

Where Is the Moral Indignation Over Corporate Crime?

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Abstract Neo-liberalists promise a just and measured response from the state to corporate crime without resort to the force of a “criminal” justice. The argument is that there is more than enough justice done in administrative and civil regulatory regimes. In this contribution, I argue that this promise of justice done is betrayed. Evidence of this betrayal is found in the absence of any genuine moral indignation over corporate wrongdoing. Asking questions such as why there is so little moral disapprobation over corporate crime, and how is corporate moral integrity laundered, lead to a simple but important conclusion. These multi-stakeholder games serve and support a regulatory equilibration. This equilibration maintains the *status quo* of a system tilted in favor of corporations of scale and power, and fails to prompt the emotions necessary to support a strong sense of the wrong in corporate criminal wrongdoing.

Lost in the increasingly popular neo-libertarian account of criminal law in the United States is the kind of moral reflection over corporate wrongdoing that boils the blood of retributivists and calls for the exercise of state power with little reflection. It is difficult to conceive of a corporate harm deserving of criminal punishment according to the hardened liberalist.¹ Murder, rape, and aggravated assault encourage and mobilize the state in ways that the full spectrum of financial frauds, deceptions, and manipulations simply do not. One may ask, who is morally outraged by corporate fraud? Moreover, resort to corporate criminal justice is chock full of externalities. It is misguided, anthropomorphic silliness and, worse, harmful

¹ Hasnas (2005), pp. 187ff.; Hasnas (2006, 2009), pp. 1329ff.

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in itself.² Beneath the surface rhetoric of freedom and independence from governmental social controls over business and deregulation are intuitions about the muted seriousness of corporate offenses. Fundamental questions remain over the very fiction of extending criminal liability to the firm.

The genius behind these neo-liberalist musings is the heartfelt promise of a just and measured response from the state without resort to the force of a “criminal” justice. There is more than enough justice done in administrative and civil regulatory regimes. The direct and collateral consequences of criminal law to innocent stakeholders must be tempered. Remedies in tort and the vast regulatory state will be sufficient. Those promoting the very idea of a corporate criminal law while questioning the constitutional rights of firms are “corporate bashing” and exposing a political hostility aimed directly at the modern for-profit corporation.³

In this contribution, I argue that this neo-liberal promise of justice done is simply but quite deftly betrayed. It is, though, not only this betrayal that is of concern. An even more significant obstacle to corporate criminal justice is with the government functionaries who pontificate about the immorality of corporate deviance and the need for justice from the powerful and privileged. Their disingenuousness, and that of their corporate contemporaries, combine to ensure a regulatory equilibrium that has all the appearances of a fair administration of justice, but appearances only.

At times in this contribution, I am pressed by my reaction to the pretense of indignation and make what amounts to a progressive case of corporate criminal law. In doing so, I bear no hostility to for-profit corporations, only a sense of shame that the lion’s share of moral indignation is reserved for certain crimes, and a certain kind and class of people. Tilting the system so significantly to get justice for street crimes, and against those of color, the poor and the disaffiliated, exacts a steep and distorted price.

The neo-liberal promise of justice, like that *status quo* of the regulatory equilibrium, stands as an impressive monument to the failure of corporate criminal law reform over the past century, specifically the conceptualization of culpability and liability that reflect the complex nature of the firm. Add to this the failure to anticipate the successful shifting of legal risks within the firm; and failure to fully appreciate the power and influence of private sector interests in fashioning any responsive law reform. All of these failures are, as I maintain elsewhere, a grand concession to an unabashed and unapologetic brand of corporatism.⁴

If there is a single thread connecting these failures, though, a thread that allows for the neo-liberal account to bully its way on stage, it is the absence of any genuine moral indignation over corporate wrongdoing.⁵ Prosecutors and regulators are long on rhetoric, providing a deep text of outrage. They are, regrettably, short on authentic anger and indignation. The faint but steady cries of indignation from

² See, e.g., Reich (2007).

³ Redish and Siegal (2013), pp. 1447ff.

⁴ Laufer (2008).

⁵ Cf. Cullen et al. (1982), pp. 83ff.

civil society activists on the left are pushed on the margins by those on the right with a dismissive and patronizing arrogance about appropriate deference to firms, markets, risk-taking, entrepreneurship, and capitalism. It is hard to muster the kind of moral disapproval necessary to support moral indignation when corporations are called to arms as the main engines of economic growth.

There is, alas, no shortage of genuine indignation, outrage, fear, and anger over street crime, where, as Alexander so poetically notes, “. . .the stigma of race has become the stigma of criminality”.⁶ With the highest per capita incarceration rate in the world, state and federal justice expenditures in the United States support one of the most elaborate state owned enterprises—fueled by a near insatiable fear of crime, fear of drugs, and craving for the banishment of the “bad guys.” No industrial complex with even remotely comparable expenditures supports corporate criminal justice. The images of thugs, street-level dealers, and violent predators do not include members of the board and senior management from corporations of scale, influence, and power. When we think about the evils perpetrated by drug cartels and terrorist organizations, who thinks about the facilitating role of HSBC? There is no perennial if not perpetual fear of corporate deviance touching and compromising our lives. Quite simply, our sense of being wronged by corporations and their agents does not engender a brand of moral outrage, indignation, and fear adequate to support a fair, equitable, and proportional regime of corporate criminal justice.⁷

In Sect. 1 of this contribution, I briefly explore why there is so little moral disapprobation over corporate crime. This exploration requires a deconstruction of the moral rhetoric employed by criminal justice functionaries, moving from the given text to the more meaningful subtext. The disingenuous rhetoric of indignation is defined and placed into the context of a multi-stakeholder game, a game that leverages the power of facades and pretense. Section 2 reveals how corporate moral integrity is, at times, successfully laundered by firms, regulators, and in games that carefully accommodate the convincing rhetoric of the state. Laundering and gamesmanship make any authentic moral disapprobation that much more unlikely. Section 3 concludes with a discussion of how these games serve a regulatory equilibration. This equilibration maintains the *status quo* of a system tilted in favor of corporations of scale and power. The outcome is exactly what neo-libertarians dream about: A corporate criminal law that is fully dressed on Saturday night, but without a date and with essentially nowhere to go.

1 What Happened to Our Moral Indignation?

The construct of moral indignation reflects the emotion felt over an immoral act. This emotion is captured by a person’s disapproval of that act as unjust, unworthy, and malicious.⁸ Indignation, accordingly, is the anger that results from moral

⁶ Alexander (2012), p. 199.

⁷ Cf. Hagan (2010) and Laufer (2013), p. 679.

⁸ Beardsley (1970), pp. 161ff.

disapproval. Sunstein⁹ deconstructs the notion of indignation further, seeing it as a complex of disgust, shame, and hatred.¹⁰ This complex, according to Sunstein, consists of moral emotions, intuitions, and response tendencies that are not necessarily connected to reasons, are automatic, and may be expressed as something else. Reasons, we are told, are not the *sine quon non* of judgments. For some people, moral principle does not consciously fashion or drive their indignation. Instead, we may be agnostic as to why we feel such indignation.¹¹ As Fingarette writes, constructing a coherent account of moral disapproval and blame requires "...an affective tone reminiscent of anger".¹² Moral indignation may devolve into an empty kind of fear. And anger, mixed at times with this fear, fuels a thirst for the state to respond with an indignation that is nothing short of palpable.

The predictable incoherence of moral judgments, as Sustein calls it,¹³ may nevertheless produce a coherent set of outcomes. While scholars from a host of disciplines still unpack this construct, few would argue that the kind of anger, disgust, and contempt associated with moral indignation strongly influences the priority given to the allocation of criminal justice expenditures; strategies for use of resources in municipal policing; charging decisions by prosecutors; the deliberations of jury decision making; sentencing outcomes from judges; and the treatment of inmates in correctional institutions.

Race and the perceived badness of an actor or an act are, at times, inextricably intertwined with moral approbation.¹⁴ For example, research on the salience of race as a heuristic for determining the blameworthiness of the defendant and the perniciousness of the crime is as telling and remarkable, as it is shocking. Eberhardt et al. found that in capital cases where the defendant is Black and the victim is white, juror decision making about life or death hinges, for some, on the extent to which the defendant appears stereotypically Black.¹⁵ In non-capital cases, those defendants with stereotypical Black facial features were given longer prison sentences (up to 8 months) than those least stereotypical.¹⁶

Our collective moral indignation, it seems, is reserved for certain kinds of wrongdoers (or images of wrongdoers), and certain kinds of wrongs. And offers to explain the absence of indignation, in terms of one or another, may be incomplete. For wrongdoers, indignation is likely mediated by complex heuristics, framing effects, social dynamics, and a host of other factors, e.g., the "outrage heuristic,"

⁹ Sunstein (2009), pp. 405ff.

¹⁰ Cf. Jones (2007), pp. 768ff.

¹¹ Sunstein (2009), pp. 405ff.

¹² Fingarette (1963), p. 118.

¹³ Sunstein (2009), pp. 405ff.

¹⁴ Johnson and Newmeyer (1975), pp. 82ff; Greenwald and Krieger (2006), pp. 945ff.; Jolls and Sunstein (2006), pp. 969ff.

¹⁵ Eberhardt et al. (2006), pp. 383ff.

¹⁶ Eberhardt et al. (2006).

“moral framing,” and “rhetorical asymmetry”.¹⁷ For wrongdoing, the now obvious complexity of indignation places into context some of the intuitive conclusions that flow from research comparing white collar and street crimes, i.e., that perceived seriousness of crimes simply determines the value that law enforcement, prosecutors, and judges give different offenses. Explaining variance in the perceived seriousness of offenses and offenders is more complex.

Early research on the seriousness of crimes revealed only a modest level of wrongfulness attributed to white collar offenses.¹⁸ Cullen et al., for example, found that white-collar crime was ranked 7th out of 11 categories of crime, and concluded that, “While the above data support the conclusion that white-collar crime has come to be viewed by the public as more serious not only on an absolute level but also relative to other forms of crime, it does not appear that the public has yet reached the point of considering white-collar crime to be as serious as most other offense categories”.¹⁹ More recent efforts to tease apart the relative seriousness of street versus white collar offending find an increase in rankings of the latter. Piquero, Carmichael, and Piquero, for example, found white collar crimes were more serious than street crimes in four of the six comparisons.²⁰

There are, of course, other ways of asking why the victimization or possible victimization from some wrongdoing elicits deeply-held fears, while wrongdoing of another type engenders anger, frustration, but little to no moral indignation. Research on fear of street crime and the effects of victimization consistently shows a strong association with life satisfaction, quality of life, and risk of such crime.²¹ Fear of violent crime, at its core, is an emotional reaction driven by a “. . . sense of danger and anxiety produced by the threat of *physical harm*”.²² Criminologists speak of this kind of fear of crime as a concern over possible “invasion of self” or serious threats to one’s personal autonomy. No one claims that fear of crime corresponds perfectly with crime rates.²³ Actual and anticipated fear of serious

¹⁷ See, e.g., Sunstein et al. (2002), pp. 1153ff; McCaffery et al. (1995), pp. 1341ff.; Schkade et al. (2000), pp. 1139ff.

¹⁸ See, Rossi et al. (1974); Gottfredson et al. (1980), pp. 26ff.; Evans et al. (1993), pp. 85ff.; Rosenmerkel (2001), pp. 308ff.

¹⁹ Cullen et al. (1982), p. 94.

²⁰ Piquero et al. (2008), pp. 291ff. To say that these data reveal a commensurate seriousness for white collar and street crimes would be a vast overstatement. Research exploring the seriousness of white collar “offenses” often offers subjects offense scenarios that are not criminal offenses. When researchers are good about selecting criminal offenses, though, they are rarely corporate offenses. Not attending to the criminal law and, at the same time, recognizing differences between the acts of agents and those of the entity, make this research difficult to place in the overall discussion of moral indignation.

²¹ Hansmaier (2013), pp. 515ff.; LaGrange et al. (1992), pp. 311ff.; Garofalo and Laub (1979), pp. 242ff.

²² Garofalo (1981), p. 840.

²³ Skogan (1986), pp. 203ff.

violent and property crime are far more complex “social facts.” The proportion of crime that is interracial, for example, may mediate variance in fear.²⁴

The rhetoric of moral indignation that comes from criminal justice functionaries obscures the conclusion that a certain kind of outrage is reserved for certain kinds of wrongdoers and wrongdoing. Carefully chosen words from the offices of federal prosecutors on the indictment or conviction of corporate offenders are so very familiar. They speak of thieves and fraudsters as not playing by the rules, compromising integrity, violating the public trust, swindling the American public, taking advantage, cheating, and unfair dealing. Wrongdoers must compete on a level playing field, we are told, be held responsible for wrongdoing, and be brought to justice for acting as if the laws do not apply to them. All corporations, we are told, no matter how large, will be held accountable. And there is an urgency and exigency associated with the prosecutorial response: there is “the need to be relentless,” we “will not hesitate to prosecute,” and we “will continue to aggressively pursue. . . .” The extension of moral agency to the body corporate is personal, human, and remarkably emotional.

Often, the language of prosecutors blends strong retributive and deterrence messages, couched in stern, biblical, and paternalistic tones. In the press release from the recent announcement of a criminal indictment against the hedge fund S.A.C. Capital, the United States Attorney of the Southern District of New York proclaimed: “A company reaps what it sows, and as alleged, S.A.C. seeded itself with corrupt traders, empowered to engage in criminal acts by a culture that looked the other way despite red flags all around. S.A.C. deliberately encouraged the no-holds-barred pursuit of an ‘edge’ that literally carried it over the edge into corporate criminality. Companies, like individuals, need to be held to account and need to be deterred from becoming dens of corruption. To all those who run companies and value their enterprises, but pay attention only to the money their employees make and not how they make it, today’s indictment hopefully gets your attention.”²⁵

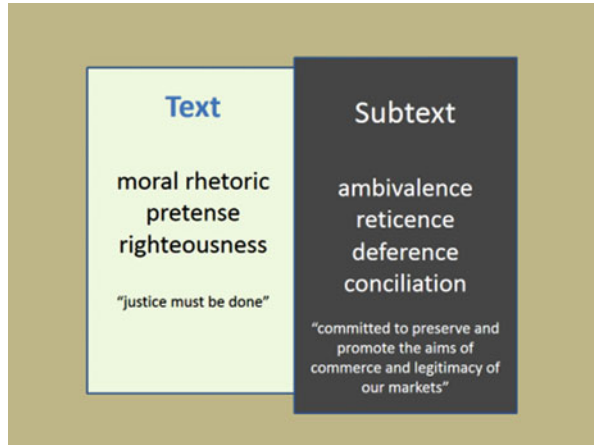
Listening to the Executive Branch make much of the need for Main Street and Wall Street to play by the same rules, and be held accountable for serious wrongdoing, is wonderfully inspirational, convincing, and comforting—particularly at times when our markets reveal regulatory lacunae and are weak. The sub-text, or deeper meaning, of this language is just as important. Reconciling the text with its deeper meaning is the challenge (see Fig. 1).

Functionaries use moral rhetoric to convey a definite outrage at the temerity of such privileged wrongdoing. The message that justice must be done is conveyed with a pretense and sense of righteousness that mimics the emotions felt over an immoral act. Beneath the words one would expect anger, disgust, and a sense of

²⁴ Liska et al. (1982), pp. 760ff.

²⁵ Manhattan U.S. Attorney and FBI Assistant Director-In-Charge Announce Insider Trading Charges Against Four SAC Capital Management Companies and SAC Portfolio Manager, July 25, 2013, available at: <http://www.justice.gov/usao/nys/pressreleases/?m=07&y=2013/12.2.2014>.

Fig. 1 Faux indignation?



shame. With lobbied and muted regulatory reforms, the diversion of large firms into plea agreements, and the recognition that some firms are simply too big or too risky to prosecute, no less convict, the subtext reflects an ambivalence and reticence to use this heavy-handed social control with the engines of our economic growth. Prosecutorial deference and a desire for conciliation are masked by a strongly worded metaphoric text. Expenditures, priorities, strategies, and allocation of criminal justice resources are so oriented to street crime, and toward certain kind of wrongdoers, that we should be surprised, if not disturbed, by just how convincing the text is.

One reasonable conclusion from a reconciliation of the text and subtext is that functionaries are offering a kind of *faux indignation*. Their objective: Placate market stakeholders with a carefully constructed retributive text, use the prosecutorial function to skillfully deter as much misconduct as possible, and yet leave undisturbed the risk-taking behavior that drives the kind of unbridled innovation and entrepreneurship necessary to move the economy forward. What makes this indignation *faux*? The text is calculated and crafted in ways that reveal an inauthenticity. The moral emotions and affect that capture indignation are missing. The anger and fear that combined in a very real way with street crime are simply not there. *Faux indignation* is, plain and simple, a convenient moral placeholder.²⁶

It would be incomplete and naïve to begin and end an examination of the meaning of text and sub-text with the law enforcement and prosecutorial functions. While these functionaries are crafting language to convey their “outrage” at corporate wrongdoing, firms are deftly positioning their behavior in equally inauthentic ways.²⁷ They, too, placate, by pandering compliance back to regulators with

²⁶ None of this is to suggest, of course, that law enforcement lacks a desire or even resolve to bring about justice in cases of corporate wrongdoing. The disconnect among desire, resolve, and commitment of resources simply reflects a very different reality.

²⁷ See, Laufer (1999), pp. 1343ff.

their fair share of moral outrage over the “rogue behavior” of agents that so clearly violate corporate policies. Their authenticity is so often a casualty of the simple prescription that cooperation with authorities, acceptance of responsibility, and the commitment of additional compliance expenditures will result in a diversion from the criminal process—into the far more comfortable world of deferred prosecutions and non-prosecutions.

I argue below that the laundering of moral integrity by the regulated, combined with the washing of moral indignation by regulators, make for a dynamic regulatory game where appearances, posturing, and self-presentation regularly trump genuine ethicality and accountability. And the appearance of players in this game, the sense that the ethics of a firm matter, that deviant firms are subjected to the strictures of the criminal law fairly and justly, promote the kind of confidence in our justice system (all largely undeserved) that make it far less likely that the public would feel moral indignation. With so many stakeholders invested in the outcome of this game, it is little wonder that it works so well. With certain stakeholders playing the game with near unlimited resources, and otherwise much to lose, it is also little wonder that genuine moral indignation for wrongdoing is all but forgotten.

How can you blame a company that is “beyond petroleum” for an unprecedented oil spill? How can you blame a financial institution for untrustworthiness when it is an icon of trust? How can you blame a company for the harmful and addictive nature of their products when they tell you not to buy them? From all appearances, and carefully orchestrated messages, images, and gestures, these are good companies. They are companies with souls. They are companies with an agent who, quite simply, did not fit with the corporate culture or failed to appreciate just how committed the firm is to doing the right thing.

2 Faux Indignation Meets Corporate Inauthenticity

Lurking behind the corporate scandals that now seem common place on Wall Street is an inauthenticity, a disconnect between what corporations say they do and what they actually do, that leads to public displays by top management of naïve surprise when the public hears the news of a criminal investigation or indictment.²⁸ From Goldman Sachs to British Petroleum, and Enron to WorldCom, images of pristine corporate reputations tarnished by allegations of an incompatible rash of wrongdoing make it difficult to appreciate the polished spin associated with a professed commitment to corporate social responsibility. The disconnect should leave lasting suspicions and even cynicism about those corporate commitments to ethics,

²⁸ The construct of authenticity, with differing roots in existential philosophy, psychoanalytic schools of thought, and classical literature, extends to corporations with all the usual anthropomorphic and ontological questions and concerns. Even so, the word “authenticity,” according to Trilling, first referred to material and immaterial “things” and not persons. Its metaphorical use began in the sixteenth century. See, Trilling (1972).

compliance, and responsibility that are paraded as both genuine and authentic. But this disconnect is so rarely noted, and so regularly overlooked.

Corporate inauthenticity comes with a cost to multiple stakeholders of the firm, from shareholders, debt holders, to vendors, customers and clients.²⁹ Most significant, regulators, prosecutors, and judges are left without the tools to determine a firm's compliance with laws and good governance. This is non-trivial because independent, evidenced-based assessments of compliance effectiveness are generally not available from extant gatekeepers. As a result, investigatory, charging, adjudicatory, and sentencing decisions are most often made on the faithful and overtly cooperative representations of an accused or convicted firm. At the same time, all firms are encouraged to spend generously on compliance and good governance functions without any corresponding empirical evidence of their efficacy.³⁰ Finally, to make matters even more complex, firms have multiple incentives to maintain an external posture of full cooperation, compliance, good governance, integrity, and responsibility that may or may not reflect their genuine commitment.

The fact that both criminal justice and corporate functions are, at times, disingenuous makes the script of this regulatory game so deceptive, intriguing, and compelling.³¹ Countless examples of corporate misfeasance and malfeasance over the past century expose the difference between the text of a corporation's commitment to ethics, integrity, and compliance, and the subtext of their rhetoric and public communications. This disconnect obscures elaborate games that companies play to avoid detection, deflect regulation, minimize compliance and governance costs, and at times launder questionable corporate decisions if not reputations. In the end, the longstanding and somewhat successful campaign for corporate transparency runs a serious risk of being compromised by the failure of state and non-state regulators to hold firms accountable for their inauthenticity. Allowing firms to escape any accountability for their inauthenticity only seems to encourage

²⁹ If the appearance of corporate authenticity is nothing more than a guise or pretense, then its expression is instrumental and strategic. While nuanced differences in appearance may make an appearance of authenticity and inauthenticity indistinguishable, I suggest that corporations fall along a behavioral continuum from opacity (i.e., where firms are characteristically obscure, elusive, and dense) to transparency (i.e., organizations that are open with communications, frank, candid, and forthcoming), sincerity (i.e., firms that act, as a means to an end, without pretense and dissimulation), and finally authenticity (i.e., companies that, as an end in itself, align their decisions, policies, and actions with actual desires, motivations, and intentions).

³⁰ Codes, compliance programs, and the products from a cottage industry of ethics consultancies are part of an overall regulatory prescription but remain of questionable value if behavioral compliance is the dependent variable.

³¹ The task for firms, more specifically, is one of genuinely aligning their corporate vision, leadership, culture, value propositions, operations, and decisions with the expression of their collective moral sentiments, whether conceived as a sense of citizenship, integrity, or a sense of social responsibility. This task is quite challenging given the increasing range of incentives offered companies for voluntary social initiatives and evidence of regulatory compliance. Calls for a social conscience from non-governmental organizations, non-profits, and activist organizations make this challenge that much more potent.

firms to maintain an appearance of authenticity while, in fact, being opaque, or worse.

The price associated with this opacity is not limited to problems of ensuring faithful compliance with laws and regulation. It also reflects the inauthenticity of corporate representations about their lofty social and environmental commitments and accomplishments. The emergence and widespread acceptance of voluntary corporate social responsibility initiatives tend to lure signatory companies into making commitments, representations and declarations that add a green or blue luster to their reputations, and give them membership in an apparently exclusive club, often without authentic commitment. Meeting voluntary social and environmental expectations in any genuine way is costly and, without authenticity, disconnected from or out of step with the vision and values of corporate leadership.

Civil society activists set threshold expectations for firms quite low in their conception of corporate transparency. The new conventional bar, that firms should aspire to be revealing rather than withholding or decidedly opaque, is quite insubstantial. The position that transparency is actually ambitious, if not more, reflects the closed nature of the firm, the legitimate need for confidentiality, and the intensity of competition, among a wide variety of factors. Simply put, this position asks too little of the private sector.

This kind of corporate inauthenticity, and the pretense of moral indignation from prosecutors described earlier, combine in some very compelling ways. First, corporations and prosecutors accommodate each other by sharing a guise. The pretense of one often fits nicely with the faux indignation of the other. More practically, the product of a disingenuous indignation and organizational inauthenticity feed a regulatory equilibrium that produces stable rates of white collar and corporate prosecutions.³² On the surface, and reading the text, the threat of the criminal law seems to work. Cases are brought with the usual moral fanfare, and corporations fall on the sword knowing that a compliance reincarnation is only a matter of time and cost. Both sides express condemnation and make amends.³³ And, to add just one last swipe at the disingenuousness of corporate criminal prosecution, criminal fines in corporate fraud cases are, apparently, very difficult if not sometimes impossible to collect.³⁴

In a final section below, I wonder what should be done with a regulatory equilibrium, fashioned by the pretense and deception of government and corporate functionaries that protects and safeguards the corporate person in ways that are never extended to biological persons. Should it matter that we reserve our anger, outrage, and fear in ways that only fuel inner city policing, keep municipal

³² The number of white collar crime prosecutions, combining all federal enforcement agencies, is remarkably stable over time—with between 8,000 and 9,000 cases per year. This is a true equilibrium given the number of referring agencies and organizations. Interesting, recent data on white collar cases originating with the Federal Bureau of Investigation show a decline or slump. See, e.g., Trac data [available at: <http://trac.syr.edu/tracreports/crim/331/> (12.2.2014)].

³³ Laufer and Strudler (2007), pp. 1307ff.

³⁴ Government Accountability Office (2005).

prosecutors up all night, and drive incarceration rates even higher? Who talks about the externalities of street crime the way we talk about the costs of corporate prosecution? We worry about innocent shareholders and employees, as casualties. Who cares about the casualties of mass incarceration? These rhetorical questions are recast in the brief section below.

3 Measured Indignation and the Bad Guys

Criminal justice functionaries take comfort in casting morality as a simple dichotomy. There are good guys and bad guys. Municipal police and local prosecutors know what it means to “get” the bad guys. Alas, it is the task of good guys to get the bad guys. Conventional musings about “bad guys” are part of a shared language deeply encoded in our popular culture.

We know who is bad. Apprehending, prosecuting, convicting, and incarcerating bad guys is just like it was on the concrete school playground, where playing cops and robbers pit good against bad in a simple morality game. There are important differences, though, between the Kohlbergian-type shenanigans of children at recess and the psychological splitting seen throughout the criminal process. The former are acts reflecting age appropriate, stage appropriate, pre-conventional moral reasoning. The latter is an adaptive denial, a vestige of worn-torn experience with the administration of justice that ravages the idealism of rookie cops, assistant district attorneys, judges, probation officers, and corrections officers.

Experience in the criminal process makes the very notion of a continuum of morality inimical. Experience brings perceptions and prompts biases that confound what it means to be labeled *bad*. Experience gives permission to disregard the devastation, the tragedy, and the inhumanity found in the disaffiliated, indigent areas that generously contribute human capital to the criminal justice system. Perhaps most significant, a long shadow of race and abject poverty makes these experiences look so stark, and people look so good or so bad. Moral nuances simply come with too high a price.

Law enforcement brethren freely dismiss all of this talk about possible gradations between good and bad as naïve sentimentality, an exaggerated recognition of race and class, insensitivity to the plight of genuine victims of crime, and a failed appreciation for the simple notion of what makes a person who does bad things, bad. Seeing more in those who commit bad acts inexplicably disregards the evil behind the crime and its harm, or so the argument goes. Hard retributivists following the Kantian line would likely go one or more steps further.

To see the frailty, weakness, and humanness that accompany economic, psychological, and sociological deprivation counters this convention and the powerful press of professional socialization. To see more than archetypal images of miscreant Black and Hispanic youth defies deeply encoded suspicions, fears, predispositions and resentment. To experience criminal justice and yet decouple race, ethnicity and class from perceived immoralities require an understanding of our racial heritage, unusual discipline and, at times, courage. *Status quo* in the criminal

process is too tempting for most, too intuitive for many, and the desire for fraternal inclusion and recognition simply too great.

And to see badness in corporations also counters the convention that we should believe and invest in free markets and capitalism. Corporate criminal liability doesn't only seem wrong because of unjustifiable externalities. It is wrong because corporations are not "bad" the way real criminals are.³⁵ Their wrongs are not worthy of genuine moral indignation. Firms, as a wrongdoer, are not worthy of moral indignation.

There is simply not enough hate, fear, and anger to go around. And the façade of compliance, the diversion of large businesses out of the criminal process into artfully crafted "integrity" agreements, and redemption from compliance reincarnations all contribute to something less than a sense of badness. Their badness is undone by extolling the virtues of corporate social responsibility, a commitment to sustainability, and an investment in the community. They are the good guys who, regrettably, and only so very rarely, do bad things.

It is not too late for a plea for genuine moral indignation over corporate crime. It is a tall order to muster, though, even with much better accounts of just how corporate crime touches our lives directly, and the toll that these offenders take. It will require more than academic musings, more than a complex table listing primary, secondary, and tertiary victimizations from corporate wrongdoing. Any genuine indignation of victimization or harm will inevitably meet a well-dressed and neatly-coiffured neo-libertarian, along with a well-tested strategy of posturing, pandering, greening, and apology from one of the most powerful "persons" in the world—the corporation. Street level drug dealers and thugs can only fantasize what it might be like to position themselves this way. And we can only think about the price that all of us continue to pay for conceiving justice in such a tilted manner.

Acknowledgments My appreciation to Nien-he Hsieh, Eric Orts, and Diana Robertson for their comments on earlier drafts of this contribution.

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³⁵ Cullen et al. (2009).

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