

Corporate Criminal Liability Conundrum: A Comparative Analysis

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EXECUTIVE SUMMARY

The concept of corporate criminal liability, which has been around for quite some time, has been the focus of in-depth and heated debate in recent years, particularly with regard to its evolution and the effectiveness of its application. In spite of this, the most fundamental question of corporate criminal liability, which is, specifically, the role it serves in relation to other liability regimes, continues to be unresolved. The existing legal frameworks for imposing criminal liability on corporations suffer from a lack of clarity regarding the standards for imposing liability and the repercussions for corporations. This lack of clarity results in inconsistent application of the law and reduces the efficacy of corporate criminal liability as a tool for discouraging wrongdoing by corporations. This problem is made considerably worse by the fact that many corporate crimes are complicated and involve many countries. As a result, it is difficult to set exact rules for determining liability and to assure uniform enforcement across several different jurisdictions.

INTRODUCTION

The concept of criminal liability for corporations may be traced back to ancient legal precedents, and around the end of the 19th century, it became the focus of doctrinal arguments. The distinct national histories, legal systems, economic conditions, and political environments of each country have had a significant impact on the conceptualization, as well as the subsequent evolution, of the idea of corporation criminal liability. In contrast to how it developed in common law systems, the idea of criminal responsibility for corporations has progressed very differently in civil law systems. In a similar manner, the concept of criminal responsibility for corporations has evolved differently within the frameworks of common law and civil law to account for the historical events and current socioeconomic situations of a variety of countries. The development of corporate criminal liability over the course of time demonstrates that it is in line not only with the core principles of criminal law but also with the essential nature of companies.

Early in evolution of Roman law, the capacity people had to form commercial, religious, and charitable organizations was recognized. Despite the belief that these associations lacked free will and were legal fictions according to Roman theory, the following entities existed, nonetheless. Creation of autonomous entities with obligations as well as rights served as the basis for the growth of corporate organizations in the mediaeval period. Later, among the twelfth and fourteenth centuries, the concept of corporate criminal liability arose.

The idea originated acknowledged that businesses had their own free will, which led to the subsequent imposition of criminal liability. It was possible for a corporation to commit every crime that a person could, with a few exceptions including bigamy, rape, and other similar offences. This was the case even if the conduct in question had nothing at all to do with the purpose for which the corporate body was created. The preceding concept was deeply ingrained in the way people thought across continental Europe up to the end of the 18th century.

The mediaeval concept was built on the idea that all businesses should be held liable for the civil and criminal offences committed by its members. This conception underpinned the foundation of the mediaeval concept. During the 16th and 17th centuries, commercial enterprises mushroomed and rose to prominence in economic and social life. The need to rein in corporate wrongdoing grew as time went on. Companies are considered “legal persons” in their own right, having their own identities and sets of assets that are distinct from those of their shareholders. In the 1840s, corporate criminal liability in England began when the courts held corporations accountable for violations of strict liability. Using the concept of vicarious liability from tort law, courts quickly began to impose criminal liability on corporations in cases where natural individuals may also be held vicariously

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