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Book Reviews

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CORPORATE CRIME. BY *Marshall B. Clinard & Peter C. Yeager*. New York: The Free Press. 1980. Pp. xiii, 386.

*Reviewed by Howard M. Friedman**

Despite Ralph Nader's characterization on the dust jacket, *Corporate Crime* is not "a call to action." Rather, it is an encyclopedia of the expanding research by sociologists and criminologists on corporate deviance. The work is the outgrowth of a 1979 empirical study conducted by the authors and their associates of governmental actions against the 477 largest publicly held U.S. manufacturing corporations.[1] *Corporate Crime* reflects the growing consensus that "white collar crime" is an undescriptive label in need of refinement.[2] The book's focus upon the unique characteristics of organizational deviance present in corporate actions provides that refinement.

The authors seek to identify the causes of corporate crime. As Clinard and Yeager point out, traditional explanations are inadequate: "[T]he argument that poverty or individual pathology 'causes' crime, for example, fails completely to account for lawbreaking by corporate executives, who are affluent and, presumably, well-adjusted persons" (p. 21). The authors therefore seek other explanations. The reasons for illegal conduct which they explore fall into two categories: (1) economic pressures which encourage attempts to maximize profits by ignoring the rules of the game; and (2) organizational structures which numb the moral sensitivity of corporate officials and create corporate allegiances that outweigh devotion to legal rules.

The authors' 1979 empirical study tested the validity of economic models as predictors of illegal behavior. The data suggested only a moderate correlation between financial considerations and illegal activity (pp. 127-132).[3] The authors conclude that "a more satisfactory explanation is that economic pressures and other factors operate in a corporate environment that is conducive to unethical and illegal practices" (p. 132).[4] The corporate environment which

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1 M. CLINARD *et al.*, ILLEGAL CORPORATE BEHAVIOR (1979).

2 *See, e.g.*, A. REISS, JR., & A. BIDERMAN, DATA SOURCES ON WHITE-COLLAR LAW-BREAKING 1-4 (1980).

3 M. Clinard *et al.*, *supra* note 1, at 150-79.

4 *Id.* at 179.

they describe consists of a structure that diffuses responsibility and a management policy that encourages loyalty to the corporate enterprise by monopolizing the executive's time and interrupting ties to non-corporate centers of values.

Corporate Crime raises many difficult questions. The first relates to the data developed by the authors. What counts as corporate crime? Beginning with Edwin Sutherland's seminal work,[5] researchers have generally treated some kinds of conduct punishable by non-criminal sanctions as white collar crime. Thus, Clinard and Yeager include in their data not only criminal prosecutions but also all instances of governmental enforcement through administrative orders, civil penalties and injunctions. This expanded definition of "crime" is crucial to some of the classical Marxian premises underlying early studies of white collar crime. According to Marxian theory, it is the political power of white collar violators that keeps certain antisocial activities from being subjected to criminal sanctions (p. 75).

This class-based, Marxian analysis has fallen upon hard times in recent literature.[6] Yet it seems apt in analyzing government interaction with the largest national and multinational businesses. Clinard and Yeager waffle on this one. They make what appears to be an obligatory, but explicit, disavowal of "radical or Marxist thinkers" who fail to recognize "that even the largest corporations are increasingly being subjected to severer restrictions, heavier penalties, and stronger governmental control . . ." (p. 75). This seems inconsistent with an earlier section on the political influence of corporations which concludes that "so great is corporate power that it is inconceivable, except in time of war, that government could have the power to achieve true corporate accountability for the national welfare" (p. 57).

The interaction of corporate constituencies with government policymakers is perhaps the most interesting dynamic which sociologists could study. Clinard and Yeager catalogue much of the current knowledge about that interaction, but continue in the tradition that considers the interaction an obstacle to government's proper performance of its duties. A more helpful approach would view corporate influence as part, but only part, of the process by which values in a democracy are mediated into law. A weakness in Clinard and Yeager's work is the failure to concede that the current attitude toward

5 E. SUTHERLAND, WHITE COLLAR CRIME (1949).

6 *See, e.g.*, A. Reiss, Jr. & A. Biderman, *supra* note 2, at 39; P. HOROSZOWSKI, ECONOMIC SPECIAL-OPPORTUNITY CONDUCT AND CRIME 1-7 (1980).

corporate crime may reflect not systemic imperfections but a continually shifting accommodation of divergent values. Pro-corporate notions may be held, for example, not only by shareholders and management, but also by those who are employed by large enterprises or those who fear increased unemployment or other economic disruption from anti-business policies.

The category of corporate crime on which the book focuses has certain unique characteristics. Its impact is spread among large numbers of victims, each of whom suffers only small individual loss. Moreover, even its diffused victims are often unidentifiable by the perpetrator at the time of the criminal activity. Specific victims of water pollution, price fixing, or hazardous products can generally not be named in advance. These characteristics lessen societal concern with corporate crime. However, Clinard and Yeager, like most other researchers in this field, make assumptions about the moral repugnancy of corporate crime. They rely primarily on a single 1978 national survey which explored attitudes toward the seriousness of various types of crimes (p. 5).

What counts as white collar crime is complicated by other notions. The private influence which prevents government from criminalizing certain conduct also inhibits it from subjecting other sorts of white collar deviance even to civil or administrative sanctions. They quote the late Senator Philip Hart on this phenomenon: "It's not uncommon to find some corporation that appears to be determinably breaking the law, only to discover when you get up close that, technically, the firm has merely succeeded in being unethical" (p. 213). Clinard and Yeager concede that "often, only a thin line separates . . . an unethical tactic from an actual violation of law" (p. 213). They fail to point out, however, that the line is often the result of a carefully, or not so carefully, conducted cost-benefit analysis. Where victims are unidentifiable at the time of making the relevant decision, society is often willing to balance the cost of extra protection against the aggregate loss to be suffered by unknown persons. It is an odd quirk of ethics that while, for example, society will spare no cost to rescue identifiable broken bodies from a collapsed building, it will make judgments about the cost of stricter building standards that would marginally decrease the likelihood that a building will collapse on presently unknown occupants. Indeed, much federal agency rulemaking is subject to a required cost-benefit analysis.[7]

One need not be an apologist for business interests to suggest the

7 Exec. Order No. 12291, 46 Fed. Reg. 13,193 (1981). *See also* 5 U.S.C.A. §§ 603, 604,

difficulty of determining whether a balance of costs and benefits should consciously be made in particular situations. Whether society so values particular goals that no explicit balancing of countervailing interests is justified is a determination which calls for the judgment of the political and judicial branches of government. For example, the United States Supreme Court recently held that Congress had rejected any cost-benefit test in authorizing OSHA to promulgate occupational health standards dealing with toxic materials and harmful physical agents. The majority held that "Congress understood that the Act would create substantial costs for employers, yet intended to impose such costs when necessary to create a safe and healthful working environment."[8]

The ultimate task of our legal system is to wrestle with the problem of translating values into law. When is there a societal consensus that certain goals should be imposed by law? When must achieving those goals be tempered by consideration of other societal interests? If conflicting interests result in the legal imposition of specific requirements when they are cost-effective, is it immoral for business enterprises to accept this cost-benefit determination?

Clinard and Yeager focus, in separate chapters, on three particular kinds of corporate deviance—anticompetitive behavior, dissemination of inaccurate financial statements, and questionable corporate payments. While these are presumably singled out as prime examples of "corporate crime," in fact few other areas pose so many problems in determining the appropriate balance between competing national values and interests. In an increasingly internationalized economy, the wisdom of those national antitrust laws which impede international competition by local industry becomes more problematic than in the past. The wisdom of making independent certified public accountants insurers of the accuracy of financial statements which they audit is far from clear. Most strikingly, both the wisdom and the morality of rules against corporate political contributions and corporate payments to obtain foreign business have been called into question. A closer examination of the questionable payments area illustrates the difficult issues involved.

The authors describe corporate contributions to candidates' election campaigns as having a "long and sordid history" of corrupting the democratic processes of government (p. 157). Yet there

610 (Supp. 1981) and statutes discussed in American Textile Mfrs. Inst. v. Donovan, 101 S. Ct. 2478, 2491 (1981).

8 101 S. Ct. at 2495-96.

are countervailing interests. In 1978, the Supreme Court struck down as a violation of the first amendment a state statute that limited corporate expenditures in referendum campaigns on issues unrelated to corporate economic interests:

> If the speakers here were not corporations, no one would suggest that the State could silence their proposed speech. It is the type of speech indispensable to decisionmaking in a democracy, and this is no less true because the speech comes from a corporation rather than an individual. The inherent worth of speech . . . does not depend upon the identity of its source. . . .[9]

The Supreme Court pointed out that contributions to candidates, rather than referendum campaigns, pose concerns about corruption through the creation of political debts and thus may well be subject to regulation.[10] But the point is that there are trade-offs—a lessening of political dialogue in exchange for prophylactic regulation.

In the area of foreign payments, the ambiguities are even greater. The Foreign Corrupt Practices Act of 1977 (FCPA) permits "grease payments" to ministerial or clerical employees of foreign governments in order to expedite the performance of their duties. The FPCA prohibits only payments to influence such discretionary official action as the passage of legislation and the awarding of contracts.[11] The moral distinctions between "grease payments" and prohibited bribes is unclear. Indeed, Congress based its distinction not on moral differences but on the pragmatic necessity of making "grease payments" in order to do business abroad effectively.[12]

More recently, both the General Accounting Office[13] and the United States Chamber of Commerce[14] have suggested that current antibribery restrictions may have resulted in the loss of substantial amounts of foreign business by American companies. Legislation has been proposed which would loosen these provisions by eliminating the prohibition on payments to sales agents merely because there is

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9 First Nat'l Bank v. Bellotti, 435 U.S. 765 (1978).

10 *Id.* at 777.

11 *See* H. FRIEDMAN, SECURITIES AND COMMODITIES ENFORCEMENT 121-25 (1981).

12 Unlawful Corporate Payments Act of 1977, H.R. Rep. No. 95-640, 95th Cong., 1st Sess. 8 (1977).

13 COMPTROLLER GENERAL'S REPORT TO CONGRESS, IMPACT OF FOREIGN CORRUPT PRACTICES ACT ON U.S. BUSINESS 13-17 (1981).

14 U.S. Chamber of Commerce, *The Price of Ambiguity: More Than Three Years Under the Foreign Corrupt Practices Act* (1981), *discussed in* 609 SEC. REG. & L. REP. (BNA) A-15 (June 24, 1981).

"reason to know" that they will pass funds on as bribes.[15] Even a high official within the SEC recognized that there is a question as to whether or not the FCPA's antibribery provisions reflect such fundamental values of our society that they are worth the cost.[16]

These kinds of balancing and compromises do not make for gripping scenarios of criminal intrigue. But they do more accurately reflect the reality of interactions between private business and government. The recognition of this reality appears from time to time in Clinard and Yeager's book, often only to be swept aside by broad introductory and conclusory paragraphs which suggest more simplistic views of desirable government policymaking.

Finally, mention must be made of the role of government enforcement activities in any analysis of corporate crime. Clinard and Yeager deal with the enforcement role of regulatory agencies and with the need for the imposition of more severe sanctions. But more importantly, all their data on the incidence of corporate crime relates only to the incidence of enforcement actions of some sort (pp. 111-13). They deal at length with the oil, automobile and pharmaceutical industries as those that "appear to violate government regulations and laws more frequently than others" (p. 237). In fact, their data supports only the conclusion that more enforcement actions are brought against companies in these industries. Additional research is required to determine whether these industries are prime examples of those whose environments are conducive to unlawful behavior, or whether the Environmental Protection Agency, the National Highway Traffic and Safety Administration and the Food and Drug Administration merely have particularly zealous enforcement staffs.

Despite these reservations, *Corporate Crime* is a valuable contribution to the literature on white collar crime. It is generally a balanced and thoughtful work. As a ready source of reference for the complex and difficult issues surrounding analysis of the incidence, causes and cures for corporate crime, it is excellent. The book is a compact but comprehensive introduction to the behavioral and legal issues involved, a starting point for much additional serious research, and a

15 Business Accounting and Foreign Trade Simplification Act, S. 708, 97th Cong. 1st Sess. (1981) (introduced by Sen. Chafee). *See also* H.R. 2530, 97th Cong. 1st Sess. (1981).

16 Address by Commissioner Stephen J. Friedman, *discussed in Friedman Evaluates Chafee Proposal To Amend FCPA. Emphasizes Common Ground with SEC Policy Statement*, 601 SEC. REG. & L. REP. (BNA) D-1 (Apr. 19, 1981). *But see* Statement by former Chairman Harold M. Williams, *discussed in Multinationals: Former SEC Chairman Endorses SEC Recommendations on FCPA*, 367 U.S. EXPORT WEEKLY (Intl. Trade Rep.) (BNA) A-1 (July 28, 1981).

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