what the state "does" as proceeding naturally from a familiar and intelligible "we" [Geertz, 1973:317].

The temptation to reduce such decisions to the actions of individuals is widespread, as in the suggestion, once common, that wars be settled by a fistfight or duel between the protagonist heads of state.

The expression "the White House decided" is a social construction; as a matter of social construction, the same organizational output might be expressed as "the president decided" or "the administration decided" or "the United States decided" or "the president gave in to the decision of the Congress." Equally, the

makes no sense here. There is no make-believe: of course players perish, but the play does not, and it is the latter, the performed rather than the performer that really matters [Geertz, 1983:62].

The merging of the individual person with the land in Australian aboriginal cultures, where a particular rock can be part of an ancestor or part of oneself, provides another example at odds with the conception of bounded unitary individualism. Even within the Western cultural tradition it is difficult to accept that individuals, unlike corporations, are characterized by a bounded unitary consciousness. As Hindess (1988) has pointed out, decisions made by individuals as well as those made by corporations have a diffuse grounding; they represent the product of "diverse and sometimes conflicting objectives, forms of calculation, and means of action." When the sober John Smith expresses remorse at the way John Smith behaves when he is drunk, this disassociation of self illustrates that the individual is not such a unitary self (Goffman, 1971:113). When scholars speak of defending some of the alleged sins of the younger Cressey against the older Cressey, they can fracture the unitary conception of this individual without questioning that Cressey was capable of action.

The polar opposite to methodological individualism is the methodological holism of the early European sociologists, notably Emile Durkheim. For Durkheim, "the individual finds himself in the presence of a force [society] which is superior to him and before which he bows" (1966:123). From this perspective, the collective will of society is not the product of the individual consciousness of members of society (Durkheim, 1911). Quite the reverse: the individual is the product of social forces.

Both the crude methodological individualism of Hayek and the crude methodological holism of Durkheim are unpersuasive. It is just as constricting to see the sailor as the navy writ small as it is to see the navy as the sailor writ large. It is true to say that the activity of the navy is constituted by the actions of individual sailors. But it is also true that the existence of a sailor is constituted by the existence of the navy. Take away the institutional framework of the navy—ships, captains, rules of war, other sailors—and the notion of an individual sailor makes no sense. Institutions are constituted by individuals, and individuals are socially constituted by institu-

tions (Giddens, 1979, 1984). To conceive of corporations as no more than sums of the isolated efforts of individuals would be as foolish as to conceive the possibility of language without the interactive processes of individuals talking to one another and passing structures of syntax from one generation to another.

Irving Thalberg and others have suggested that "it would be absurd to say that corporations could act even though all human beings have perished" (May, 1983:79–80). In fact it is not absurd. If all humankind perished in a nuclear war and preprogrammed missiles of the U.S. Army continued to be launched, why could we not describe their launching as an action of the U.S. Army (see also Dan-Cohen, 1986; Held, 1986)? Thompson points out that part of the genius of modern organizations is their capacity to perform tasks of spectacular complexity when set against the rather ordinary individual talents of the people involved. This genius can be understood in terms of the composition of these individual talents into a corporate system. To look for the answer as a simple sum of individual genius is to commit a "fallacy of division" (Thompson, 1986:117).

Equally misguided is a sociological determinism that grants no intentionality to individuals, that sees them as wholly shaped by macrosociological forces. Sociological functionalism, as championed by Durkheim, indulges this absurdity. Mesmerized by the achievements of evolutionary theory in biology, the functionalists failed to recognize that human beings are capable of reflecting upon causal laws and engaging in purposive social action that does not conform to those laws or, indeed, that is intended to defeat them. We may readily agree with Durkheim that each kind of community is a thought world that penetrates and moulds the minds of its members, but that is not to deny the capacity of individuals to exercise their autonomy to resist and reshape thought worlds.

All wholes are made up of parts; reductionism can be a near-infinite regress. Psychological reductionists can argue that the behavior of organizations can only be understood by analyzing the behavior of individual members of the organization. Biological reductionists can argue that the behavior of individuals can only be understood by the behavior of parts of the body—firing synapses in the brain, hormonal changes, movement of a hand across a page. Chemical reductionists might argue that these body parts can only

concept of "deciding" is a social construct (what amounts to "deciding" for some is "muddling through" or perhaps even "ducking a decision" for others). To talk of individual decisions as real and of collective decisions as fictions, as Cressey does, is to obscure the inevitability of social construction at any level of analysis.

In many circumstances the social construction "the White House decided" will be a workable one for analytic purposes. This does not mean that we should treat this as the only accurate description of what happened any more than we should accept "the president decided" as the real description of what happened. Indeed, the social control of corporate crime depends on understanding how those involved with a crime socially construct the responsible individuals or collectivity. The key to unlocking the control of corporate crime is granting credibility to multiple social constructions of responsibility, and investigating the processes of generating and invoking these social constructions; as Geertz has explained, "[h]opping back and forth between the whole conceived through the parts that actualize it and the parts conceived through the whole that motivates them, we seek to turn them, by a sort of intellectual perpetual motion, into explications of one another" (1973:317).

Social theory and legal theory are thus forced to stake out positions between individualism and holism. The task is to explore how wholes are created out of purposive individual action, and how individual action is constituted and constrained by the structural realities of wholes. This exploration extends to how responsibility for action in the context of collectivities is socially constructed by those involved as well as by outsiders. Moral responsibility can be meaningfully allocated when conventions for allocating responsibility are shared by insiders and understood by outsiders. Metaphysics about the distinctive, unitary, irreducible agency of individuals tend to obstruct analysis, as do metaphysics about the special features of corporateness. As elaborated in the following section, the moral responsibility of corporations for their actions relates essentially to social processes and not to elusive attributes of personhood; as Surber has indicated, the issue is "more a matter of what we consider moral responsibility to be, rather than what sort of metaphysical entities corporations may turn out to be" (1983:81).

## Corporations Have Intentions

Cressey contends that, because corporations are not real persons, they cannot have intentions; intention is something unique to being a person. While it is obviously true that corporations lack the capacity to entertain a cerebral mental state of intentionality, corporations manifest their own special kind of intentionality—corporate policy. Peter French identifies the Corporate Internal Decision Structure of corporations as a license of the sort required to redescribe certain corporate actions as intentional. To be intentional, just one of any number of true redescrptions of the behavior need involve intentionality. Hence, the depositing of money in a bank can be redescribed in a variety of purely mechanical ways, as well as in at least one intentional form. A Corporate Internal Decision Structure involves (1) an organizational system of stations and levels of decision-making, and (2) a set of decision/action recognition rules of two types: procedural and policy. "These recognition rules provide the tests that a decision or action was made for corporate reasons within the corporate decision structure" (French, 1986:22). French applies a Wittgensteinian (1975:39) distinction: the organizational structure supplies a grammar of the corporation's decision making, and the recognition rules provide its logic.

The concepts of corporate policies and procedures do not express merely the intentionality of a company's directors, officers, or employees, but they project the idea of a distinctly corporate strategy:

It will be objected that a corporation's policies reflect only the current goals of its directors. But that is certainly not logically necessary nor is it in practice true for most large corporations. Usually, of course, the original incorporators will have organized to further their individual interests and/or to meet goals which they shared. [But] even in infancy the melding of disparate interests and purposes gives rise to a corporate long range point of view that is distinct from the intents and purposes of the collection of incorporators viewed individually [French, 1984:45–46].

While we accept French's account of a special corporate kind of intentionality that courts can sensibly recognize, one does not have

to accept it to be able to hold corporations blameworthy or responsible for their actions. We will turn to this in the next section. But first we must dispense with Cressey's claim that unless behavior is intended, it cannot be explained:

[I]t is just as ridiculous for criminologists to try to explain criminal behavior that was not intended as it is for judges to try to determine whether a fictitious person has an evil state of mind [1988:48].

Because corporations cannot intend actions, none of their criminality can be explained in the framework of behavioral theory [1988:48].

[N]o social psychological theory can make sense of behavior that is not intended, be it ordinary crime such as felony murder or a white-collar crime such as restraint of trade, false advertising, or unfair labor practices [1988:46].

Yet we know that psychological theories can and do explain behaviors that, instead of being intentional, are negligent or unconscious or a reflex. And if we move from micro to macro levels of explanation, intent as an essential ingredient of social explanation becomes even more suspect. An explanation of the Great Depression is not likely to be found by searching for people who intended it. So we must dismiss out of hand the suggestion that because corporate behavior cannot be intentional, it cannot be explained.

### Corporations Have Legal and Ethical Responsibilities

Cressey considers talk of corporate citizenship, of corporate social responsibility, of a social contract imposing ethical and legal obligations on corporations as anthropomorphism. Good consequences might flow from people being deluded into accepting such fictions, but they are still anthropomorphisms. However, it is not clear why we can only talk of individuals as having responsibilities. Thus, De George, who does not believe that corporations are moral persons, can still argue that corporations are nevertheless subject to moral rules and are to blame for breaking them:

It suffices to recognize that as human creations which are used by human beings for certain ends and which can be said to act, corporations have the status of moral actors. A moral actor is subject to the moral law and one can correctly evaluate such an actor's actions from a moral point of view [De George, 1986:63].

What, then, is a sensible formulation of corporate moral responsibility or blameworthiness? Blameworthiness requires essentially two conditions: first, the ability of the actor to make decisions; second, the inexcusable failure of the actor to perform an assigned task. Herbert Simon (1965) has defined a formal organization as a "decision-making structure." Under this definition, a formal organization has one of the requirements for blameworthiness that a mob, for example, does not have. We routinely hold organizations responsible for a decision when and because that decision instantiates an organizational policy and instantiates an organizational decision-making process that the organization has chosen for itself. A decision made by a rogue individual in defiance of corporate policy (including unwritten corporate policy) to undermine corporate goals, or in flagrant disregard of corporate decision-making rules, is not a decision for which the organization is morally responsible. This is not to say, however, that we cannot hold the organization responsible if the intention of individuals is other than to promote corporate goals and policies. It may be that two individuals, A and B, hold the key to a particular corporate decision. A decides what to support because of a bribe; her intention is to collect the bribe rather than to advance corporate goals. B decides to support the same course of action out of a sense of loyalty to A, who is an important ally and mentor; his intention is formed from a consideration of bureaucratic politics rather than corporate goals. Even though the key individuals do not personally intend to further corporate policy by the decision, it may be that they cannot secure the acquiescence of the rest of the organization with the decision unless they can advance credible reasons as to why the decision will advance corporate policy. If the reasons given are accepted and acted on within the corporate decision-making process, then we can hold the corporation responsible irrespective of any games played by individual actors among themselves. It is not just that corporate intention (the instantiation of corporate policy in a deci-

sion) is more than the sum of individual intentions; it may have little to do with individual intentions.

Blameworthiness also requires an inexcusable failure to perform an assigned task (Goodin, 1987). Any culture confers certain types of responsibilities on certain kinds of actors. Fathers have responsibilities not to neglect their children. Doctors bear special responsibilities in the giving of medical advice. Just as fathers and doctors can be held to different and higher standards of responsibility by virtue of role or capacity, so it is possible for corporations to be held to different and higher standards of responsibility than individuals because of their role or capacity as organizations (Goodin, 1987).

It is not a legal fiction for the law to hold corporations responsible for their decisions: in all cultures it is common for citizens to do so. When the law adopts these cultural notions of corporate responsibility, it does more than reflect the culture: it deepens and shapes the notions of corporate responsibility already present in the culture. The law can clarify the content of what we expect corporations to be responsible for. Thus, the law can require large chemical companies to be responsible for an inventory of all hazardous chemicals on their premises, a responsibility not imposed on individual householders. More fundamentally, the law is not only presented with the cultural fact that a corporation can be blamed; the law, more than any other institution in the culture, is constantly implicated in reproducing that cultural fact. Thus, the Roman law tradition of treating corporate persons as fictions and the Germanic realist theory that law cannot create its subjects (that is, that corporations are preexisting sociological persons) both overlook the recursive nature of the relationship between law and culture (French, 1984:35–37). Corporations are held responsible for the outcomes of their policies and decision-making procedures partly because organizations have the capacity to change their policies and procedures. Thomas Donaldson (1982:22) has pointed out that, like corporations, a computer conducting a search and a cat waiting to pounce on a mouse are making decisions and are even doing so intentionally. We grant moral agency to the corporation and yet not to the cat or the computer for two reasons, according to Donaldson. First, the corporation, like the individual human being and unlike the cat, can give moral reasons for its decision making. Second, the

corporation has the capacity to change its goals and policies and to change the decision-making processes directed at those goals and policies. For these reasons the concept of corporate intentionality defies equation with feline or digital brain waves.

Corporate intentionality does not exhaust the range of relevant fault concepts. We can blame actors for things done deliberately, where the actor does not want or intend harm, but is quite deliberate about being willing to run the risk of harm. In practice, the predominant form of corporate fault is more likely to be corporate negligence than corporate intention. Companies usually are at pains not to display any posture of inattention to legal requirements; on the contrary, compliance policies are de rigueur in companies that have given any thought to legal-risk minimization (Bruns, 1985; Sciamanda, 1987). Corporate negligence is prevalent where communication breakdowns occur, or where organizations suffer from collective oversight. Does corporate negligence in such a context amount merely to negligence on the part of individuals? It may be possible to explain the *causes* of corporate wrongdoing in terms of particular contributions by managers and employees, but the attribution of *fault* is another matter (Shaver, 1985). Corporate negligence does not necessarily reduce to individual negligence. A corporation may have a greater capacity for avoiding the commission of an offense, and for this reason it may be that a finding of corporate but not individual negligence may be justified. We may be reluctant to pass judgement on the top executives of Union Carbide for the Bhopal disaster (perhaps because of failures of communication within the organization about safety problems abroad), but higher standards of care are expected of such a company given its collective might and resources (Walter and Richards, 1986). Thus, where a corporate system is blamed for criminogenic group pressures, that blame is directed not at individual actors but, rather, at an institutional setup from which the expected standards of organizational performance are higher than the standards expected of any personnel (Cooper, 1972). As Donaldson has observed in the context of corporate intelligence:

Corporations can and should have access to practical and theoretical knowledge which dwarfs that of individuals. When Westinghouse Inc.

manufactures machinery for use in nuclear power generating plants, it should use its massive resources to consider tens of thousands of possible consequences and be able to weigh their likelihood accurately. Which human errors might occur? How are they to be handled? How might espionage occur? How should human systems interface with mechanized ones? . . . Good intentions for Westinghouse are not adequate. Westinghouse must have, in addition to good intentions, superhuman intelligence [1982:125].

Corporations, it may thus be argued, can be blamed and held morally responsible for intentional or negligent conduct. Michael McDonald has gone further by arguing that organizations are paradigm moral agents:

Not only does the organization have all the capacities that are standardly taken to ground autonomy—viz., capacities for intelligent agency—but it also has them to a degree no human can. Thus, for example, a large corporation has available and can make use of far more information than one individual can. Moreover, the corporation is in principle “immortal” and so better able to bear responsibility for its deeds than humans, whose sin dies with them [1987:219–20].

Granted, corporations lack human feelings and emotions, but this hardly disqualifies them from possessing the quality of autonomy. On the contrary, the lack of emotions and feelings promotes rather than hinders rational choice, and in this respect the corporation may indeed be a paradigm responsible actor (McDonald, 1987).

There are other difficulties with the view that corporate responsibility amounts to merely an aggregation of individual responsibility. Repeatedly in organizational life, individual actors contribute to collective decision-making processes without being conscious of the totality of that process—each individual actor is a part of a whole, which no one of them fully comprehends. Indeed, even that part that an individual contributes may be unconscious.

Consider the predicament of the campaigner for clearer writing who is concerned about the way children learn an excessive use of the passive voice when they should use the active voice. Our activist wants to allocate blame for the way children leave school with ingrained habits of overusing the passive voice. Empirically,

he may find that in general neither students nor teachers have a conscious understanding of what it means to use the passive versus the active voice. Unconsciously, they understand how to choose between them—more precisely, they have “practical consciousness” but not “discursive consciousness” of the choice (Giddens, 1979, 1984). The lack of intentional individual action in making these choices makes the blaming of teachers or students problematic. Yet it might be quite reasonable for blame to be directed at the English Curriculum Branch of the Education Department. Conscious awareness of the distinction between the active and the passive voice is widespread throughout the branch because it is, after all, the job of the branch to attend to such matters and to raise the consciousness of teachers and students. It may thus make sense to lay collective blame for social action produced unintentionally, even unconsciously, by all the individual actors. Apart from the justice our campaigner may perceive in blaming the English Curriculum Branch rather than the students or teachers, she might conclude that change is more likely to be effected by collective blame. This raises the issue of collective action and deterrent efficacy, as discussed in the section after next.

### Corporations Can Commit Crime

If we can accept that corporations have ethical and legal responsibilities, that corporations can act, and that corporations can be held blameworthy for their actions, then corporations can commit crime. We have also argued that corporate intentionality is a coherent idea, having both similarities to and differences from the idea of individual intentionality. But one does not have to believe in corporate intentionality, as Cressey suggests one does, in order to accept that corporations can commit crime. Intention is not the only basis for attributing fault for corporate action; further possible bases of corporate fault include recklessness, negligence, and “wilful blindness” (Wilson, 1979). There is no novelty in this point. With individuals, *mens rea* does not mean simply intention: it encompasses a panoply of fault concepts. Similarly, we have argued that it is unnecessary to accept the philosophically controversial idea that corporations are moral persons in order to justify holding corporations criminally responsible. Held puts this position nicely:

We seem to have some good reasons for conferring personhood on corporations, and some good reasons for denying it. I suggest that we sidestep the problem. It is not necessary to decide whether corporations "are" persons unless we have some unwarranted assumptions that only persons can act, or be responsible, or decide, etc. If what we are interested in is corporate behavior, we can suppose we are talking about an entity which is like a person in some respects and unlike a person in other respects. We can "hold" corporations responsible, in both moral and legal judgments. We can recognize that we need moralities that will recommend guidelines for the actions of corporations as we need guidelines for the actions of individual persons [1986:178].

Put another way, no modern society can afford a criminal law that communicates the message that, so long as we avoid individual fault, there is no need to worry about corporate fault. Equally, no society can afford a criminal law that communicates the message that, so long as the corporation is kept in the clear, we need not worry about individual fault on the part of actors in corporate roles. What is needed is a criminal law that inculcates both individual and corporate responsibility.

### Corporations Can Suffer from Punishment

Cressey's critique here is that "criminologists rather routinely, unthinkingly and erroneously assert that corporations have the psychological capacity to be guilty of crime and to suffer from punishment" (1988:34). It is true that corporations have "no soul to damn, no body to kick." But contemporary social constructions of individual punishment do not generally involve the infliction of pain by causing bodies to bleed, nor do they involve the damning of souls. Rather they tend to involve the identification of individual goals—wealth, security, freedom—and the infliction of punishments that frustrate those goals. For example, the judge assumes that the defendant shares the goal of wealth accumulation when she imposes a fine; she assumes freedom to be desired when she imposes a sentence of imprisonment. From time to time these assumptions will be misplaced. First, there will be individuals who do not care for money or freedom. Second, and more fundamentally, doubt can be cast on the idea that human behavior is all about

the pursuit of goals or interests. Equally, it can be about sustaining an identity or nurturing a self-concept as, say, a Christian or a lawyer, even when sustaining that identity is not in the interests of the actor.

Individual behavior can be understood in useful but limited ways both as a process of displaying and sustaining an identity (Bowles and Gintis, 1986) and as the pursuit of goals or interests. Equally, we would contend, corporate behavior can be usefully constructed both as a display of identity and the pursuit of goals. If individual and corporate conduct share in common at least some degree of goal-directedness, then it is just as sensible to seek to punish corporations by interfering with their goal attainment as it is to do so with individuals. Partial account of corporate action though it is, there is reason to believe that corporate crime better fits the model of rational goal seeking than does individual crime (Braithwaite and Geis, 1982).

If corporate behavior is partly about the attainment of collective goals, punishment of individuals alone is bound to fail as a control strategy. We must seek as well a capacity to interfere directly with those collective goals. This is so because if corporations rationally pursue goals, individuals who are deterred from following those goals on behalf of the corporation will be replaced by individuals who will pursue the corporate goals. Adherence to the individualist fallacy of division will have disastrous practical consequences for enforcement policy.

Let us try to make the point more clearly by comparing collective deterrence in the domain of foreign policy. Following Cressey, we could adopt the view that individuals, not nations, decide to go to war. Instead of threatening nuclear or commercial retaliation against a nation should it invade another, we could threaten to find out who the political actors were that lobbied for the invasion and to send assassination squads after them. This policy option is not usually recommended, largely because of an enduring belief in the capacity of groups to replace slain leaders. If collective deterrence is a fiction, it is a fiction on which strategic analysts in the United States and the Soviet Union have based the future of the world (Schelling, 1960; Kenny, 1985).

It is quite possible to deter by damaging collective interests even when individual members of an organization are not personally

affected. In an earlier study of seventeen adverse publicity crises experienced by large organizations, we concluded that adverse publicity surrounding allegations of corporate crime was an effective deterrent, but not mainly because of fear of the financial consequences of the publicity (Fisse and Braithwaite, 1983). Companies value a good reputation for its own sake, just as do universities, sporting clubs, and government agencies. Individuals who take on positions of power within such organizations, even if they as individuals do not personally feel any deterrent effects of censure directed at their organization, may find that they confront role expectations to protect and enhance the repute of the organization. For example, an academic might be indifferent to the reputation of her university; indeed she might do more to snipe at the incompetence of the administration than to defend it publicly. But, if appointed as dean of a faculty, she confronts new role expectations that she will protect the university's reputation. She may do this diligently, not because of the views she brought to the job as an individual member of the university community, but because she knows what the position requires, and she wants to be good at her task. Thus, in organizations where individuals are stung very little by collective deterrents, deterrence can still work if those in power are paid good salaries on the understanding that they will do what is necessary to preserve the reputation of the organization or to protect it from whatever other kind of collective adversity is threatened.

### The Same Theory Can Be Applied to Individual and Corporate Criminals

Cressey's ultimate concern is that the "blurring of the distinction between corporate crimes committed by persons and corporate crimes committed by organizations asks theoreticians to use one causal theory to explain both, an impossible task" (1988:40). This task is not impossible, though it does require negotiating a mine field of difficulties. In the last section, we concluded that models that conceive that crime is understandable in terms of rational pursuit of goals can have partial validity for both individual and corporate actors. Thus, there is a prospect of rational-choice models accounting for some variance with both types of criminal actors.

Corporations can learn, so there is the possibility of learning theory applying to both collectivities and individuals.

Just as individuals can participate in and be influenced by a subculture, so can corporations. Cressey's (1976) contribution on criminogenic corporate subcultures of restraint of trade, and the similarities of these to neighborhood subcultures of delinquency, is perhaps the most outstanding contribution to this literature. Corporate offending patterns, like individual offending patterns, may be accounted for by the configurations of legitimate and illegitimate opportunities that actors confront. Rational-choice, learning, sub-cultural, and opportunity theories doubtless do not exhaust the possibilities for theories that may apply to criminal action by both individual and collective entities. Equally, there are many theories of individual offending that it is difficult to see ever being usefully applied to corporations—such as biological theories of the relation between intelligence, impulsiveness, or race and crime.

The fundamental point is that it is impossible, in advance of a theory being developed and put to the test, to rule out any level of generality in theory application. Braithwaite, in chapter 8 of this volume, argues just this. As suggested there, before Darwin, the idea that the same theory could account for the origins of both man and amoebas was implausible. Criminology will not progress as a science if its practitioners suffer stultified creativity at the hands of an orthodoxy that theories of a certain scope are, to use Cressey's word, "impossible."

### Conclusion

Cressey has done a service in his last published work. Sociologists are especially prone to the folly of treating nonactors as actors, as is evident from the sweeping flourishes often made about "the ruling class deciding," when no decision-making structures can be identified within an entity called the ruling class. Cressey's article puts all on guard against such all-too-common Type I errors. Our hope is that it will not also cause criminologists to perpetrate a host of Type II errors, discarding the reality of collective criminal action in favor of an inferior methodological individualism.

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