ARTICLES

REEVALUATING CORPORATE CRIMINAL LIABILITY: THE DOJ'S INTERNAL MORAL-CULPABILITY STANDARD FOR CORPORATE CRIMINAL LIABILITY

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I. INTRODUCTION

In 1909, the scope of American criminal jurisprudence was forever changed by the creation of corporate criminal liability in the landmark decision *New York Central & Hudson River Railroad Co. v. United States*.[1] *New York Central*, however, was only the beginning of corporate criminal liability's evolution. Over the next one hundred years, numerous appellate courts interpreted the Supreme Court's conclusion that a corporation could not be immune from "all punishment because of the old and exploded doctrine that a corporation cannot commit a crime"[2] to create a plethora of precedent establishing an exceedingly low bar for liability.[3]

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1. 212 U.S. 481 (1909); *see* Jerold H. Israel, Ellen S. Podgor, Paul D. Borman & Peter J. Henning, *White Collar Crime: Law and Practice* 53 (3d ed., West 2009) (discussing the history of corporate criminal liability).

2. *N.Y. Central*, 212 U.S. at 495–496.

3. *See* Albert W. Alschuler, *Two Ways to Think about the Punishment of Corporations*, 46 Am. Crim. L. Rev. 1359, 1363 (2009) (observing that after *N.Y. Central*, courts

Currently, corporate criminal liability attaches upon a meager showing of respondeat superior, a tort concept only requiring that an employee's or agent's actions (a) are within the scope of his or her duties and (b) are intended, even if only in part, to benefit the corporation.[4] The standard is so *de minimis* that it allows a corporation to be held criminally liable even if (a) the criminal behavior was perpetrated by a low-level, rogue employee without upper-level management's knowledge; (b) the perpetrator was explicitly instructed by the corporation not to engage in the conduct and was directly violating established company policy; and (c) the company had an established and effective compliance program in place at the time of the offense and the conduct came to light because of such compliance program.[5]

As might be expected from the description above, the two-prong approach to corporate criminal liability has engendered great disfavor among various groups, most notably academics and the criminal-defense bar. Both argue in part that the standard is too easily satisfied.[6] As one commentator remarked, "[T]he criminal case against a corporation, once there is evidence that even a

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frequently imposed corporate criminal liability despite the legislature's silence on the issue).

4. *See In re Hellenic, Inc.*, 252 F.3d 391, 395 (5th Cir. 2001) ("An agent's knowledge is imputed to the corporation [when] the agent is acting within the scope of his authority and [when] the knowledge relates to matters within the scope of that authority." (footnote omitted)); *United States v. 7326 Hwy. 45 N.*, 965 F.2d 311, 316 (7th Cir. 1992) ("[A]cting within the scope of employment means 'with intent to benefit the employer.'" (citations omitted)); Memo. from Paul J. McNulty, Dep. Att'y Gen., U.S. Dep't of Just., to Heads of Dep't Components and U.S. Att'ys, *Principles of Federal Prosecution of Business Organizations* 2 (2006) (available at http://www.justice.gov/dag/speeches/2006/mcnulty_memo.pdf) ("Corporations are 'legal persons,' capable of suing and being sued, and capable of committing crimes. . . . To hold a corporation liable for these actions, the government must establish that the corporate agent's actions ([i]) were within the scope of his duties and (ii) were intended, at least in part, to benefit the corporation."); Dane C. Ball & Daniel E. Bolia, *Ending a Decade of Federal Prosecutorial Abuse in the Corporate Criminal Charging Decision*, 9 Wyo. L. Rev. 229, 234 (2009) (stating that "if a criminal act benefits only the employee, officer, or director, vicarious liability does not apply" (footnote omitted)).

5. *See* Preet Bharara, *Corporations Cry Uncle and Their Employees Cry Foul: Rethinking Prosecutorial Pressure on Corporate Defendants*, 44 Am. Crim. L. Rev. 53, 64–65 (2007) (describing situations in which a corporation is criminally liable); Pamela H. Bucy, *Corporate Criminal Liability: When Does It Make Sense?* 46 Am. Crim. L. Rev. 1437, 1441 (2009) (observing situations in which a corporation may be held criminally liable despite its best efforts to prevent wrongdoing and in the absence of any benefit to the corporation).

6. *See* Pamela H. Bucy, *Corporate Ethos: A Standard for Imposing Corporate Criminal Liability*, 75 Minn. L. Rev. 1095, 1096 (1991) (noting that commentators are skeptical of using criminal prosecution to punish corporations).

single low-level employee engaged in criminal activity on the job, is virtually bulletproof."[7] Another has written, "Prosecutors have inordinate leverage due to the current application of the doctrine of vicarious liability. A single low-level employee's criminal conduct can be sufficient to trigger criminal liability on the part of the corporation."[8]

But what is at the heart of this discomfort and unease with the current standard? Certainly there are other aspects of criminal law that assist the prosecution in its task and lower the applicable threshold for conviction. Examples include conspiracy law and strict-liability offenses.[9] Perhaps then it is not the ease with which the respondeat superior standard may be met, but rather that the test, borrowed directly from tort law, wholly ignores a fundamental tenet of criminal jurisprudence present in crimes applicable to individuals: moral culpability.[10]

II. MORAL CULPABILITY AND THE PRINCIPLE OF DESERVING PUNISHMENT

For individuals, there are two fundamental requirements for criminal liability. First, the individual must engage in conduct that creates moral culpability, which means it is conduct "deserving of punishment."[11] Second, the morally culpable conduct must

7. Bharara, *supra* n. 5, at 76.

8. Andrew Weissmann, *A New Approach to Corporate Criminal Liability*, 44 Am. Crim. L. Rev. 1319, 1320 (2007).

9. Jennifer Moore, *Corporate Culpability under the Federal Sentencing Guidelines*, 34 Ariz. L. Rev. 743, 747 (1992) (explaining that "[a]s the proliferation of strict[-]liability offenses attests, the principle of responsibility is not absolute, and some commentators see the growth of strict liability as a repudiation of the traditional link between culpability and punishment" (footnote omitted)); Herbert Wechsler, William Kenneth Jones & Harold L. Korn, *The Treatment of Inchoate Crimes in the Model Penal Code of the American Law Institute: Attempt, Solicitation, and Conspiracy*, 61 Colum. L. Rev. 957, 959–960 (1961) (describing the prosecutorial advantages of a conspiracy charge).

10. *See* Bharara, *supra* n. 5, at 63 (noting that "there has been even some judicial recognition that corporate criminal law wears the garment of vicarious liability somewhat like an ill-fitting hand-me-down, but significantly, courts have accepted the tradeoffs between legal coherence and crime prevention"); Bucy, *supra* n. 6, at 1114–1115 (discussing *N.Y. Central*'s flaw of failing to appreciate the inherently different nature of civil and criminal law).

11. John Hasnas, *The Centenary of a Mistake: One Hundred Years of Corporate Criminal Liability*, 46 Am. Crim. L. Rev. 1329, 1330 (2009); William S. Laufer & Alan Strudler, *Corporate Intentionality, Desert, and Variants of Vicarious Liability*, 37 Am. Crim. L. Rev. 1285, 1289 (2000).

have been made criminal.[12] With regard to corporate criminality, the second tenet is arguably satisfied by the respondeat superior standard. The conduct that has been made criminal is any situation in which a corporation's employee or agent engages in criminal conduct within the scope of his or her duties and with the intent to benefit the corporation. The first tenet, however, is wholly ignored, and the current standard allows conviction of corporations when the entity has engaged in no morally culpable behavior.[13] As an example, consider the moral distinction between a corporation whose board of directors encourages employees to engage in illegal behavior and a corporation that, through utilizing an effective compliance program, discovers and punishes a rogue employee who acted against direct corporate and managerial instructions to the contrary. Should each of these corporations be viewed as equally guilty under the law? Just as one would feel great discomfort if an individual were convicted of engaging in conduct that did not deserve punishment, there is a sense of great unease when corporations suffer this precise fate.

It is at this point in the analysis of corporate criminal liability when some commentators argue that corporations should simply not be subject to criminal liability because they, as fictitious entities, cannot be morally culpable.[14] This premise should be rejected, however, because corporations act as persons under the law and must be treated accordingly.[15] Further, it is vital to society that entities as powerful as corporations be accountable for their actions in both the civil and criminal arenas.[16] Therefore, to

12. *See* Bharara, *supra* n. 5, at 57 (explaining that a corporation is criminally liable only for the illegal acts of an employee).

13. *See* Matt Senko, *Prosecutorial Overreaching in Deferred Prosecution Agreements*, 19 S. Cal. Interdisc. L.J. 163, 184 (2009) (arguing that "[t]he abrogation of the intent requirement for corporate defendants destabilizes the essential framework of criminal justice by punishing those who have no subjective culpability").

14. *See* Bucy, *supra* n. 5, at 1440 (discussing the reasons why some argue corporations, as fictional entities, should not be prosecuted); Samuel W. Buell, *The Blaming Function of Entity Criminal Liability*, 81 Ind. L.J. 473, 475 (2006) (explaining that academics have criticized corporate criminal liability because of "the impossibility of fitting liberal concepts about responsibility with nonhuman actors").

15. *See e.g.* 1 U.S.C. § 1 (2006) ("In determining the meaning of any Act of Congress . . . the words 'person' and 'whoever' include corporations . . . .").

16. *See* Bucy, *supra* n. 5, at 1437 (stating that corporations should be prosecuted because they "often engage in activity that harms lots of people"); *see generally* Joan MacLeod Heminway, *Enron's Tangled Web: Complex Relationships; Unanswered Questions*, 71 U. Cin. L. Rev. 1167 (2003) (discussing the effects of the Enron affair).

alleviate the discomfort surrounding current corporate criminal liability, a moral-culpability element must be added to the existing two-prong respondeat superior standard.[17] But how does one establish whether a corporation's actions have satisfied a moral-culpability element?

Pamela Bucy addressed just this issue in her 1991 article entitled *Corporate Ethos: A Standard for Imposing Corporate Criminal Liability*.[18] In her article, Bucy argued that corporations have distinct and identifiable personalities or "ethos," and that only organizations with a corporate ethos that encouraged employees or agents to commit criminal acts should be held criminally accountable under the law.[19] Interestingly, Bucy advanced the following eight factors for consideration in determining whether a corporate ethos encouraged criminal conduct:

(1) Was the corporation organized in a manner that encouraged the criminal conduct?

(2) Were goals set by the corporation that encouraged illegal behavior?

(3) Were corporate employees educated about legal requirements?

(4) Were legal requirements monitored?

(5) Who was involved in the criminal conduct, and was it "recklessly tolerated" by higher echelon officials?

(6) How did the corporation react to past violations of the law and individual violators?

(7) Were there compensation incentives for legally inappropriate behavior?

17. Amendments to the common law test for vicarious liability could be achieved either through judicial or legislative action.

18. Bucy, *supra* n. 6, at 1099. Though Bucy described her proposed theory as addressing a lack of "intent" in the respondeat superior standard, for ease of discussion this Article will examine her proposal as one that can be generically described as a culpability element.

19. *Id.*

(8) Are there indemnification practices that encourage criminal conduct?[20]

Bucy proposed that corporate criminal liability should attach if these factors indicate that the corporate ethos encouraged the employee's or agent's criminal conduct.[21]

III. MORAL CULPABILITY AND THE DOJ'S PRINCIPLES OF PROSECUTION OF BUSINESS ORGANIZATIONS

Though today's Department of Justice would likely challenge Bucy's proposed modification of the respondeat superior test, it cannot deny that moral culpability should at least be considered before criminal charges are levied against a corporate defendant. This is because, although Bucy's culpability factors have not been incorporated into the common law, the Department of Justice has essentially mimicked this moral-culpability analysis in its *Principles of Federal Prosecution of Business Organizations* ("*Principles of Prosecution*").[22]

The *Principles of Prosecution*, which was first issued by then Deputy Attorney General Eric Holder on June 16, 1999, listed eight factors for consideration before criminally charging a corporation.[23] The memorandum has undergone several iterations since its initial release, but the basic structure of the nine core principles have remained the same.[24] The factors for consideration by the Department of Justice are:

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20. *Id.* at 1129–1146.

21. *Id.* at 1128.

22. *See* Laufer & Strudler, *supra* n. 11, at 1303 (noting that "throughout the [federal prosecutorial guidelines], prosecutors are cautioned about resorting to vicarious liability [if] it would be unfairly strict to the 'corporate person'").

23. Memo. from Eric H. Holder, Jr., Dep. Att'y Gen., U.S. Dep't of Just., to Heads of Dep't Components and U.S. Att'ys, *Bringing Criminal Charges against Corporations* 3 (June 16, 1999) (available at http://www.justice.gov/criminal/fraud/documents/reports/1999/charging-corps.PDF). The memorandum from Holder was later amended by Deputy Attorney General Larry Thompson, who changed the title to *Principles of Federal Prosecution of Business Organizations*. Memo. from Larry D. Thompson, Dep. Att'y Gen., U.S. Dep't of Just., to Heads of Dep't Components and U.S. Att'ys, *Principles of Federal Prosecution of Business Organizations* 1 (Jan. 20, 2003) (available at http://www.usdoj.gov/dag/cftf/corporate_guidelines.htm).

24. Memo. from Larry D. Thompson, *supra* n. 23, at 3; Memo. from Paul J. McNulty, *supra* n. 4, at 4.

1. the nature and seriousness of the offense, including the risk of harm to the public, and applicable policies and priorities, if any, governing the prosecution of corporations for particular categories of crime;
2. the pervasiveness of wrongdoing within the corporation, including the complicity in, or condonation of, the wrongdoing by corporate management;
3. the corporation's history of similar conduct, including prior criminal, civil, and regulatory enforcement actions against it;
4. the corporation's timely and voluntary disclosure of wrongdoing and its willingness to cooperate in the investigation of its agents;
5. the existence and adequacy of the corporation's pre-existing compliance program;
6. the corporation's remedial actions, including any efforts to implement an effective corporate compliance program or to improve an existing one, to replace responsible management, to discipline or terminate wrongdoers, to pay restitution, and to cooperate with the relevant government agencies;
7. collateral consequences, including disproportionate harm to shareholders, pension holders and employees not proven personally culpable and impact on the public arising from the prosecution;
8. the adequacy of the prosecution of individuals responsible for the corporation's malfeasance; and
9. the adequacy of remedies such as civil or regulatory enforcement actions.[25]

These Department of Justice principles and the Bucy culpability factors are strikingly similar. Perhaps this explains the great divide between a dissatisfied academy and defense bar and a seemingly content law-enforcement body. The Department of Justice is not concerned with the lack of moral culpability in the common law corporate criminal liability standard because it has

25. Memo. from Paul J. McNulty, *supra* n. 4, at 4 (internal cross-references omitted) (emphasis in original).

implemented a moral-culpability element on its own and requires that it be considered before bringing any criminal charges.[26] Maybe corporations should be satisfied that despite the reluctance of the courts to revise the standard established in *New York Central* over one hundred years ago to incorporate a moral-culpability element, the Department of Justice has seen fit to implement a new standard on its own volition. There are, however, two fundamental flaws with allowing the status quo to suffice.

First, while the government's consideration of the *Principles of Prosecution* may be "mandatory," these guidelines create no legal rights for corporate defendants.[27] In fact, since the *Principles of Prosecution* is technically found within the *United States Attorneys' Manual*, the following disclaimer contained in the introduction applies to any attempt to enforce this additional moral-culpability element to the basic respondeat superior standard:

> The Manual provides only internal Department of Justice guidance. It is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. Nor are any limitations hereby placed on otherwise lawful litigative prerogatives of the Department of Justice.[28]

While the Department of Justice's actions to incorporate consideration of moral culpability should be applauded, moral culpability should be a fundamental aspect of the common law test rather than an unenforceable aspiration on the part of the prosecuting entity. Furthermore, because the *Principles of Prosecution* is an internal departmental document, the Department of Justice retains the ability to amend it at any given point, including in ways that are viewed as inappropriate or even

26. *See* Laufer & Strudler, *supra* n. 11, at 1305 (recognizing that the federal prosecutorial guidelines reflect prosecutors' abandonment of traditional vicarious liability rules in favor of new set of rules focusing on moral culpability).

27. Ellen S. Podgor, *Department of Justice Guidelines: Balancing "Discretionary Justice"*, 13 Cornell J.L. & Pub. Policy 167, 170 (2004).

28. U.S. Dep't of Justice, *United States Attorneys' Manual* § 1-1.100 (updated May 2009) (available at http://www.justice.gov/usao/eousa/foia_reading_room/usam/title1/1mdoj.htm).

constitutionally offensive.[29] If, as even the Department of Justice appears to agree, moral culpability should be considered before attaching criminal liability to a corporation, moral culpability must become an established and legally binding element of the applicable standard.

Second, the *Principles of Prosecution* suffers from a flaw that is also found within the Bucy culpability factors for establishing corporate criminal liability. Each contains elements for consideration that are outside the applicable scope of inquiry because they examine actions by the corporation that occur after the criminal conduct under scrutiny. Focusing on the *Principles of Prosecution*, the nine factors may be sorted into the following distinct categories:

PRE-OFFENSE OR OFFENSE-SPECIFIC CONDUCT

- Nature and Seriousness of the Offense
- Pervasiveness of the Wrongdoing
- Corporation's Past History
- Existence and Adequacy of the Pre-Existing Compliance Program

POST-OFFENSE CONDUCT

- Timely and Voluntary Disclosure
- Remedial Actions
- Collateral Consequences of Prosecution
- Adequacy of Civil or Regulatory Enforcement
- Adequacy of Prosecution of Individuals

Contrary to the full criteria advanced by the *Principles of Prosecution*, only those factors listed in the pre-offense or offense-specific conduct category are properly considered in determining corporate moral culpability. This is because the actions taken by the corporation after the discovery of wrongdoing do not offer reliable insight into the true ethos of the corporation at the time of the underlying offense. For instance, a corporation that was not

29. *See* Podgor, *supra* n. 27, at 170 (emphasizing that the guidelines may be changed at any time and are not subject to judicial review).

morally culpable at the time a rogue employee committed a criminal act may later attempt to obstruct justice to prevent detection of the conduct. While this might properly result in a corporate conviction for obstruction of justice, the organization should not also be held accountable for the previous acts of the employee. Similarly, a corporation that was morally culpable for the acts of its employee because it encouraged the illegality does not become morally pure merely because it offers remedial amends once the behavior is discovered. As such, focusing only on pre-offense and offense-specific considerations creates a more reliable mechanism for the culpability analysis.

Drawing on the four factors described above, an analysis of whether a corporation encouraged the criminal behavior of its employee or agent for purposes of the proposed moral-culpability element would include consideration of several questions. First, what does the nature and seriousness of the offense tell us about the corporate ethos? If the offense is minor, the individual may have believed he or she would succeed undetected by the corporation. If, however, the offense is particularly egregious and far reaching, it is more likely that the individual believed the conduct would be permitted and his or her action would go unpunished and unreported by the corporation. Second, was the conduct pervasive? The involvement of multiple employees, agents, or units of the corporation likely signals a corporate ethos that encouraged, or at least tolerated, legally questionable activity. Third, did the corporation have a history of past bad acts, and what was the response to such activities? If a corporation has an extensive history of employees and agents engaging in improprieties that go unpunished, the corporation may be found to be encouraging, even if only indirectly, further criminal conduct. If, however, the corporation has a limited history of employee or agent misconduct and any discovered misconduct is dealt with swiftly and severely, the corporation is likely not engaged in wrongful conduct. Finally, did the corporation have a pre-existing and effective compliance program? Particularly in today's enforcement environment, the failure to have an effective compliance program sends a strong message to employees and agents that enforcing legal obligations is not a priority for the organization. Such a message indicates the existence of a corporate ethos that encouraged the criminal conduct at issue.

To be clear, the remaining five post-offense conduct factors from the *Principles of Prosecution* are not irrelevant because they remain exceedingly important in determining whether an organization should—not may—be prosecuted. When the government is determining whether an individual may be charged with fraud, consideration of whether the victim has received restitution is not a factor in the legal analysis of the elements of the offense.[30] Such remedial measures are considered, however, when the prosecution determines how it should exercise its prosecutorial discretion, a purely permissive undertaking.[31] In a similar fashion, instead of focusing on whether the legal elements of corporate criminal liability have been satisfied, the analysis of post-offense conduct by a corporation should be relegated to the government's permissive determination of whether to prosecute.[32]

IV. CONCLUSION

In summary, the common law respondeat superior test for corporate criminal liability should be expanded beyond the current two-prong test to encompass a third prong regarding moral culpability. The revised test, which might be termed the moral-culpability standard, would permit corporate criminal liability as described below:

A corporation shall be criminally liable for the criminal acts of its employees or agents when:

(1) The employee's or agent's criminal acts:

a. Were within the scope of their duties; *and*

b. Were intended to benefit the corporation;

And,

30. *See e.g.* 18 U.S.C. § 1031(a) (2006) (setting forth the elements the government must prove to prosecute a person for committing fraud against the United States, which do not include whether restitution has been made).

31. *See* Podgor, *supra* n. 27, at 168 (explaining that prosecutors have discretion regarding "whether cases will be plea bargained, dismissed, or tried").

32. This does not mean that the government may not also consider the first four pre-offense and offense-specific conduct factors in deciding whether it should prosecute. Rather, this Article merely argues that the five post-conduct factors should not be part of the proposed common law moral culpability analysis.

(2) The corporation is morally culpable for encouraging the above-described criminal acts of its employees or agents based on an analysis of the following four factors:

a. The nature and seriousness of the offense, including the risk of harm to the public;
b. The pervasiveness of wrongdoing within the corporation, including the complicity in, or condonation of, the wrongdoing by corporate management;
c. The corporation's history of similar conduct, including prior criminal, civil, and regulatory enforcement actions against it; and
d. The existence and adequacy of the corporation's pre-existing compliance program.

Such a revised standard increases the burden on the prosecution to establish a criminal violation, incorporates a moral-culpability element into the traditional respondeat superior test, and focuses the analysis of whether the corporation is morally culpable on a refined and appropriately limited group of pre-offense and offense-specific factors.

This proposal is but one of many currently being considered as a remedy to the status quo, and the conclusion of this Article will briefly discuss three such proposals and their relationship to the moral-culpability standard described above. The first is the Model Penal Code, which proposes to limit corporate liability to those instances in which "the commission of the offense was authorized, requested, commanded, performed[,] or recklessly tolerated by the board of directors or by a high managerial agent acting [o]n behalf of the corporation within the scope of his office or employment."[33] The second is the standard advocated by Andrew Weissmann, who would permit corporate criminal liability only if "a company reasonably should have taken steps to detect and deter the criminal action of its employee."[34] Finally, Ellen

33. Model Penal Code § 2.07(1)(c) (ALI proposed off. dft. 1962).

34. Weissmann, *supra* n. 8, at 1335; *see also* Andrew Weissmann & David Newman, *Rethinking Criminal Corporate Liability*, 82 Ind. L.J. 411, 411 (2007) (arguing that "the

Podgor has proposed creating an affirmative defense applicable to any corporation that has taken all reasonable preventative steps in the matter.[35]

While the intent of each of these proposals is commendable, a more sweeping correction to the respondeat superior standard is warranted, particularly given the increasing frequency with which corporations are being criminally investigated. The moral-culpability proposal advanced in this Article incorporates elements of each of the three alternatives described above. A moral-culpability standard protects corporations when there was no involvement by high managerial agents and prevents prosecution of corporations that took all reasonable steps to detect and deter criminal acts. Beyond the above alternatives, however, the moral-culpability standard also protects a corporation that may have failed to satisfy one of these standards but that, after analysis of the four factors, does not appear to have a corporate ethos that encouraged the relevant criminal behavior. Finally, the moral-culpability test punishes a corporation that might satisfy one of the above proposals but that has still demonstrated an ethos that encouraged criminal behavior.

Corporate criminal liability is a unique legal concept that presents complex and difficult quandaries because laws created for humans are applied to fictitious entities. Nevertheless, criminal laws can and must be applied to corporations to ensure that these organizations, which are growing in ever-increasing size and strength, are held accountable for their actions. In extending criminal liability to corporations, however, it is important to remember that though they are fictitious, corporations are merely collections of people who suffer real and significant consequences when corporate criminal laws are applied.[36] As such, every effort must be made to ensure corporate criminal liability is applied to

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government should bear the burden of establishing . . . that the corporation failed to have reasonable policies and procedures to prevent the employee's conduct").

35. Ellen S. Podgor, *A New Corporate World Mandates a "Good Faith" Affirmative Defense*, 44 Am. Crim. L. Rev. 1537, 1538 (2007); *see also* Bucy, *supra* n. 5, at 1442 (proposing a "corporate compliance" affirmative defense to prevent prosecution of corporations "that have taken all reasonable steps to discourage illegal corporate acts and encourage compliance of the law").

36. *See* Assaf Hamdani & Alon Klement, *Corporate Crime and Deterrence*, 61 Stan. L. Rev. 271, 277–280 (2008) (describing the collateral consequences of a corporate conviction).

organizations in a fair and consistent manner, as if the corporations were the very people who fill their ranks.