

Personality and Social Psychology Review

<http://psr.sagepub.com>

The Second Face of Evil: Wrongdoing in and by the Corporation

V. Lee Hamilton and Joseph Sanders

Pers Soc Psychol Rev 1999; 3; 222

DOI: 10.1207/s15327957pspr0303_5

The online version of this article can be found at:
<http://psr.sagepub.com/cgi/content/abstract/3/3/222>

Published by:



<http://www.sagepublications.com>

On behalf of:



Society for Personality and Social Psychology, Inc.

Additional services and information for *Personality and Social Psychology Review* can be found at:

Email Alerts: <http://psr.sagepub.com/cgi/alerts>

Subscriptions: <http://psr.sagepub.com/subscriptions>

Reprints: <http://www.sagepub.com/journalsReprints.nav>

Permissions: <http://www.sagepub.com/journalsPermissions.nav>

Citations <http://psr.sagepub.com/cgi/content/refs/3/3/222>

The Second Face of Evil: Wrongdoing in and by the Corporation

V. Lee Hamilton
Sociology Department
University of Maryland

Joseph Sanders
Law School
University of Houston

The second face of evil is hurtful, rather than malevolent. We argue that this is likely to be the form of wrongdoing characteristic of corporate actors. This article views the corporation at 3 levels: the individual self-interested actors within it, the individual actors who respond to their hierarchical position, and the hierarchy (corporation) itself. Research shows that action inside complex organizations such as corporations is not necessarily more rational and informed by greater foresight than individual actions, but several studies indicate that individuals hold organizations to a higher level of responsibility than individuals committing similar acts, and they do so in part because they perceive organizations to enjoy greater foresight. We address this paradox by suggesting that future research address how the corporation's obligations to foresee consequences and the sheer, primitive consequences themselves may shape perceptions of corporate foreseeability.

Evil, according to the *Oxford English Dictionary* (Simpson & Wiener, 1991), has numerous definitions. The first two provide a useful introduction to a discussion of wrongdoing in and by corporations. The first definition of evil involves actions that are "morally depraved, bad, wicked, vicious" (p. 471). It captures a sense of intentionally doing a morally blameworthy act with the purpose of achieving a reprehensible goal. The second definition is "doing or tending to do harm; hurtful, mischievous, prejudicial" (p. 471). This second sense, or second face, of evil seems less purposeful, less clearly accompanied by what the law calls "guilty mind" or *mens rea*. The two definitions are useful for our purposes because they illuminate the fact that, when we speak of evil in and by corporations, more frequently than not we are referring to evil in the second sense. As we discuss subsequently, the corporation is a special form of organizational actor. Organizations and the individuals within them are, to be sure, capable of evil acts in the first sense. A few organizations might themselves be said to be evil (Staub, 1989),

insofar as their organizing purpose is to achieve morally depraved results. The Nazi doctors whose purpose was to do medical experiments on the victims of the Holocaust (Annas & Grodin, 1992; Lifton, 1986) or the "blue coats" whose job was to interrogate and obtain confessions from people to be sent to the gulag (Solzhenitsyn, 1973), are evil in this sense. Other organizations are not literally set up to do evil, but their members may, nevertheless, commit evil acts in the first sense of the term. The My Lai massacre during the Vietnam War is an example of such behavior (Kelman & Hamilton, 1989).

Much corporate wrongdoing is more prosaic than that. It includes the questionable risk-benefit decisions that generated the recent McDonald's hot coffee tort litigation (Curcio, 1996) and the set of miscalculations and errors in judgment that led to the explosion of the space shuttle *Challenger* (Vaughan, 1996) or the crash of the tanker *Exxon Valdez* and the massive oil spill that followed (Davidson, 1990).

Consider the *Exxon Valdez* incident. A focal point for the investigation was the ship's captain, Joseph Hazelwood, a long-term Exxon employee experienced in Alaskan waters. He had been drinking in the port of Valdez, Alaska before setting sail, and his behavior on board was in several ways odd if not negligent. However, other individuals and organizations contributed in major ways to the scope of the eventual catastrophe. For example, the harbor pilot, who boards a ship and

Article preparation was facilitated by National Science Foundation Grants SES-9113914 and SES-9113967.

Special thanks to the Japanese colleagues with whom we conducted the research described herein: Naotaka Kato, Mikio Kawai, Takashi Kubo, Haruo Nishimura, and Kazuhiko Tokoro.

Requests for reprints should be sent to V. Lee Hamilton, Department of Sociology, University of Maryland, College Park, MD 20742-1315. E-mail: lee@bss1.umd.edu.

takes control to guide it out of the harbor, theoretically can object to the behavior of a captain. However, in this instance, despite smelling liquor on the captain's breath and despite the fact that the captain left the pilot on the bridge in violation of company policy, the harbor pilot returned control of the vessel to the captain and left the ship. As the *Exxon Valdez* proceeded through Prince William Sound among dangerous reefs and ice floes, Coast Guard monitors of transmissions heard the captain slur his words and mistakenly identify his vessel. The Coast Guard then lost the ship on its tracking devices, and the person in charge of finding it spent valuable time rearranging papers and going for coffee instead of using radio or radar to find it. In the meantime, the captain had decided on a tricky maneuver for avoiding a large ice floe in the path of the *Valdez*, had issued unusual instructions to the helmsman, and had left the bridge in the control of a junior officer with little experience on the ship. Perhaps not surprisingly, the ship ended up aground on a reef.

The disaster then continued to build. It turns out that the emergency preparedness system supposedly arranged among the state of Alaska, the oil pipeline consortium Alyeska, and Exxon was flawed. It was several days before large-scale efforts to get rid of the oil were under way. Ultimately, more than 9 million barrels of oil escaped from the vessel, spreading over thousands of square miles of ocean and beaches. Many thousands of dollars worth of commercial and environmental damage, and years of cleanup and amelioration efforts, ensued. Clearly, there is a sense in which we can hold Exxon, or its captain, responsible and a sense in which that responsibility is shared. Such is often the case given the sheer magnitude of the forces corporations attempt to work with and to tame. Here, multiple individual actors and multiple organizations showed misjudgment or poor planning in an event that surely in no sense was planned or desired by anyone.

Corporate wrongdoing also can involve initially innocent decisions, or perhaps misjudgments, that snowball into coverups. Examples of such trends include the decades-long coverup of the adverse health affects of exposure to airborne asbestos by the asbestos industry (Brodeur, 1985) or the coverup of the defective Dalkon Shield by the A. H. Robins pharmaceutical company (Sobol, 1991). An industry grew out of asbestos, the "miracle" fire-retardant substance, in the decades before 1900. By that point, however, the first evidence that asbestos might have a dark side was emerging. Eventually, it was implicated in deaths from various cancers, especially lung cancer, and other lung-related conditions including one that came to be known as "asbestosis." People who made or installed asbestos products were at high risk, and smokers with such jobs were at particular risk for lung cancer. Calhoun and Hiller (1988), among others, chronicled how the industry

handled this bad news over the decades that followed. The role of the Johns-Manville (later Manville) Corporation is central because it dominated the American asbestos scene. Johns-Manville conducted its own research on the effects of asbestos as early as 1928, and it followed a general industry pattern of attempting to downplay other negative health reports as well as to sponsor positive ones. Health effects of asbestos can be fairly called "insidious" (Calhoun & Hiller, 1988), in that it takes a long time—decades—for them to be observable. Thus, it may not be surprising that it was the 1960s before strong independent evidence linking asbestos to negative health outcomes emerged. In the decades that followed, Johns-Manville fought every lawsuit against it vigorously. As this tactic showed signs of failing (e.g., the company's insurer declined to continue coverage), Johns-Manville attempted to obtain relief via federal legislation to settle claims. That strategy having failed, in 1982 the company declared bankruptcy. The company, at that point, still had extensive resources—\$2.3 million in assets—but its prospects were considerably more grim.

The progress of the A. H. Robins company through the courts (Sobol, 1991) was in some senses a speeded-up version of the story of asbestos. Robins had the opportunity to take over production of a "hot" new intrauterine device (IUD) design in 1970. The design was supposed to improve on prior ones by being less subject to expulsion from the uterus, making it appropriate even for women who had not borne children. However, there were problems from the start, some of which the company knew of and some of which they did not. Its developer claimed it had a pregnancy rate of 1% when the true rate was 5%, a fact of which Robins was aware at the time it acquired the Dalkon Shield. The company promoted it vigorously, with the result that in "1971, 1972, and 1973 more Dalkon Shields were sold than all other brands of IUDs combined" (Sobol, 1991, p. 7). However, the Dalkon Shield had a more serious flaw. Its string, which was supposed to allow the user to check that it was still in place, was made of a material that allowed bacteria to "wick" upward into the uterus. The Dalkon Shield not only generated excess pregnancies, it generated septic abortions and deaths. People within the company were complaining about this design flaw as early as 1971, but company executives did not want to hold up production of their exceedingly popular product to allow a redesign. Robins first disputed and denied medical evidence of the dangers of the Shield and then fought all-out in court (e.g., focusing on the sexual histories of the plaintiffs on the grounds that having multiple sexual partners is a risk factor for infection in its own right). Eventually, with the agreement of a federal judge, Robins went into bankruptcy in 1987 in a deal that allowed it to be absorbed by another company.

Clearly, these cases are not all of a piece. Some are more of the nature of events, others of processes; some are far more blameworthy than others. However, all of them—at least at their outset—more closely fall within the second definition of evil than the first. Although the acts of such organizations and their agents lead to harm, it is harder to say that they acted with the purpose of achieving a reprehensible goal. In the calculus that goes on in such settings, bad outcomes may never even be considered when action is taken. When the potential for a bad outcome is considered, it is often discounted as infeasible or at least unlikely. The probability and severity of an untoward result is underestimated, or the potential for bad outcomes is thought to be outweighed by potential gains. If we are to call the actions “evil,” they are not the purposeful evil of the first definition. Rather, they are acts of either thoughtless or careless evil.

Harmful results of this type are less horrific than the purposeful evil of a genocidal state. However, most of the harm caused by organizations probably results from evil in the second sense (Darley, 1996). The absolute amount of harm caused by thoughtless or careless actions can be greatly magnified when committed by an organization. Furthermore, evil of the second type often breeds evil of the first. Once the problem surfaces, organizations may begin to engage in purposeful efforts to cover up the harm or their responsibility for the harm. This occurred in both the asbestos and Dalkon Shield cases. Coverups are obviously not restricted to U.S. corporations. For example, Upham (1987) reviewed Chisso Chemical Company’s coverup of pollution in Minamata, Japan (which led to “Minamata disease”).

Central to the fascination of the corporation is its complexity; it has an internal environment, such that we can speak of wrongdoing in the corporation, and an external environment, such that we can speak of wrongdoing by the corporation. In this article, we are interested in these interlocking issues: (a) the dynamics of corporate wrongdoing as seen from within, in terms of how employees think and feel when they commit misdeeds, and (b) even more centrally, the dynamics of corporate wrongdoing as seen from without, in terms of how the citizenry judges corporate misdeeds. Our investigation begins with an overview of the corporation as a social and legal form, then turns to wrongdoing in the corporate setting and concludes with wrongdoing that can be meaningfully said to be done by the corporation.

Corporate Actors

Modern societies are comprised of two types of actors: people and organizations. Although corporate

actors have existed in some form for much of recorded human history (e.g., the Roman Catholic Church in the Middle Ages), this type of actor has grown enormously in ubiquity and importance in modern times (Coleman, 1990). In developed societies, individuals and families have become relatively less powerful, and corporate actors, especially business corporations, have become much more powerful (Lempert & Sanders, 1986).

The increased role of corporate actors in society is accompanied by an increase in the frequency with which harms are caused by corporations. As a consequence, there are many opportunities to judge organizations and to assess their responsibility for harmful outcomes (Hans, 1989). Sanctioning organizations and their members is a complex undertaking, in part because organizations involve complex, prescriptive authority structures in which many individuals occupy both subordinate and superordinate roles (Coleman, 1990; Hamilton & Sanders, 1992b). A considerable literature is devoted to the problem of designing efficient and effective corporate sanctioning regimes (e.g., Arlen & Kraakman, 1997; Coffee, 1981; Fisse & Braithwaite, 1993; Laufer, 1994; Stone, 1975).

Corporations are powerful at least in part because they have an independent legal existence. As Pollock and Maitland (1898/1968) noted in their treatise on corporations

Every system of law that has attained a certain degree of maturity seems compelled by the ever-increasing complexity of human affairs to create persons who are not men, or rather (for this may be a truer statement) to recognize that such persons have come and are coming into existence, and to regulate their rights and duties. (p. 486)

Corporations own property, they enter into contracts, they pay taxes, they are entitled to express their political views, and they can sue and be sued. Creatures of the law, corporate actors have taken on a life of their own. Interestingly, that life has a moral and normative component. Most of us are prepared to say of corporations and other organizations, as we are willing to say of natural persons, that they are trustworthy or untrustworthy, loyal or disloyal, virtuous or evil. Corporations are praiseworthy and blameworthy. They are moral agents. They are capable of evil acts.

The next section begins our exploration of the corporation as a moral—and potentially evil—actor¹ by first looking within the corporation. Here, we find

¹Not everyone agrees with the view that corporations are moral actors. For discussions of whether we should think of organizations as moral agents, see Cressey (1989), French (1984), and Metzger and Dalton (1996).

two kinds of wrongdoing. On the one hand, some wrongdoing is committed by individuals acting out of self-interest, and it can be readily understood in a rational actor framework. Other wrongdoing is committed by individuals acting in what they see as the corporation's interest, or at least in response to the authority of the moment. It is more motivationally complex. Ultimately, we believe that one key to the moral climate of the corporation lies in the relationship between corporation and employee (in the language of the law, the relationship between *principal* and *agent*). This discussion draws on Hamilton and Sanders (1992b) and on Kelman and Hamilton (1989).

Wrongdoing Within the Corporation

Individuals as Self-Interested Actors

A great deal of social science research suggests that complex organizations are not highly rational entities and that their actions are not blessed with substantial foresight. Much of the discussion of these issues focuses on limitations caused by the presence of individual human decision makers or by conflict between them and their corporate masters. Consider, for example, limits on rationality outlined in transaction cost economics. This approach, most frequently associated with Williamson (1981), envisions the firm as a governance structure designed to economize on the costs of transactions by organizing them within the context of a hierarchy rather than through the mechanism of a market. This microlevel approach does not treat the corporation as an indivisible black box but as a structure filled with superiors and subordinates, with principals and agents. Williamson emphasized the extent to which actors in corporations do not act in fully rational fashion and the extent to which they may act opportunistically, in ways not consistent with the organization's self-interest.

One limitation on organizational rationality is the fact that the rationality of human action is "bounded"—failing to take account of every contingency as would a perfect information processor (Williamson, 1981). In addition to the general limitations discussed previously, bounded rationality also reflects the fact that decisions must be made under circumstances of uncertainty. Uncertainty is often great inside organizations. The diffusion of information in many parts of the firm may make it difficult for any individual or group to have a clear overview of events (Darley, 1996, pp. 16–17). Furthermore, individuals are often overconfident in their judgments, especially their ability to estimate the probability of uncertain events; this is as true of experts as it is of

nonexperts once the experts are forced to go beyond their data and rely on their judgment (Lichtenstein, Fischhoff, & Phillips, 1982).

A second limitation is that the actors in organizations engage in "opportunism"—they fail to act in the interest of the organization (Williamson, 1981, p. 554). Opportunism is not simply the organizational equivalent of some individual limitation. It is the product of interaction. Opportunism is also not just a matter of acting in one's self-interest, it is self-interest seeking with guile (Williamson, 1985). Individuals hide personal advantage, they shirk, they cover their tracks, they fail to follow orders (Goffman, 1969; Williamson, 1981). Opportunism is certainly not unique to organizations. However, controlling opportunism inside the firm is difficult. Rules designed to guard against opportunism either by compelling disclosure or by attempting to assure that the interests of the individual are the same as those of the organization are difficult to construct and costly to implement (Grandori, 1987). Thus, the whole system is less rational as individuals pursue their own self-interests. Opportunism, like bounded rationality, undermines the assumption that the corporation is a rational, utility-maximizing entity.

Bounded rationality and opportunism occasionally come together to create a particularly perverse type of corporate behavior called a "sunk cost" effect (Fox & Staw, 1979; Staw, 1976; Staw & Fox, 1977; Staw & Ross, 1987). Actors within a firm continue a course of action in which they have invested time and resources even when, from the point of view of the corporation, continuing is economically irrational. Change is called for, but it is resisted. The asbestos and Dalkon Shield episodes discussed previously illustrate how, despite inadequate or flawed products, firms may continue to support production after inadequacies are widely known.

Opportunism helps to explain sunk cost effects. When a firm experiences a failure, superiors may find themselves in a vulnerable position with low job security. In such circumstances, they engage in a process of retrospective rationalization, designed to explain past decisions to save their position in the firm (Tetlock, 1985). An example is the now-famous Ford Pinto memorandum providing a cost-benefit justification for not altering the automobile's gas tank design (Dowie, 1977). The memo reported an analysis that justified not spending \$11 per automobile to reduce the potential for gas tank rupture in the event of a rear-end collision because the total cost for the entire fleet would be \$137 million, and the benefit in terms of reduced deaths and burn injuries would only be \$49 million.

Framing effects that contribute to bounded rationality also help to explain the phenomenon of sunk

costs. Kahneman and Tversky (1984) discussed the importance of the decision frame in making a risky choice. Payoffs from prior decisions create a framework for new decisions. Perversely, when the past payoffs are negative, they may cause decision makers to frame choices in terms of losses. One of the primary findings of Kahneman and Tversky's work is that, when choices are framed in terms of gains, individuals tend to become risk-averse, but when choices are made within a framework of avoiding further losses, individuals tend to become risk seeking, literally throwing good money after bad (Arkes & Blumer, 1985).

The *Challenger* disaster reflects this process (Vaughan, 1996). The decision to launch in cold weather in the face of substantial engineering evidence indicating that this posed a serious risk was made following a substantial number of delayed launches that had placed NASA on the defensive and caused it to fear a loss of funding in future years. Had the issue arisen after a string of successful, on-time launches, the decision frame and the decision itself might well have been different.

Vaughan's (1996) summary of the *Challenger* disaster serves to weave together several of the themes encountered thus far:

No extraordinary actions by individuals explain what happened: no intentional managerial wrongdoing, no rule violations, no conspiracy. The cause of disaster was a mistake embedded in the banality of organizational life and facilitated by an environment of scarcity and competition, elite bargaining, uncertain technology, incrementalism, patterns of information, routinization, organizational and interorganizational structures, and a complex culture. (p. xiv)

Individuals as Subordinates in Corporate Hierarchies

The wrongdoing committed by subordinates acting within a hierarchy takes on a different tone from the rational calculi and rationalizations described previously. First, let us clarify what we mean by a "hierarchical relationship." A minimal hierarchy exists when one individual has a role-based, nonreciprocal ability to control the acts of another: when two individuals enter into the relationship of principal and agent. The superior has some role-based power or right of control over the subordinate (Coleman, 1990). Corporate hierarchy encourages subordinates to act, not solely in terms of individual self-interest but in terms of authority's orders. Hierarchy transforms the way in which the individual actor frames the situation and his or her choices within it. Whereas

bounded rationality, opportunism, and sunk cost framing effects act primarily as factors reducing the rationality of superiors acting as principals, hierarchical frames help to explain the behavior of subordinates acting as agents.

As is the case with superiors, the way in which subordinates frame a problem can affect their choices when asked to follow the directive of a superior. When an authority's instructions exceed normative bounds—for example, when an action that is illegal or immoral is requested—the subordinate is caught in a bind, placed in a "damned if you do and damned if you don't" position. Either carrying out the directive or disobeying it might be wrong, and either course of action might be punished. We call the carrying out of orders that are in some way illegitimate a "crime of obedience" (Kelman & Hamilton, 1989); in the original Kelman and Hamilton analysis, the central example was the behavior of Lieutenant William Calley during the 1968 My Lai massacre in Vietnam, but any superordinate-subordinate relationship is theoretically subject to this phenomenon. In crimes of obedience, the appropriate unit of analysis is "the individual in relation to the social and organizational systems to which he or she belongs" (Tetlock, 1985, p. 326).

People choose a course of action in response to such orders by picking frames within which to view and describe their situations. (By use of the active verb *picking*, we do not mean to imply that people necessarily consciously choose a way of looking at the situation, or even that they are consciously aware of how they end up viewing it. Instead, we mean that there tends to be a convergence between people's original predispositions, their original perceived self-interests, and their eventual way of looking at the situation of action under orders.) These frames tend to be self-justificatory. The actor who resists authority's demands or who expects to resist them is likely to focus on the deed, and especially on the foreseeable consequences of obedience. Such a focus includes the costs of action, phrased in terms of harm to potential victims, and the actor's own role as a physical contributor to these consequences. This deed-based frame of reference is one that also would apply in situations in which no hierarchy at all is involved (Hamilton & Sanders, 1992a).

In contrast, a subordinate who is inclined to obey can justify the action, to self or to others, in terms of the expectations of the subordinate role: "I'm just doing my job," or "It's the boss's orders" (Kelman & Hamilton, 1989). The "vocabulary of motive" (Mills, 1940) used to rationalize and excuse action is its role-based motive. The actor who focuses on demands of the subordinate role is using a frame of reference that stresses role expectations and obligations

over actions as determinants of sanction. This latter frame is just as “normal” as the former, but the deed-based frame is naked of context, whereas the role-based frame is, of necessity, organizationally embedded. To a greater or lesser extent, then, subordinates may respond because they feel obligated to obey someone who is a legitimate authority over them. Similarly, people often obey the law out of general concerns of its procedural fairness, independent of their own personal gains or losses (Tyler, 1990). Psychologically speaking, to be obligated is more than a response to external sanctions. It is a matter of loyalties. It involves some investment in, or sense of identification with, the role. As a motive, obligation tends to result in a high level of enthusiasm, participation, and organizational “good citizenship” (Kelman & Hamilton, 1989).

The ceding of choice is in fact so common in the face of authority that Milgram (1974) argued that there must be some evolutionary advantage to the fact that so many humans fall into an “agentic state” in response to orders. Milgram helped to convince generations of social scientists of the power of authority to demand the illegal and immoral through his experiments in which an apparently benign psychologist induced people to deliver what seemed to be severe shocks to an innocent victim (see, e.g., Miller, Collins, & Brief, 1995). One of the clearest messages of Milgram’s experiments was that people were not sadistic; they did not want to give the shocks. However, they simply could not get themselves out of the situation.

Milgram’s (1974) experimental participants were not rational actors in the sense of individual maximizers of pleasure and avoiders of pain. They apparently failed to weigh the costs and benefits of their conduct. The costs of disobedience to the experimenter were trivial. Indeed, they were informed that it would not even include loss of the money (\$4.50) paid them for their participation. The costs essentially involved coming to grips with the experimenter and saying “No.” Participants had to “make a scene” to get out of their dilemma. Fear of making a scene is hardly, from a rational actor perspective, a sufficient explanation for willingness to deliver shocks to a victim who pleads to be released. What had happened was that the participants in Milgram’s experiments had simply lost their perspective. They had accepted the frame set up by the authority. Within that frame, they were not individual choosers but were part of a larger structure. It was the structure, the authority-plus-subordinate, that was producing the effects observed.

We return to the third layer: not individual actors, not individuals embedded in hierarchies, but the corporation itself. How is it viewed as a moral actor?

Corporate Responsibility: Reality or Paradox?

Experimental Research

It has been widely observed that jurors award larger judgments in cases involving corporate defendants than in cases involving individual defendants. Initially, researchers hypothesized that what occurred was a “deep-pocket” effect, such that jurors gave plaintiffs more money when they thought defendants could afford to pay (Chin & Peterson, 1985; “Many Jurors Consider Deep Pockets,” 1993; Vidmar, 1994). However, in a set of laboratory experiments using mock jurors, Hans (1994; Hans & Ermann, 1989) found that the differential reactions to corporate and individual wrongdoing could not be explained by a deep-pocket hypothesis.

In these experiments, mock jurors were presented with a situation in which the defendant hired five workers to clear a newly purchased lot cluttered with debris. After 2 weeks on the job, four workers complained of dizziness when working, but the owner told them to keep working but to report if they felt worse. By the 3rd week, three of the workers began to have visible tremors and to experience breathing difficulties. Eventually, they were hospitalized for 2 weeks with severe respiratory problems and suffered some permanent lung damage. Subsequent inspection of the lot by federal officials revealed significant amounts of a highly toxic substance. The workers subsequently sued the owner for their injuries. In addition, a criminal action was brought against the owner. The participants in the experiment were asked whether the owner was civilly liable for the injuries and, if so, how much the plaintiffs should recover and then they were asked to play the role of criminal jurors in the criminal case brought against the owner. The sole manipulation in the first experiment was the nature of the defendant. In half the cases, the defendant was “Mr. Jones,” and in the other half, the defendant was the “Jones Corporation.”

Mock jurors found the corporation responsible for a greater number of claims, awarded the plaintiffs larger sums when the corporation was the defendant, and found the corporation guiltier (on a 5-point scale ranging from 5 [*definitely guilty*] to 1 [*definitely not guilty*]) in the criminal case (Hans & Ermann, 1989, p. 157). In an attempt to explain these results, the experimenters asked the participants a number of additional questions concerning the incident. They included “recklessness” questions (how reckless the defendant had been and whether the defendant knew beforehand about the risk); “harm” questions (how badly the plaintiffs were injured); “finances” questions (whether the defendant might be driven into

bankruptcy by the action and whether the defendant was insured); and “deterrence” questions (whether the defendant regretted what had happened and would be deterred by a judgment for the workers). When these factors were entered into regressions with award size and judgment of civil liability as dependent variables, recklessness was by far the strongest predictor. Hans and Ermann (1989) conjectured that “respondents made assessments of recklessness within the specific context of individual or corporate misbehavior, apparently applying a different standard of care to the two types of actors” (p. 161).

In a subsequent replication of this study, Hans (1994) conducted a telephone interview with a sample of 450 Delaware residents. The study used two vignettes, one of which followed the same basic fact pattern as the original research. Each story directly varied both the defendant’s wealth (assets of less than \$100,000 or more than \$1 million) and the type of defendant (individual, nonprofit organization, business corporation). Respondents were asked to assess the negligence and recklessness of the defendant. They also were asked to rate the seriousness of the plaintiff’s injury, to assess damages, to rate the contributory negligence of the plaintiff, and to rate the defendant’s ability to pay a judgment. In addition, respondents also were asked whether corporations should be held to a higher standard of responsibility than individuals. Both stories were analyzed together.

Respondents found the individual defendant to be the least negligent and reckless, the business corporation the most negligent, with the nonprofit group in the middle (Hans, 1994, pp. 21–22). Hans found that judgments of business negligence were significantly correlated with respondents’ agreement that corporations should be held to a higher standard than individuals. This finding lends support to the argument that greater responsibility is assigned to corporate actors because corporate actors are held to a higher standard of care (p. 26).

In an effort to replicate the Hans (1994) finding and to see whether it applied in other cultures, we asked a slight variation of the Jones story to a random sample of respondents in the Washington, DC and Tokyo metropolitan areas (Washington, $N = 202$; Tokyo, $N = 200$).² In our short vignette, we manipulated whether the actor was “Mr. Jones” or the “Jones Corporation” and the mental state of the defendant.³ Within our research and also in most legal contexts, mental state may be separated into three categories: intentionally harmful actions, negligent actions, and

acts that cause harm but are neither intentional nor negligent (cf. Heider, 1958; Shaver, 1985). Acts thought to have been committed intentionally are more blameworthy than those done negligently, which are, in turn, more blameworthy than pure accidents. In this vignette, in the high mental state condition, the actor is at least quite negligent, whereas in the low mental state condition, the actor is not negligent at all unless one believes he should have foreseen the possibility that the property was contaminated. In the current vignette, Jones either had the workers stop working as soon as they showed symptoms (low mental state) or he tells them to continue working even after they complained of illness (high mental state). Following each vignette, respondents were asked to rate the actor’s responsibility on a 100-point scale ranging from 0 (*not at all responsible*) to 100 (*fully responsible*); respondents also were asked to rate whether the actor could have avoided the injury on a scale from 0 (*could not have avoided*) to 100 (*could have avoided*). A basic analysis of variance model of the effect of mental state and type of actor on responsibility scores indicated that mental state had a significant effect on responsibility judgment in both Tokyo, $F(1, 430) = 59.83, p < .001$, and Washington, $F(1, 395) = 31.62, p < .001$. The effect of type of actor was not significant in either country and neither was the interaction between mental state and type of actor.

More interesting is the effect of mental state and type of actor on respondents’ judgment as to whether the actor could have done otherwise. These results are presented in Figure 1. In both the Tokyo and the Washington data, there is a significant main effect for both mental state and type of actor. For Washington, the effects were the following: mental state, $F(1, 392) = 35.8, p < .001$; and type of actor, $F(1, 392) = 3.9, p < .05$. For Tokyo, the effects were: mental state, $F(1, 396) = 65.6, p < .001$; and type of actor, $F(1, 396) = 4.7, p < .03$. Moreover, in both samples there was a significant interaction effect: Washington, $F(1, 392) = 5.4, p < .021$; Tokyo, $F(1, 396) = 7.2, p < .008$. As one can see in Figure 1, in both countries the type of actor has no effect on “could have avoided” judgments in the high mental state condition but has a significant impact in the low mental state condition. (Although this interaction is not significant when responsibility is the dependent variable, there is a similar trend, as shown in Figure 2.) Recall in the low condition, Mr. Jones/the Jones Corporation tells the workers to cease work when they first report symptoms. Judging the defendant’s behavior from the point of view of the immediate situation, the workers’ injuries might be thought of as an unfortunate accident for which no one is responsible. Only from the longer view of failing to foresee possible danger

²We also conducted the survey in Moscow, but due to an error in administration, one cell of the design was omitted for this vignette.

³For a discussion of how we constructed the survey instrument, see Hamilton and Sanders (1995) and Sanders and Hamilton (1996).

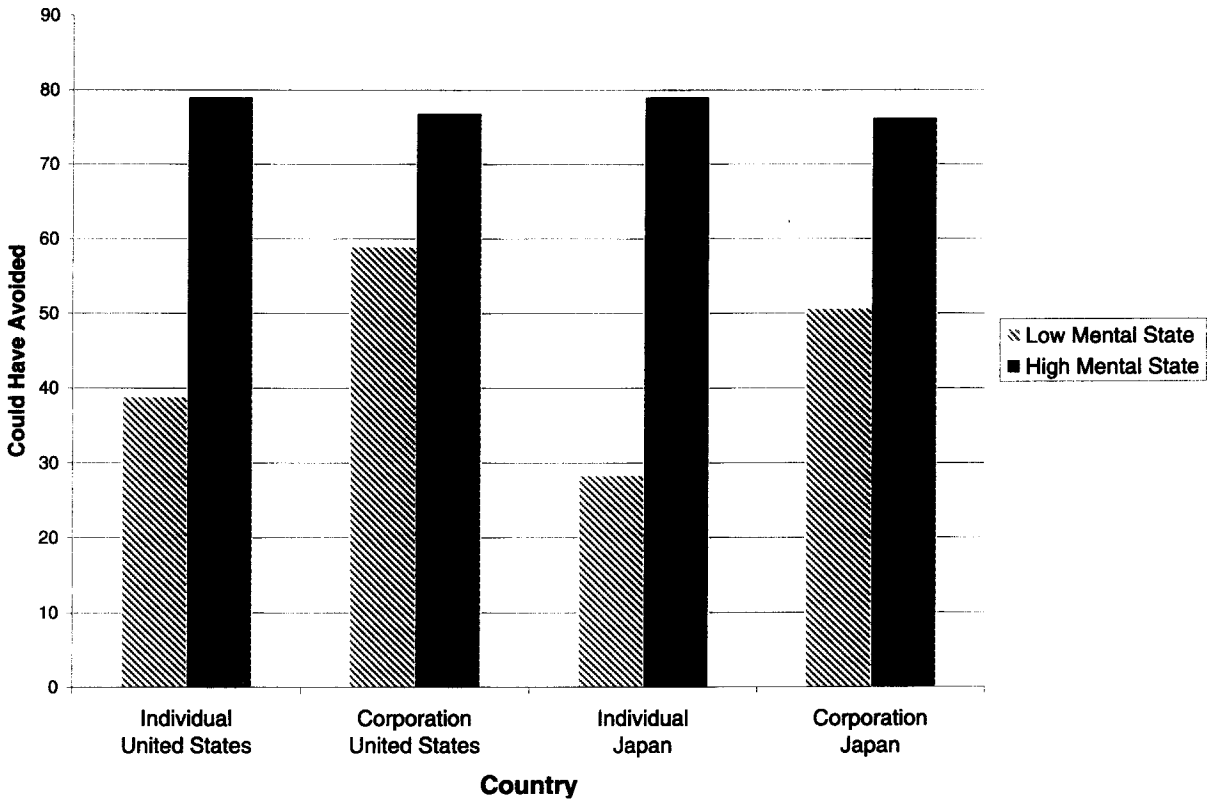


Figure 1. Actor could have avoided injuries: United States and Japan.

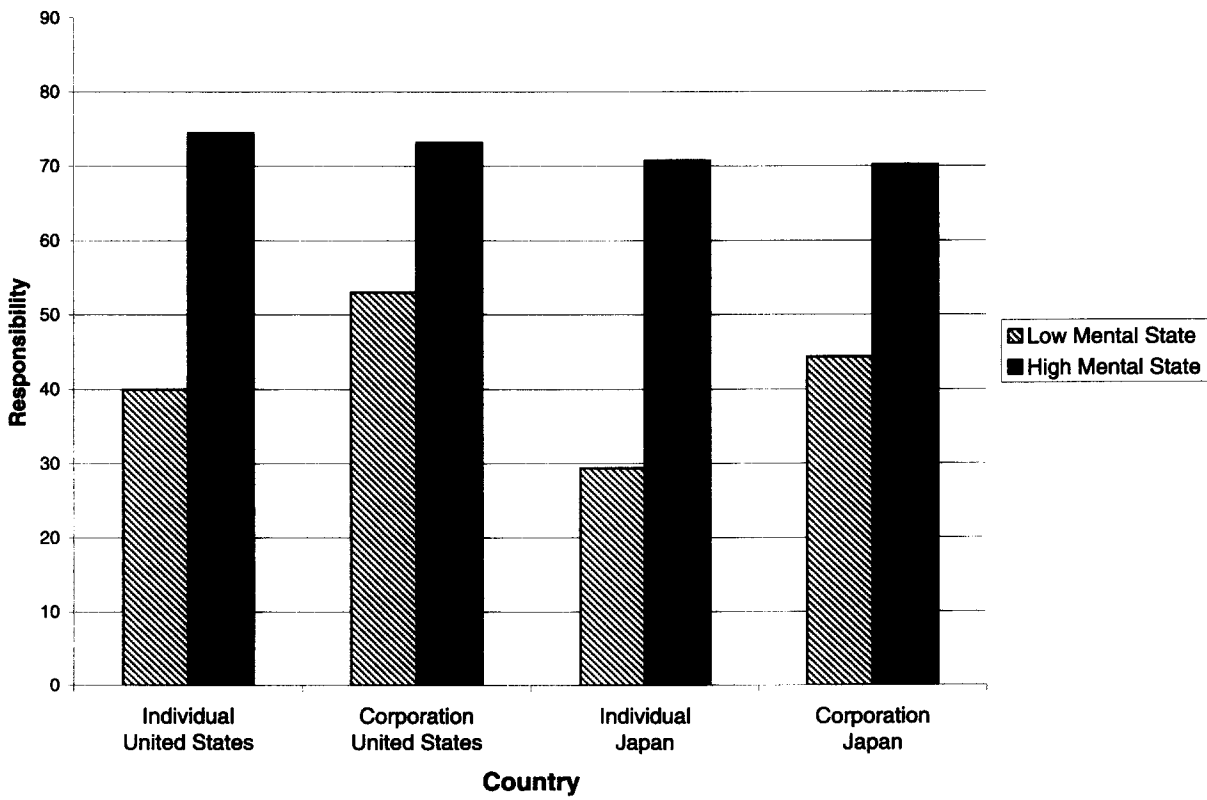


Figure 2. Actor responsibility: United States and Japan.

posed to anyone working in the area can we call the actor's behavior negligent. It is precisely here that respondents appear to hold corporate actors to higher levels of foresight and responsibility.

In another pair of laboratory studies, MacCoun (1996) reported a weak actor identity effect and in one experiment found some evidence that individuals may view corporations as more reckless and more able to foresee harm than individuals. He did not observe any corporate identity effect in a second experiment. Nevertheless, neither experiment supported the deep-pocket hypothesis.

The primary motivation for the Hans (1994; Hans & Ermann, 1989) research was a practical one: to test the deep-pocket hypothesis. However, her findings, our replication, and even the weaker support provided by the MacCoun (1996) research raised a more interesting theoretical question. Why should we hold organizations to a higher standard, if we do? The most plausible answer from these studies is that people think organizations possess greater foresight and, therefore, are more reckless when they do harm. For similar levels of wrongdoing and intentionality, organizations are more blameworthy and more evil in the second sense of the term.

The preceding discussion has suggested ways in which organizations are not particularly rational, and organizational structures impede, rather than enhance, rational action. However, one might argue that individuals attributing responsibility to organizations do not rely on this type of analysis when making judgments. This is a fair observation. After all, Hans's (1994) participants are not students of transaction cost economics, and they were not necessarily familiar with Milgram's (1974) research. If the experience of the public is that organizations are rational, well-organized, and capable of extraordinary foresight, the findings in the Hans experiment would not present a paradox. In our view, however, there is little reason to believe that individuals do have this impression of the organizations in which they themselves are embedded. The popularity of the cartoon strip *Dilbert* reflects a different reality. When they reflect on their own organization, many individuals perceive a disorganized, often irrational entity capable of no extraordinary foresight.

Why, then, are ordinary citizens willing to assign higher levels of responsibility to corporate than to individual actors? Why are organizations seen as more reckless, more evil? One approach to this question is to review the building blocks of human responsibility attribution and explore how these may apply to corporate actors. Normative judgments about individuals routinely take the following factors into account: intentionality, obligation, and consequences (Hamilton & Sanders, 1992a, 1992b).

1. The *intentionality* (or, more generally, the mental state) of the actor: In law and everyday life, we often distinguish between intentional acts, negligence, and strict liability. Intentionality is the key ingredient that separates out the first and second definitions of evil. Negligence, as it ordinarily is understood in law and everyday life, is centered on the idea of foresight. One is not responsible for those consequences one could not foresee. Finally, we occasionally hold individuals strictly liable, as when we hold parents responsible for their children's wrongdoing.

2. The *obligations* of the actor: Here, the focus is not on what the actor intended to do but what background standards or expectations existed for the actor. There is no moral responsibility absent obligation. Among individuals, the level of obligation varies depending on the power of the individual, with superordinates held to more and more diffuse obligations than less powerful subordinates (Hamilton & Sanders, 1992a; Kelman & Hamilton, 1989).

3. The *consequences* of the act: Finally, responsibility usually requires some adverse consequences. Seriousness of consequences does play a small role in attributions of responsibility, although for most acts of human wrongdoing it plays a less important role than mental state and role obligations (Hamilton & Sanders, 1992a). For the most serious events such as murder, however, seriousness of consequences may play a greater role in responsibility judgments.

We argue that the key to understanding normative judgments about corporate mental state is understanding how individuals and organizations are seen to vary on the other two dimensions, obligations and consequences, as well. Most dramatic are differences in the severity of consequences. One salient feature of corporate misdeeds is often the sheer scope of the harm done. Even unintended corporate misdeeds can do enormously more damage than the misdeeds of individual actors. Perhaps because of the potential reach of corporate wrongdoing, obligations are equally broad. Corporate actors are routinely thought to be responsible for outcomes for which we would rarely hold an individual responsible. Note that this is not simply another way of saying that corporate actors will be held responsible for acts at lower levels of mental state. Corporate actors are frequently held responsible for harm to remote strangers at distant points in time. General Motors may be held responsible for an injury to a pedestrian struck by a defective car manufactured 15 years earlier.

The research by Hans and colleagues (Hans, 1994; Hans & Ermann, 1989) and our own replication of the Jones vignette must be understood within this context. Conceptually, we usually think of the assessment of mental state as the independent variable that

determines the scope of one's obligations. The axiom "ought implies can" captures the idea that obligation and duty follow mental state. However, attributions may not always follow this path. We hypothesize that people adjust their perceptions of an actor's foresight to conform with perceived obligations, making mental state a dependent variable.

This possibility is particularly likely with respect to corporate liability. Corporate actors are often perceived in one of two diametrically opposed ways. On the one hand, the organization is often reified and its entire organizational structure is treated as a black box. This is particularly likely with organizations run by a founding charismatic leader such as the present-day Microsoft® or Ford Motor Company in an earlier era. In this situation, the organization becomes identified with the individual who charismatically leads it. The corporation Microsoft® can do far more than the human Bill Gates because it is an organized concatenation of humans under his command. This entrepreneurially led corporation may be seen as more responsible than individual actors because it is judged to be a kind of "large human." On the other hand, corporations like General Motors are often thought of as faceless bureaucracies. In this case, the complex bureaucratic structure of formal organizations acts as a two-edged sword. The complex structure obscures intentions, limits individual foresight, and thereby deflects responsibility away from individuals inside the organization. However, the bureaucratic structure also may obscure the fact that individuals in the organization are being held to a standard that they cannot realistically meet. This potential is exacerbated when organizations project an image of great ability in their advertising. These images may cause individuals to compare a given corporation against a theoretical ideal (McGill, 1996, p. 240). In sum, the organization is a series of entities—individuals and groups—sometimes tightly and sometimes loosely coupled together. If Microsoft® is a study in portraiture, General Motors is a messy collage. However, in both the "entrepreneurial corporation" and the "bureaucratic corporation," unrealistic levels of foresight may be attributed to the organization as a whole.

If our general argument is correct, then two things should follow. First, attributions of foresight to a complex organization should increase when the firm is being held accountable for an act of wrongdoing, as compared to other situations in which the "mental state" of the firm is being judged outside this normative context. Second, attributions of foresight should decrease to the degree the firm is neither black-boxed nor perceived as a faceless bureaucratic structure but rather is judged from the point of view of specific individuals inside the organization. It is from this latter

perspective that the organization appears to be the most complex and the least rational.

Conclusions

The discipline of psychology has well-developed concepts concerning the origins of antisocial acts in the personality structures of those who commit those acts. However, that individual-level psychology is largely irrelevant to the occurrence of a much more common source of evil actions. (Darley, 1996, p. 41)

The second kind of evil is the mindless or thoughtless kind. Individual humans are certainly capable of it, but corporate entities are experts at its commission. We have argued that this is a function of the complexity of corporations (and indeed, of organizations more generally). On the one hand, research shows that action inside complex organizations is not necessarily more rational and informed by greater foresight than are individual actions. The everyday experiences of individuals embedded in organizations seem to conform to this view. On the other hand, the results of several studies indicate that individuals hold organizations to a higher level of responsibility than individuals committing similar acts, and they do so in part because they perceive organizations to enjoy greater foresight. How can we make sense of all this?

We have addressed three layers of corporate identity: individual members acting on their own, individuals acting in hierarchies, and the corporation acting as a unit. At each layer, evil consequences of certain types ensue. We suggest that future research address how the scope of corporate harm, the extensive obligations to which organizations are held, and the perceived mental state of organizations interact to form judgments of corporate liability. Further structural elements such as the difference between the entrepreneurial and the bureaucratic corporation can help to illuminate what it means for a corporation, rather than a human being, to face justice. Together, these explorations may help to unmask the second face of evil.

References

- Annas, G. J., & Grodin, M. A. (Eds.). (1992). *The Nazi doctors and the Nuremberg Code: Human rights in human experimentation*. New York: Oxford University Press.
- Arkes, H., & Blumer, C. (1985). The psychology of sunk cost. *Organizational Behavior and Human Decision Processes*, 35, 124-140.
- Arlen, J., & Kraakman, R. (1997). Controlling corporate misconduct: An analysis of corporate liability regimes. *New York University Law Review*, 72, 687-779.
- Brodeur, P. (1985). *Outrageous misconduct: The asbestos industry on trial*. New York: Pantheon.

- Calhoun, C., & Hiller, H. (1988). Coping with insidious injuries: The case of Johns-Manville Corporation and asbestos exposure. *Social Problems*, 35, 162-181.
- Chin, A., & Peterson, M. A. (1985). *Deep pockets, empty pockets: Who wins in Cook County jury trials*. Santa Monica, CA: Rand Corporation.
- Coffee, J. (1981). No soul to damn, no body to kick: An unscandalized inquiry into the problem of corporate punishment. *Michigan Law Review*, 63, 1099-1278.
- Coleman, J. S. (1990). *Foundations of social theory*. Cambridge, MA: Belknap Press.
- Cressey, D. R. (1989). The poverty of theory in corporate crime research. In W. S. Laufer & F. Adler (Eds.), *Advances in criminological theory* (Vol. 1, pp.31-55). New Brunswick, NJ: Transaction.
- Curcio, A. A. (1996). Painful publicity: An alternative punitive damage sanction. *DePaul Law Review*, 4, 341-393.
- Darley, J. M. (1996). How organizations socialize individuals into evil-doing. In D. M. Messick & A. E. Tenbrunsel (Eds.), *Codes of conduct: Behavioral research into business ethics* (pp. 13-43). New York: Russell Sage Foundation.
- Davidson, A. (1990). *In the wake of the Exxon Valdez*. San Francisco: Sierra Club Books.
- Dowie, M. (1977, September/October). Pinto madness. *Mother Jones*, pp. 18-24, 28-32.
- Fisse, B., & Braithwaite, J. (1993). *Corporations, crime and accountability*. New York: Cambridge University Press.
- Fox, F., & Staw, B. M. (1979). The trapped administrator: The effects of job insecurity and policy resistance upon commitment to a course of action. *Administrative Science Quarterly*, 24, 449-471.
- French, P. A. (1984). *Collective and corporate responsibility*. New York: Columbia University Press.
- Goffman, E. (1969). *Strategic interaction*. Philadelphia: University of Pennsylvania Press.
- Grandori, A. (1987). *Perspectives on organization theory*. Cambridge, MA: Ballinger.
- Hamilton, V. L., & Sanders, J. (1992a). *Everyday justice: Responsibility and the individual in Japan and the United States*. New Haven, CT: Yale University Press.
- Hamilton, V. L., & Sanders, J. (1992b). Responsibility and risk in organizational crimes of obedience. In B. M. Staw & L. L. Cummings (Eds.), *Research in organizational behavior* (Vol. 14, pp. 49-90). Greenwich, CT: JAI.
- Hamilton, V. L., & Sanders, J. (1995). Crimes of obedience and conformity in the workplace: Surveys of Americans, Russians, and Japanese. *Journal of Social Issues*, 51, 67-88.
- Hans, V. P. (1989). The jury's response to business and corporate wrongdoing. *Law & Contemporary Problems*, 52, 177-203.
- Hans, V. P. (1994, June). *Lay reactions to corporate defendants*. Paper presented at the Law and Society Association Meeting, Phoenix, AZ.
- Hans, V. P., & Ermann, M. D. (1989). Responses to corporate versus individual wrongdoing. *Law and Human Behavior*, 13, 151-166.
- Heider, F. (1958). *The psychology of interpersonal relations*. New York: Wiley.
- Kahneman, D., & Tversky, A. (1984). Choices, values and frames. *American Psychologist*, 39, 314-350.
- Kelman, H. C., & Hamilton, V. L. (1989). *Crimes of obedience*. New Haven, CT: Yale University Press.
- Laufer, W. (1994). Corporate bodies and guilty minds. *Emory Law Journal*, 43, 647-730.
- Lempert, R. O., & Sanders, J. (1986). *An invitation to law and social science*. Philadelphia: University of Pennsylvania Press.
- Lichtenstein, S., Fischhoff, B., & Phillips, L. (1982). Calibration of probabilities: The state of the art to 1980. In D. Kahneman, P. Slovic, & A. Tversky (Eds.), *Judgment under uncertainty: Heuristics and biases* (pp. 306-334). Cambridge, England: Cambridge University Press.
- Lifton, R. J. (1986). *The Nazi doctors: Medical killing and the psychology of genocide*. New York: Basic Books.
- MacCoun, R. J. (1996). Differential treatment of corporate defendants by juries: An examination of the "deep-pockets" hypothesis. *Law and Society Review*, 30, 121-161.
- Many jurors consider deep pockets and ignore presumption of innocence. (1993, February 22). *National Law Journal*, 15, p. S12.
- McGill, A. L. (1996). Responsibility judgments and the causal background. In D. M. Messick & A. E. Tenbrunsel (Eds.), *Codes of conduct: Behavioral research into business ethics* (pp. 228-242). New York: Russell Sage Foundation.
- Metzger, M. B., & Dalton, D. R. (1996). Seeing the elephant: An organizational perspective on corporate moral agency. *American Business Law Journal*, 33, 489-576.
- Milgram, S. (1974). *Obedience to authority: An experimental view*. New York: Harper & Row.
- Miller, A. G., Collins, B. E., & Brief, D. E. (Eds.). (1995). Perspectives on obedience to authority: The legacy of the Milgram experiments [Special issue]. *Journal of Social Issues*, 31(3).
- Mills, C. W. (1940). Situated actions and vocabularies of motive. *American Sociological Review*, 5, 904-913.
- Pollock, F., & Maitland, F. W. (1968). *History of English law*. Cambridge, England: Cambridge University Press. (Original work published 1898)
- Sanders, J., & Hamilton, V. L. (1996). Distributing responsibility for wrongdoing inside corporate hierarchies: Public judgments in three societies. *Law and Social Inquiry*, 21, 815-855.
- Shaver, K. G. (1985). *The attribution of blame*. New York: Springer.
- Simpson, J. A., & Weiner, E. S. C. (Eds.). (1991). *Oxford English Dictionary* (2nd ed.). Oxford, England: Clarendon.
- Sobol, R. B. (1991). *Bending the law: The story of the Dalkon Shield bankruptcy*. Chicago: University of Chicago Press.
- Solzhenitsyn, A. I. (1973). *The gulag archipelago* (Vol. 1). New York: Harper & Row.
- Staub, E. (1989). *The roots of evil: The origins of genocide and other group violence*. New York: Cambridge University Press.
- Staw, B. M. (1976). Knee-deep in the big muddy: A study of escalating commitment to a chosen course of action. *Organizational Behavior and Human Performance*, 16, 27-44.
- Staw, B. M., & Fox, F. (1977). Escalation: Some determinants of commitment to a personally chosen course of action. *Human Relations*, 30, 431-450.
- Staw, B. M., & Ross, J. (1987). Behavior in escalation situations: Antecedents, prototypes, and solutions. In B. M. Staw & L. L. Cummings (Eds.), *Research in organizational behavior* (Vol. 9, pp. 39-78). Greenwich, CT: JAI.
- Stone, C. (1975). *Where the law ends: The social control of corporate behavior*. New York: Harper & Row.
- Tetlock, P. E. (1985). Accountability. In L. L. Cummings & B. M. Staw (Eds.), *Research in organizational behavior* (Vol. 7, pp. 297-332). Greenwich, CT: JAI.
- Tyler, T. R. (1990). *Why do people obey the law?* New Haven, CT: Yale University Press.
- Upham, F. K. (1987). *Law and social change in postwar Japan*. Cambridge, MA: Harvard University Press.
- Vaughan, D. (1996). *The Challenger launch decision: Risky technology, culture and deviance at NASA*. Chicago: University of Chicago Press.
- Vidmar, N. (1994). Empirical evidence on the deep pockets hypothesis: Jury awards for pain and suffering in medical malpractice cases. *Duke Law Journal*, 43, 217-266.

WRONGDOING IN AND BY CORPORATIONS

Williamson, O. (1981). The economics of organization: The transaction cost approach. *American Journal of Sociology*, 87, 548–577.

Williamson, O. (1985). *The economic institutions of capitalism*. New York: Free Press.