Varieties of Responsibility and Organizational Crime

JOHN BRAITHWAITE* and BRENT FISSE**

Data from interviews at the head offices of Japanese companies are used to illustrate the highly varied ways in which large organizations hold individuals and subunits responsible for corporate wrongdoing. Noblesse oblige, captain of the ship responsibility, nominated accountability and fault-based responsibility are identified as important types of individual accountability all of which can be unjust and ineffective when decisionmaking is more or less collective. In the face of immense diversity in varieties of responsibility for organizational crime, different strategies for bringing law and organizational culture into alignment are tentatively evaluated.

Debates about the allocation of individual or collective responsibility for organizational wrongdoing have been abstract or universal rather than tuned to the diversity of organizational reality (Doig, Phillips and Manson, 1984: 36–48; Kraakman, 1984; Leigh, 1982; Donaldson, 1982: 109–28; Hodgkinson, 1978: 170–9; Posner, 1977: 235–6; Elzinga and Breit, 1976: 30–43; Coleman, 1975; Schelling, 1974; Downie, 1971: 90–3; Feinberg, 1970: 222–51; Hart, 1968: 211–30; Emmet, 1966: 201–5; Sutherland, 1949: 53–54; Mitchell, 1945; Gomperz, 1939; Allport, 1933: 219–39; Cohen, 1931: 392–5). As a consequence, there has been little attempt to address the question whether legal principles of criminal or civil responsibility can or should be defined in a manner consonant with the various ways in which responsibility for decisionmaking is governed within different organizations. This question is fundamental because the law cannot be expected to work effectively or justly if it clashes with corporate cultures[1] or organizational structures.[2] Friedman (1975) has expressed the premise which is the point of departure taken in this paper:

> . . . a law which goes against the grain, culturally speaking, will be hard to enforce and probably ineffective. Prohibition is the hackneyed example. But the converse is equally true. Laws that make use of the culture and draw on its strength can be tremendously effective. When a legal system contrives to cut with the grain, it multiplies its strength. (Friedman, 1975: 108)

A related premise is that not only will a law that goes with the grain of the corporate culture be more effective, but it will be more just. When persons who are culturally defined as responsible by citizens are also legally

* Senior Research Fellow, Department of Sociology, Research School of Social Sciences, Australian National University.
** Professor of Law, University of Sydney.

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defined as responsible by courts, the law is more just. This is so even if the law unequally defines the culpability of equivalent persons for identical crimes when those crimes occur in different cultural contexts. For example, it can be a just law which holds a director of Company A responsible for a crime when the director is intimately involved in the management of the company while finding a director of Company B innocent of the same crime when the tradition in Company B is that directors do not become involved in the relevant area of management.

The purpose of this article is to examine how individual responsibility for organizational wrongdoing can be governed within corporate cultures and to explore the problem of incompatibility between legal and organizational principles of responsibility. To begin with, we describe four intracorporate varieties of individual responsibility for organizational wrongdoing (*noblesse oblige*, captain of the ship responsibility, nominated accountability, and fault-based responsibility). Second, we discuss the incompatibility or divergence which can exist between legal and organizational principles of responsibility. Finally, we tackle the question of whether disharmony between law and corporate cultures can or should be avoided by one or other of the following possible solutions:

(1) making legal principles of responsibility conform to corporate principles of accountability;

(2) making corporate decisionmaking conform to legal principles of responsibility;

(3) making corporate and legal principles of responsibility conform to some ethical canon; or

(4) allowing corporations to propose their own principles of responsibility as the basis for a pluralistic matching of legal principles and organizational cultures.

Much of our discussion is based on fieldwork in Japan where we interviewed 30 head office executives of six large corporations[3] as well as civil servants responsible for business regulation in four major ministries.[4] The fieldwork was limited; we did not spend months checking the statements of our limited circle of informants against company memos or against the accounts of outsiders or insiders at different levels of the organization as the best work of this genre does (e.g., Vaughan, 1983; Selznick, 1953). The sample of interviews and companies is small. However, these weaknesses in the data are not as important as they normally would be in social scientific research because we do not use them in the traditional social scientific way of showing patterns, trends or correlations. Our data serves the more modest purpose of demonstrating diversity. They are used to contend that certain kinds of corporate cultures exist, not to assess which types are more common or which independent variables are associated with different types. Like an instance where a botanist discovers a new plant species, one case is sufficient to demonstrate that a species exists, and a handful of cases

is sufficient to show that there is more diversity in the world than some simplistic conceptions of it would have us believe.

I. INTRACORPORATE INDIVIDUAL RESPONSIBILITY FOR ORGANIZATIONAL WRONGDOING

It is trite to point out that individual accountability has long been valued as a mainstay of social control. It is also clear that decisionmaking within large organizations is often diffused to a very extensive degree. How then do large corporations allocate individual responsibility for acts of organizational wrongdoing if, as is so often the position, acts of organizational wrongdoing take place in an environment of collective decisionmaking? In this section we canvas four varieties of intracorporate individual responsibility: *noblesse oblige*, where the titular head of the organization assumes strict responsibility; captain of the ship responsibility, where the senior executive officer at the site of the wrongdoing is held strictly to blame; nominated accountability, where strict responsibility is imposed on personnel identified in advance as being accountable should specified things go wrong; and fault-based responsibility, where responsibility is imposed on personnel who contributed intentionally, recklessly or negligently to the incident of organizational wrongdoing. We make no claim that these are the only varieties of responsibility in corporate life, nor do we deny that organizations can and do evidence mixtures of the varieties we identify. Our purpose is to show the diversity in the way corporations allocate responsibility; for others to indicate that there is more diversity beyond the four types illustrated here would be to strengthen our case.

NOBLESSE OBLIGE

Most cultures have a tradition of *noblesse oblige*,[5] although in some the tradition may be weak. Many Americans found it difficult to understand why Lord Carrington should resign in assumed blame for the negligence of the British Foreign Office in not foreseeing the Falklands Islands crisis, even though his personal culpability was minimal or non-existent (Franks, 1983: 73–90). By contrast, people familiar with the British Commonwealth tradition of ministerial responsibility were inclined at the time to speculate whether the Prime Minister, Margaret Thatcher, should also have resigned.

In corporate life, the Japanese provide some of the most striking manifestations of *noblesse oblige*. The tradition has its roots in feudal times when the Samurai were expected to satisfy higher standards of accountability and more exemplary self-control than common people (Benedict, 1954: 148). Corporate *noblesse oblige* in Japan even today can impel managers to more than resignation: in extreme cases only suicide may be perceived by traditionalists as restoring honor to the organization.[6] After the Yubari-Shin mining disaster claimed 93 lives in October 1981, the President of the

company attempted suicide by slashing his wrists. When there is a public scandal over alleged corporate wrongdoing leading to lost lives, acts of requital by no less than the head of the organization will suffice. Hence, when a mentally unstable pilot crashed a Japan Airlines jet into Tokyo Bay, the President of the company, who could not reasonably be regarded as personally at fault for the pilot error,[7] visited the homes of the families of all the victims of the disaster to apologise on behalf of the company. How drastic the self-flagellation of the president is depends on the seriousness of the corporate wrongdoing. We were told of cases where company presidents merely reduced their own salaries to symbolize shame for the wrongdoing of subordinates.

In a sense it is perverse that such onerous burdens are imposed on company presidents in Japan because Japanese presidents have somewhat less real power than their counterparts in other countries. Decisionmaking in Japanese corporations typically has been found to be bottom-up rather than top-down (Clark, 1979: 126–7; Gibney, 1979: 192–6; Ouchi, 1982: 22–43; Pascale and Athos, 1981; cf. Ohmae, 1982). Relatively junior employees can be expected to generate many of the ideas about the direction the company should be taking and what it should do at critical decision points. Such ideas, however, should reflect Jyoi-Katatsu, the concept that the will and mind of the boss should be mirrored in the proposals of subordinates. These ideas then percolate up the organization typically through the mechanism of the *ringi*—a written proposal circulated horizontally, then vertically, to as many as thirty officers who affix their name stamp to it. When the *ringi* finally arrives on the president's desk for endorsement, the merits of the proposal often will not be considered, the name stamps of many trusted executives being regarded as sufficient.

When the president automatically endorses so many decisions in this way, it seems unfair that he should be subject to strict responsibility in a way that Western chief executives, who often personally assume control over their corporation's activities, are not. But the point is that under Japanese bottom-up decisionmaking, it is not only hard justly to point the finger at the president, it is difficult justly to point the finger at anyone. As Dore has explained:

> The function of the system is to diffuse rather than to centralize responsibility. The superior, by affixing his seal, takes formal responsibility for the decision, though everyone knows that he cannot possibly acquaint himself with the details of every proposal to which he has to give approval in the course of a day. He may, when something goes wrong, 'take' responsibility (just as the head of the national railways will 'take' responsibility and resign when a ferry boat capsizes and drowns its passengers in a typhoon) but normally he would not be 'held' responsible. The need for ritual atonement by the titular head—resignation or grovelling apology—is seen not as a means of encouraging the others individually but of reawakening throughout the organization a proper sense of commitment and a determination not to make mistakes. So it is missing the point to ask exactly where, up the hierarchical

> line through which the proposal has come, the *real* responsibility lies. It is diffused through the organization. (Dore, 1973: 228).

Critics of Japanese imperialism in World War II have argued that the system of Imperial responsibility in which all decisions were in theory taken by the Emperor was in fact a "system of general irresponsibility" (Dore, 1973: 229). But generalizing this attack to corporate *noblesse oblige* would be a mistake because the Japanese do not see the function of presidential contrition being to punish the guilty, but rather to symbolize the importance to everyone of organizations not committing errors.

Under the *ringi* system usually no one can justly be held responsible. Yet consider the consequences of no one "taking" responsibility: the appearance would be created that corporate wrongdoing does not matter. However, if the function of taking responsibility becomes the symbolizing of organizational wrongdoing, the titular head of the organization can provide a dramatic symbolic sacrifice. But why should an individual person be sacrificed rather than the corporate ox that gored? For a collectivist culture, it is perverse that Japanese law does not direct more of the fire and brimstone of public shame at corporate entities rather than at individuals (cf. Fisse, 1978: 378–9).

We would hope that the foregoing discussion has not created the impression that Japanese company presidents are no more than rubber stamps. The position is much more subtle than that. Senior personnel are largely responsible for fostering a set of expectations, a corporate culture, which guides the thinking of junior people as they consider what sort of proposals it would be appropriate to advance.[8] The resignation of Tetsuo Oba, President of All Nippon Airways in 1970 provides a classic illustration of both the imposition of presidential expectations on a bottom-up decisionmaking process and the constraint upon presidents not to go beyond transmitting expectations in their exercise of power.

Testimony in 1976 before the Japanese parliament concerning bribery by American aircraft manufacturers revealed that Oba, after becoming President in 1969, worked hard at leading junior executives to the conclusion that the company ought to buy the McDonnell-Douglas DC10 (*Los Angeles Times*, Mar. 7, 1976, Part VIII, pp. 6–7). Oba testified that he dropped comments about the virtues of the DC10 "at every opportunity." After the company's consensus decisionmaking process failed to reach a conclusion, Oba, confident that his juniors would ultimately implement his expectations, went ahead on his own and signed an option to buy the DC10. This act was kept secret, to the point of having an interpreter come from outside the company to assist in Oba's negotiations with the McDonnell-Douglas representatives. When this and another breach of the rule of decision by consensus became known, Oba was forced to resign.

CAPTAIN OF THE SHIP RESPONSIBILITY

There is also a widespread tradition within organizations of holding the

captain of the ship strictly responsible.[9] That is, the senior executive officer who is on location at the time of the act of organizational wrongdoing is held strictly accountable for it. Again, Japan provides clear illustrations, although traditions of mine manager responsibility in British Commonwealth coal mining companies also exemplify this form of responsibility (Braithwaite, 1985: 156–64).

If *noblesse oblige* is the principle of accountability for gross corporate wrongdoing which attracts media attention, the captain of the ship principle defines the day-to-day practice of accountability in many, though certainly not all, Japanese organizations. Japanese companies are generally divided into sections, and the section head assumes responsibility for the section's collective failures. Obviously, the president of a Japanese company is not blamed for minor corporate wrongs which may not attract media comment and do not so much as come to his or her notice, even after they have been punished by a regulatory agency. Rather the head of the section concerned will generally take the blame.

The question of how far up the hierarchy blame will run for organizational wrongdoings of varying degrees of seriousness is an interesting one. The Japanese companies we visited all have informal rules to guide the social construction of the responsible collectivity within the organization. In the more traditional companies the head of that collectivity would take most of the blame. We do not pretend to have a full understanding of the informal rules which guide the social construction of the responsible unit within any of the Japanese organizations we studied. However, we can at least give several examples of the varied nature of these informal rules.

At Mitsui and Co. we were told that if a decision made on the basis of a *ringi* resulted in a problem, the general manager of the division who initiated the *ringi* would be held mainly responsible, but other signatories might also bear a partial responsibility depending on the circumstances. At Toyota Motor Sales Co. we were informed that in like circumstances the head of the section who initiated the proposal, or even the individual who started it, would most likely be "scolded." It would be very unusual for a vice-president to scold a departmental head. However, such a response might well occur where the vice-president was personally upbraided by a government official for wrongdoing by one of his or her departments. Accordingly, the level at which scolding occurs is a direct function of the seniority of the involvement or the level of exposure to adverse reaction: if a more senior person does not become aware of embarrassment, s/he will not scold a more junior person. Japanese business may also be no different from Western business in that blaming may be more likely to be directed at divisional managers in decentralized corporations (like General Motors (Drucker, 1946; Wright, 1979)) while corporate staff are more likely targets in centralized corporations (like IBM (Sobel, 1981; Fishman, 1981)).

There are fine, but very important, differences among Japanese companies in the informal rules that govern the taking of blame by section

heads. In the legal department of one company we visited (Mitsui), the head had very little real power. The important decisions largely emanated from a number of bright younger lawyers who were tipped to reach greater heights than their present boss. But for the moment they were waiting for the slow Japanese process of promotion by seniority to take its course. There were joking references, with which the departmental head concurred, to him having "all responsibility and no power." Perhaps because of this reality, the informal rules of blaming in the department were not seen as conforming strictly to a captain of the ship model. If one of the able young lawyers initiated a decision which went awry, he might well be blamed more than the departmental head. However, the departmental head would also take the blame, even if he was not familiar with why his department had made the decision and even if the decision was understood by all to be totally a matter of delegated responsibility to a trusted junior. Moreover, if the departmental head had any reason to suspect that the activity of his junior involved illegal or unethical conduct, and he did not stop it, then the young lawyer would no longer be held more to blame. Even if it was the junior who actually broke the law and the departmental head had only a very hazy understanding of how and why he did it, the head was to be held primarily responsible.

In the legal department of another company (Sumitomo), it was regarded as a more invariant rule that if something went wrong, the head of the section would bear more blame than the employee who was in fact most in control of the matter. Indeed, the section head might take most of the blame for a *ringi* initiated without his or her knowledge during absence on vacation. Members of one section told us that an "innocent" boss who takes the rap will get much sympathy, while the "guilty" junior who may escape any formal sanction will suffer loss of repute within the unit. As far as the corporation was concerned, it was the head of the section who lost a pay rise or suffered a black mark on file. By contrast, within the immediate work group, it was the person everyone knew to be immediately responsible who suffered informal sanctioning. Consequently, there was considerable social pressure on subordinates not to get their boss into trouble. In Japanese firms with traditions of lifetime employment such work group pressures may have an inescapable quality which renders them very powerful.

NOMINATED ACCOUNTABILITY

Instead of imposing strict responsibility on the titular head of the organization or the captain of the ship it is possible to hold some other person strictly accountable on the basis of nominated responsibility. In the paradigm case, this is a person who has a special responsibility in the area of concern. For instance, the advertising manager may be nominated as the person strictly responsible for any false advertising which emanates from the firm, the quality control director of a pharmaceutical company as the

person strictly responsible for the supply of impure drugs, and so on. There is a key difference between this kind of strict responsibility and that of *noblesse oblige*. Under the latter, responsibility is first defined on symbolic grounds and then the symbolic person is held strictly responsible. In comparison, for nominated accountability the responsible person is identified on a rational basis—presumptive fault—and then that person is held strictly responsible. To amplify, an environmental director may be nominated as responsible for environmental violations because s/he is the one person likely to be blameworthy for more violations than anyone else. If so, s/he will subsequently be held responsible for violations for which s/he is not in fact to blame.

Evidence of nominated accountability in Japanese companies is difficult to find. Unlike traditionally-run Western corporations, Japanese companies reject role specialization; the company organization chart is not made up of individuals with discrete responsibilities but of teams of people with joint responsibilities.[10] As Vogel (1979: 143–4) has elaborated:

> The essential building block of a [Japanese] company is not a man with a particular role assignment and his secretary and assistants, as might be the case in an American company. The essential building block of the organization is the section. A section might have eight or ten people, including the section chief. Within the section there is not as sharp a division of labor as in an American company. To some extent, each person in the same section shares the same overall responsibility and can substitute for another when necessary.
>
> . . . Within the general work of a section, one's assignment to a task at a given time is affected by one's general abilities, skills, and aptitudes more than by one's title within the section. The section is, in a sense, an organic unit composed to match a variety of talents rather than a team with clearly distinct, independent role assignments. The section has a responsibility to perform, and each is expected to help out by dividing up what needs to be done, substituting for someone who is absent, or assisting another when necessary. The assignment is flexible, for the position and tasks are two different systems: the position rises with seniority, but the work depends on the tasks of the unit and the talents and complementarity of the individuals. Work is not determined by a specifically defined position.

FAULT-BASED INDIVIDUAL RESPONSIBILITY

More familiar to Western eyes is the imposition of individual responsibility on the basis of fault, whether in the form of intention, recklessness, or negligence. When a nuclear accident occurs in the West, the tradition is very much one of the corporation undertaking a witch-hunt to locate the person or persons (typically control-room operators) who "didn't do their job" (Perrow, 1984). In the West we tend to be attracted to fault-based responsibility for fear that any system of nominated responsibility will give those who are not nominated an incentive to cheat, given that they are immune from sanction until fault is established. Although fault-based individual

responsibility is adopted in some Japanese corporations, traditions of collective decisionmaking very often rule it out.

Dore's (1973) study, *British Factory-Japanese Factory*, found that a major difference between the organizational cultures in English Electric and Hitachi lay in their approach to this kind of responsibility. Whereas avoidance of strict responsibility and scapegoating was not of concern to the Japanese at Hitachi, fault was critical to the process of individual blaming at English Electric:

> The principle of the scapegoat which deals with the whole group's guilt is rejected in favour of justice—pinning the blame precisely on the individual who was at fault. 'When things go wrong I want to know why—in detail, and what is being done about it and who is OK and who is not,' to quote one top manager's circular. (Dore, 1973: 229)

However, there are Japanese companies which have adopted Western ideas of fault-based individual responsibility.[11] For example, at the ship building giant IHI we were told that, in the event of organizational wrongdoing, there would be an investigation and those found to have acted carelessly or with a blameworthy state of mind would be held responsible. Traditions of *noblesse oblige* seemed almost forgotten and captain of the ship responsibility had undergone a fault-oriented transformation.

II. INCOMPATIBILITY OR DIVERGENCE BETWEEN LEGAL AND ORGANIZATIONAL PRINCIPLES OF RESPONSIBILITY

Attempts through criminal or indeed civil law to impose individual or collective responsibility for organizational wrongdoing may face a serious risk of failure unless they heed the intracorporate principles of responsibility that govern corporate behavior. Yet in Japanese and United States law incompatibility or divergence between legal and organizational principles of responsibility can and does arise.

A good example of incompatibility between legal and organizational principles of individual responsibility is apparent from a case described to us by Idemitsu Kosan, Japan's largest oil company. There had been a bad accident at the company's Tokuyama refinery. The government prosecuted a foreman who allegedly caused the accident by making a mistake. In law, the foreman was responsible. In fact, however, he was acquitted when the general manager of the plant (the captain of the ship) testified that he was totally to blame. There was no possibility that the general manager could be regarded at fault since, from where he stood, the accident was totally unforeseeable. Yet, how could the court convict the foreman when his boss insisted that they had the wrong man, that "I am the guilty one"? Instead, the formal law was bent to accommodate the social reality of blaming within the corporation. And the social reality of captain of the ship responsibility within Idemitsu was subsequently confirmed by what happened to the general manager. After the acquittal of the foreman, the general

manager stayed on at the refinery for only a year to implement a new program of occupational safety training. At the end of this period he resigned to take the blame and voluntarily declined to receive his bonus for the year. The corporation found him a slightly less senior position at head office. One of the Idemitsu directors reflected upon the event, commenting, "We are like a family. If a young son commits a crime, the father must bear blame."

The Idemitsu case suggests that legal precepts of fault-based individual responsibility are most unlikely to work if they are imposed after the event on corporate cultures which reject fault as a basis of accountability. Similarly, imposing a law of strict individual accountability upon organizational structures which cannot deliver individual accountability may easily produce injustice and ineffectiveness. Rather than putting people on notice that they must ensure law observance, we put them on notice that they will be sacrificial victims for collective decisions over which they have little effective control. In other words, for organizations with collective decision-making by persons with non-specialized and fluid roles, imposition of responsibility upon selected personnel will amount to scapegoating. We have seen that this is certainly true of *noblesse oblige* and captain of the ship responsibility in traditional Japanese companies. We have also argued, however, that scapegoating is not without virtue, particularly in the Japanese cultural context. An advantage of both *noblesse oblige* and captain of the ship responsibility is their capacity to ensure that organizational wrongdoing is recognized and denounced as such by a significant figurehead taking responsibility. In the case of nominated accountability, on the other hand, scapegoating is much more difficult to justify because a relatively junior representative is not sufficiently a figurehead to be able effectively to symbolize corporate blame. A junior scapegoat may therefore fail to mobilize informal social control.

Even more difficult to justify is the arbitrary scapegoating of junior individuals who are not even nominated before the event as responsible. This also happens in Japan. For example, at Toyota Motor Sales, we were informed that it was usual for departmental heads to take blame for mistakes perpetrated by the department. However, even where a departmental head was partly responsible for a mistake, he might well call upon a partially blameworthy subordinate to bear full responsibility and suffer all adverse consequences in terms of public disgrace or corporate penance.[12]

Given the limited symbolic impact of imposing nominated accountability on junior representatives of a corporate wrongdoer, it is noteworthy that Japanese legislation and enforcement policy increasingly recognizes the captain of the ship principle of responsibility as adopted in many Japanese organizations. The laws for environmental pollution control enacted during the late 1960s and early 1970s are geared to imposing responsibility on the general managers of plants that pollute.[13] The policy of the Environmental Agency and the Ministry of Justice in prosecuting environmental

offenses is to look first at the possibility of prosecuting the most senior person at the plant where the offense occurred. Under the Mine Safety Law of 1949 it has long been required that each mine have a "safety supervisor" whose obligation is to ensure compliance with the law (MITI, 1982). In 1953 the law was changed to require that the mine manager be the safety supervisor. The law now imposes a strict responsibility standard on a mine manager for any violation that occurs at the mine. The Ministry of Labor also tends to direct enforcement against plant general superintendents for violations of the Industrial Safety and Hygiene Law of 1972.[14] In contrast, nominated accountability has been more prevalent than captain of the ship responsibility in United States debates about responsibility for organizational wrongdoing (Watkins, 1961: 107–8; Stone, 1975: 186–92, 203–4; Stone, 1980: 37–8, 43–4). This is understandable; proposals by scholars such as Stone (1975) that the law require companies to nominate certain persons as responsible for certain types of law observance do make more sense for traditional Western companies than for Japanese organizations or for American companies which have followed the trend to "go Japanese."

As we have seen, any type of individual responsibility imposed by law on bottom-up consensual decisionmaking systems cannot be just and can only be effective to the extent that it dramatically symbolizes wrongdoing. However, for top-down management systems in which individuals have clearly defined responsibilities and powers, individual responsibility can be extremely effective in ensuring compliance with the law. Obviously, the reverse should be true of collective responsibility. In organizations where decisionmaking is collective, punishment of the collectivity should be most effective and just. Conversely, it would seem neither fair nor effective to punish the collectivity for decisions made exclusively by powerful individuals atop organizations with top-down management.[15]

The puzzling thing is that Japanese law stresses individual responsibility for organizational crime, whereas United States law relies substantially on collective responsibility. The Japanese Penal Code has no provision for corporate criminal responsibility, which can only be imposed as a matter of statutory exception (e.g., under the environmental pollution laws).[16] Moreover, to the limited extent that corporate criminal responsibility is available, a conviction cannot be obtained without proving criminality on the part of an individual representative.[17] This is odd. Structural crimes (i.e. crimes where no individual is blameworthy but where an organizational failure has brought about a violation [Stone, 1980: 31; *Yale Law Journal*, 1979: 358]) can hardly be uncommon in a collectivist culture like Japan. Yet proof of individual criminal responsibility is required as a precondition for imposing corporate criminal responsibility.

A partial explanation for this incompatibility may be the problem of imposing suitable collective punishments. We have seen that, in the social organization of traditional Japanese business, it is the section that is typically the responsible collectivity. Yet, sections cannot be put in jail, nor

can they be fined effectively.[18] Without money of its own, a section can only transmit any fine to the profit and loss statements of the whole corporation.[19] Granted, more suitable forms of collective punishment could well be devised. For instance, a community service order could be imposed on the section as a unit (Fisse, 1982), or each member of the section could be fined a fixed percentage of salary (Pepinsky, 1976: 139). So long as the range of collective punishments is restricted to traditional sanctions, however, the corporation necessarily must be the focus of any sanction. This presents the obstacle that corporations are hard to hurt; they have no bodies to kick, no souls to dam. Hence there are practical reasons why the Japanese place such an emphasis on the punishment of individuals who head units or subunits.

Unlike the position in Japanese law, corporate criminal responsibility is both generally available and often imposed in the United States and Australia. Prosecutions of corporations without any individuals being proceeded against are widespread.[20] Moreover, again unlike the position in Japanese law, corporate criminal responsibility is not predicated on any finding of individual criminal responsibility on the part of a corporate representative (although for offenses requiring intention or knowledge the general rule is that there must be proof of intent or knowledge on the part of a representative).[21] At first blush, this approach to the imposition of individual and collective criminal responsibility may appear to strike a reasonable compromise, but closer inquiry reveals risks of dissonance between legal and organizational principles of responsibility.

One of the prime reasons[22] for resorting to corporate criminal responsibility in United States prosecutions for organizational crime is that of using collective responsibility as a lever or spur for inducing corporate defendants to enforce individual accountability through internal disciplinary programs (Coffee, 1981: 407–11; Stone, 1980: 29–30; Fisse, 1978: 382–6). If corporate criminal responsibility can be thus deployed, it is possible, at least in theory, to allocate individual responsibility wherever responsibility should be sheeted home within an organization. By contrast, individual criminal responsibility is a highly selective and limited means of imposing individual accountability: State investigatory and prosecution resources are so scarce that enforcement almost invariably is confined to a small number of executives. Admittedly, there are exceptional cases where governments are moved to go after all individuals who are seen as having some responsibility for collective wrongdoing. So it was in August 1982 when, following an abortive coup in Kenya, all 2,100 members of the Kenyan air-force were arrested! (*New York Times*, August 5, 1982, p.A4.)

Comforting as it may be in an individualistic culture to view corporate criminal (or civil) responsibility as an automatic dispenser of individual accountability, the actual impact may be utterly different. Where a corporate defendant is convicted and fined, it is a matter of managerial discretion whether or not any internal disciplinary program be undertaken (Coffee,

1980: 458–60; Fisse, 1983: 1217). Some corporations respond fully and effectively, to the point even of installing a new management team (Fisse and Braithwaite, 1983: 122–3). Others lie low, and do no more than write a check for the fine. To the extent that corporations are not catalysed into taking disciplinary action, the individualistic vision behind corporate criminal (or civil) responsibility is illusory (cf. McConnell, 1966).

The divergence which can thus exist between organizational principles of individual responsibility, on the one hand, and legal assumptions of individualistically-oriented corporate disciplinary reactions, on the other, might conceivably be avoided by means of responsive reform. To this end, Coffee has advanced a proposal which would exploit the internal disciplinary potential of corporate probation (Coffee, 1981: 430–4, 455–6).

Coffee's model is the Gulf Oil report on bribery, prepared by an outside counsel, John J. McCloy. The revelations in the McCloy study were sufficiently interesting to be picked up by the press and for the report to be republished as a paperback bestseller (McCloy, 1976). Its impact was to trigger substantial internal reforms at Gulf and to hasten the resignation of some senior officials named in it. So, asks Coffee, why not make McCloy-style reports a routine part of corporate crime enforcement?

The mechanism favored by Coffee is placing corporate defendants on probation, subject to a condition that they employ outside counsel to prepare a report which names key participants and outlines in readable form their *modus operandi*. Alternatively, the vehicle could be a presentence report:

> The suggestion, then, is that the presentence report on corporate offenders be prepared in considerable factual depth in the expectation that such studies will either find an audience in their own right or, more typically, provide the database for investigative journalism. This approach permits the government both to avoid the ethical dilemma of itself being a publicist, and to rely on the more effective public communication skills of the professional journalist. In a sense, this approach integrates public and private enforcement. (Coffee, 1981: 431)

The presentence report would be distributed to stockholders, and thereby in effect to the world at large.

Coffee concludes that adverse individual publicity in a McCloy-style report can deter culpable or negligent managers on three distinct levels:

> First, the manager suffers a loss of public- and self-respect, which some research suggests is the most potent deterrent for the middle-class potential offender. Second, adverse publicity substantially reduces the official's chances for promotion within the firm. Competition for advancement is keen within almost all firms, and competitors of the culpable official can be relied upon to use such adverse publicity about their rival to their own advantage. SEC proxy disclosure requirements may pose a further barrier to such an official's advancement. Finally, disclosure of the identity of the culpable official also invites a derivative suit by which any costs visited on the firm can be shifted (at least in part) to the individual. Here again, private enforcement

> is desirably integrated with public enforcement through the linking mechanism of disclosure. (Coffee, 1981: 433)

Responsive as Coffee's proposal is to the problem of ensuring that corporate criminal (or civil) responsibility does in fact result in the effective allocation of individual responsibility, it should be realized that such an approach would not be compatible with all corporate structures. Let us assume, for instance, a corporate defendant that has "gone Japanese" in the sense of adopting a highly diffused, bottom-up, and consensual decisionmaking system. Pointing the finger of blame at a select range of guilty individuals in such a context could contradict the organizational structure of that corporation, thereby generating disrespect for the law within the culture of the organization.

III. HARMONIZING LEGAL AND ORGANIZATIONAL PRINCIPLES OF RESPONSIBILITY

It would be a mistake to assume from the preceding discussion that it is necessarily a good idea to bring law into line with the facts of organizational life. Do we want law to mirror a culture which embodies morally outrageous principles of responsibility? There is more than one route to consonance between legal and organizational principles of responsibility. We will consider four: (1) bringing law into line with organizational structure; (2) bringing organizational structure into line with law; (3) changing both legal and organizational structure to conform with ethical principles of responsibility; and (4) a pluralism where organizations are allowed to propose their own principles of responsibility as a basis for legal recognition.

MAKING LAW CONFORM WITH ORGANIZATIONAL STRUCTURE

Even in a society as homogeneous as Japan, we have shown that there are no invariant patterns of organizational culture. Overall, there would be a better match between law and culture if we imposed American legal principles of responsibility for organizational crime on Japanese society and Japanese legal principles of responsibility on American society. But in both cases a great residue of mismatching would occur because there are so many "American-style" organizations in Japan and "Japanese-style" organizations have become a vogue in the United States.

The only satisfactory route for bringing law into conformity with organizational structures would be to do it particularistically. Wherever a violation of law arose from the activities of an organization, a judicial or administrative enquiry would be required into how accountability was defined within that particular organization. For example, if consumers were killed because a pharmaceutical company distributed non-sterile products, the court or administrative body would look to company policies and procedures to see what person or what collectivity was defined as respon-

sible for ensuring compliance. Thus if the quality control director (an individual) was ascertained to be the person responsible for guaranteeing the sterility of drugs before they were let out of the plant, then he or she should be prosecuted. It sounds simple. But corporate statements of policy and organization charts are often not to be believed (Gouldner, 1954). There may be an informal social reality which is quite at odds with the proclaimed organizational structure. Everyone in the factory might understand that the quality control director did nothing without the approval of the plant manager, and everyone might know that the last quality control director who attempted to act independently was dismissed. If the plant manager had the real power then s/he should be the prime target. The difficulty, however, is that courts will be given different views of the realities of power by actors looking at the power structure from different positions within the organization. Moreover, it will often be a matter of defense tactics to try to get everyone off by putting out a smokescreen of diffused accountability to ensure that culpability beyond reasonable doubt cannot be proven against anyone.

Thus the court or administrative authority, if it were to perform its task properly, would need to undertake a *de novo* sociological study of each organization which came before it. However, the court would have a more demanding task than the average sociological researcher. The research would have to be completed in weeks rather than years if justice were to be swift. It would inevitably be conducted against a backdrop of defensiveness by informants who feared prosecution and wished to protect others and, in criminal cases, it would have to overcome the hurdle of proof beyond reasonable doubt. Not many of the small number of us who have experience in this kind of research would resign our academic positions to become court organizational sociologists.[23] If justice is to be swift, certain, and within the capacity of the taxpayers who support the criminal justice system, this approach suffers from dire problems.[24]

MAKING ORGANIZATIONAL STRUCTURE CONFORM WITH LAW

On the face of it, this may seem a silly alternative. Every social scientist knows it is easier to change law than to transform social structure. On the contrary, we would argue that the functionalist dominance in organization theory, with its emphasis on equilibrium or homeostasis (Selznick, 1948; Katz and Kahn, 1966: 448; Kaufman, 1971; Burrell and Morgan, 1979: 41–117) has blinded social scientists to the reality that organizations change radically in those unusual situations when the law gives them no option but to change (cf. Stone, 1980: 36–7, n.142). Conflict and adaptation are, after all, themes almost as recurrent in the organizational literature as stability (Burrell and Morgan, 1979; Bennis, 1973; Burns and Stalker, 1961; Ginzberg and Reilley, 1957). Business organizations with immutable organizational structures are at risk of perishing in the natural selection process that

is modern international trade. Companies unable to adjust to shifting consumer preferences, markets, and technological changes frequently get swallowed up by others that can. Of course, stability of identification and of fundamental values of excellence, quality of service and so on are also important to corporate survival (Deal and Kennedy, 1982). But it is corporate structures—wherein old divisions are abolished and new staff functions added—which need to be most adaptable.

It should also be remembered that there are many instances where governmental intervention has brought about structural corporate reform (but see Stone, 1980: 39). Australian mine safety legislation provides one example where law has reshaped the course of corporate compliance by redefining managerial responsibilities. The Queensland Coal Mining Act and the New South Wales Coal Mines Regulation Act define a number of roles which must exist in the management structure of every coal mine in the state (e.g., manager, undermanager, deputy, shot-firer, surveyor) and sets down in some detail the obligations of persons who fill those roles. The management structure of all mines in Queensland and New South Wales conform to the requirements of the Acts; there has been no great problem in ensuring compliance with the governmental imposition of an organizational pattern (Braithwaite, 1985). Another illustration emerges from the Good Laboratory Practices Regulations, 1978, under the United States Food, Drug and Cosmetic Act. These regulations require pharmaceutical companies engaged in the toxicological testing of drugs to have a Quality Assurance Unit and appoint a "study director" with special responsibilities and powers in relation to each new drug being tested. Within six months of promulgation of the regulations a survey conducted by the Food and Drug Administration found a 99 percent level of compliance with the appointment of study directors and a 79 percent level of establishment of independent Quality Assurance Units (Cook, 1979). The point could be labored with some more obvious examples. For instance, how many companies ignore the requirements of the law that they have a board of directors and an outside auditor, or the requirements of the New York Stock Exchange that they have a board audit committee?

It is not difficult for the law to require companies to nominate a person as responsible for ensuring that certain procedures are complied with and that compliance reports are placed in the hands of say the captain of the ship. It is then made clear to everyone that both the nominated compliance officers and the captain of the ship will be held individually responsible should a violation occur. If responsibility is structured so as to insist upon the appointment of a compliance officer or unit with the expertise and time to achieve effective compliance, and if senior management are pinpointed in advance as accountable for any violation, then fear of prosecution on the part of senior management is likely to ensure that the compliance officer or unit has the organizational power and capacity needed to do the job.[25] As we have seen, under the model of law conforming to organizational struc-

ture, management has an interest in creating a picture of confused accountability for wrongdoing. Where structure is made to conform to law, however, management has an interest in showing that it did everything possible to give full power to the compliance person to meet his or her statutory responsibilities. Making law conform to structure creates confusion; forcing organizational structure to conform to law makes for clarity of responsibilities. If the law puts people or groups of people under the gun, especially when some of these people hold senior positions of influence, we can expect fear of conviction to bring about organizational change rapidly.

There are other provisions in the New South Wales Coal Mines Regulation Act which can add clarity to accountability. For example, any middle manager or employee who is given an instruction "by or on behalf of the owner" may request confirmation in writing of the instruction from the higher management person who issued it, and such person must comply with the request. Hence, if a manager is under pressure from corporate headquarters to cut expenditure on safety, s/he may request confirmation of such a suggestion in writing to make it clear who is responsible for any deterioration in safety at the mine. Indeed, when an instruction is given to a manager or any other employee that the manager believes would impede safety or health, the manager is obliged to prevent execution of the instruction until it is confirmed in writing (s.54(1)). In other words, if senior executives compromise safety, the law imposes a duty to put their heads on the chopping block.

The main problem with an approach such as that adopted in Australian coal mine safety law is that it stultifies managerial diversity (Stone 1980: 38; cf. Mintzberg, 1979: 438–67). Whatever view one has about the best way to manage a company, one must concede that it is helpful to look at the very different approaches adopted by other companies. The danger of a state-imposed management structure is that it will lag behind changes in technology, ownership patterns and other basic conditions of the industry and, through stereotyping and standardization, inhibit managerial innovation.

CHANGING BOTH LAW AND ORGANIZATIONAL STRUCTURE

Another possibility is to adopt a set of principles of responsibility which are consistent with some ethical canon. Public policy would then be asked to bend both law and organizational reality to this new position. Presumably for traditional Japanese philosophers the ethically preferred position would be one of collective responsibility overlaid with *noblesse oblige*, while Western traditionalists would seek to impose clearly defined individual responsibility based on fault (Nemerson, 1975; Lewis, 1972). The practical difficulty with this approach is that it combines the problems of bringing law into line with social structure with those of bringing social structure into line with law. Public policy which seeks to transform one major institution is challenge enough.

It should also be pointed out that danger lurks in any attempt to make

law conform to traditional Western philosophical assumptions about individual and collective responsibility. Traditional Western moral notions of responsibility, it may well be argued, are not based on a critical let alone worldly-wise assessment (Mannheim, 1956: 42–65; Seney, 1971: 844–53), but have been dominated by legalistic models of individualistic will (see e.g. Jacobs, 1971: 11–24). Yet, as Walsh (1970) has explained, collective or vicarious responsibility may be more deeply rooted in the Western moral tradition than legalists assume:

> In law we seek to correct certain deviant members of society and for this purpose employ the principle that a man is answerable only for what in some degree issues from his will. To behave otherwise would be practically impossible, for though one can sue a corporation in the person of its officials, one cannot bring a legal indictment against a whole family or a whole nation. It does not, however, follow that the legal notion of responsibility must be carried over entire into the moral sphere, and my contention is that it is not. The criminal who is caught brings punishment upon himself, but he also brings shame and obloquy on his family and friends, who thus are saddled with the consequences of deeds they did not do themselves. There are persons today who say that this amounts to persecution of the innocent and would like, in consequence, to make radical alterations in our ways of dealing with offenders. I think that they ought to reflect on the function of law and morality before they proceed to any such conclusion. Law provides only a first line of defence against malefactors; it discourages anti-social conduct by the threat of definite penalties, which can, however, in most cases be paid off once and for all. Morals supplement law by bringing softer and subtler pressures to bear, pressures which affect a man not just in his personal capacity but also through his relatives, friends and associates, pressures which, again, are not always released when a prisoner completes his sentence or pays his fine. That things work out in this way may strike us as unfair; what I am concerned to stress now is only that this is how things are. The exercise of moral pressure in the way indicated is part of an elaborate system by which society tries to protect itself against undesirable forms of behaviour, and the man who proposes to sweep it away, or alter it radically, must tell us what he thinks could be put in its place. To insist on the principle of limited liability in morals as well as in law may have the unwelcome effect of destroying the possibility of stable society. But whether it does so or not, we should not make the change without being clearly aware of what it involves. (Walsh, 1970: 13; see also Moore, 1972; Boonin, 1969; French, 1975; French, 1984)

PLURALISTIC MATCHING OF LAW AND ORGANIZATIONAL STRUCTURE

So far we have expressed a preference for forcing management structures to conform to the accountability requirements of law. However, as contended above, innovation in managerial design would be stultified under such an approach and state-imposed management structures might compromise efficiency. There is a solution to this problem. Companies could be allowed to define their own principles of accountability and register these with a regulatory agency such as the Securities and Exchange Commission. For example, instead of an organization simply notifying the SEC of the name of its financial auditor, it might also be required to register the

names of the persons who would be responsible for auditing compliance with environmental laws and the name of the senior manager to whom the environmental auditor's report would need to be delivered. The best strategy would be to require the company to register a detailed set of rules and principles defining accountability within the organization (cf. Stone, 1975: 203–4; Stone, 1980: 44, n.166, 45; McVisk, 1978: 90). They could prescribe whatever mix of collective and individual responsibility suited the management style of the corporation. The writing and registering of the principles could come back to haunt the organization and its personnel. No longer could the company claim after the event that, because of diffused accountability for a certain area of compliance, it was impossible to identify those responsible. The accountable person or group having been publicly nominated before the event, notice would have been given that they would be put on the spot should a violation occur (Fisse, 1973: 275; *Yale Law Journal*, 1979: 372; Stone, 1975: 203–4; Stone, 1980: 43). There would be no sociological investigation after the event into who should be blamed: a binding commitment as to responsibility would have been secured and agreed upon before the event.

The standard governing the imposition of criminal responsibility under this proposal would be that adopted by the Supreme Court in a leading decision, *U.S.* v. *Park*.[26] In *Park*, the president of a large retail food chain was charged with having unfit food for sale contrary to the Food, Drug and Cosmetic Act (s.301(k)). The central issue was whether Park could be held responsible for rodent contamination in Baltimore when his office was in Philadelphia. In 1972 Park had received a letter from the FDA complaining of insanitary conditions in the Baltimore warehouse. Park called in his vice-president for legal affairs who informed him that the divisional vice-president in Baltimore "was investigating the situation immediately and would be taking corrective action and would be preparing a summary of the corrective action to reply to the letter." Hence the defendant claimed he had done all that could reasonably be expected of a chief executive officer to rectify the problem. Nevertheless, when the FDA re-inspected the warehouse and found that the problem had not been rectified, Park was charged and subsequently convicted and fined $50 on each of five counts. The Supreme Court upheld the conviction and fine, the basic issue of responsibility being decided in these terms:

> The duty imposed by Congress on responsible corporate executives is . . . one that requires the highest standard of foresight and vigilance, but the Act, in its criminal aspect, does not require that which is objectively impossible. The theory upon which responsible corporate agents are held criminally accountable for 'causing' violations of the Act permits a claim that a defendant was 'powerless' to prevent or correct the violation to 'be raised defensively at a trial on the merits . . . ' [T]he Government's ultimate burden . . . [is to prove] beyond a reasonable doubt the defendant's guilt, including his power, in light of the duty imposed by the Act, to prevent or correct the prohibited condition. (421 U.S. 658, 673, 1975)

Although the meaning of "powerless" in the above-cited passage is unclear (Abrams, 1981; Brickley, 1982), plainly the *Park* decision does not impose a standard of absolute responsibility. Rather, it imposes a duty to exercise special care: if the defendant can show that he or she exercised a very high degree of care, responsibility can be avoided under the defense of impossibility. However, complete reliance on any one subordinate, no matter how trustworthy, is insufficient to satisfy the standard of care required.

If it is unrealistic to expect companies to lodge all-embracing principles of intracorporate responsibility with an agency like the SEC, there is, nevertheless, the possibility of regulatory agencies requiring a detailed prescription to be provided within their more limited ambit of concern. For example, environmental agencies might require lodgment of specific accountability plans to ensure nominated accountability for environmental offenses. The management structure imposed by the New South Wales Coal Mines Regulation Act has been discussed along with the problem of stultification of innovation which this approach brings. In fact, in a 1982 revision of this legislation, some of the elements of a government mandated management system were replaced by discretion for the company to design its own management structure. This was achieved by the device of making the mine manager responsible unless there was a written delegation of specified responsibilities to another person. An instrument of delegation, countersigned by the person to whom the new legal duties are delegated, must be sent to the district inspector (s.58). A delegate may refuse to countersign an instrument of delegation and have the reasonableness of the delegation adjudicated by a court of law (s.57). In explaining this change, the former Minister for Mineral Resources commented:

> It has for some time been apparent to my Department that the management structure provided for in the present Coal Mines Regulation Act does not permit the flexibility necessary in managing a modern coal mine through all stages of its development. Many instances have come to notice where the Act provides that a particular person shall perform some function yet in practice it is performed by some other person, often because it is more convenient to do so and indeed in some cases more logical. For this reason the Department, when it began the task of preparing the new legislation, decided that the legislation should, consistent with safety, give to the manager a wide discretion to draw up his own management structure having regard to his needs and the resources available to him. (Mulock, 1981: 22–23)

While this approach permits an array of accountability structures suitable for tiny family mines at one extreme to mighty multinationals at the other, one problem is that companies are just as capable of naming scapegoats before the event as they are afterwards. In fact, some already do this. Interview research on corporate crime in the pharmaceutical industry by one of the present authors revealed three American pharmaceutical companies which had "vice-presidents responsible for going to jail"

(Braithwaite, 1984). Lines of accountability had been drawn in such a way that a "vice-president responsible for going to jail," not the president, would suffer the consequences for any serious offense.

On the other hand, the public process of pinpointing those accountable for achieving compliance would induce healthy soul searching as to where the company really did stand on principles of responsibility. Personnel at real risk of being subjected to criminal responsibility without having been given effective power to ensure compliance could be expected in some cases to: (1) successfully insist on being given that power (through pressure from their union or professional association or even by means of litigation) (2) take extra care to ensure compliance within the limits of their power; or (3) resign (a difficult option under the Japanese cultural tradition of lifetime employment). Because confrontation with employees set up unfairly as scapegoats would be a personnel relations disaster in a culture which disapproved of scapegoating, companies would be under pressure to be fair by bringing power and responsibility into alignment.

Pluralistic matching of law with the accountability principles of particular companies is an extension of a model of business regulation—the model of enforced self-regulation—which one of the authors has proposed elsewhere (Braithwaite, 1982). Under the enforced self-regulation model, governmental rules of corporate regulation are replaced by a requirement that companies write their own rules and submit them to a regulatory agency which ensures that they comply with minimum governmental standards. These privately written and publicly ratified rules are then treated in the same way as universalistic rules, so that the state is able to prosecute for their contravention. The suggestion now advanced is that individual companies be required not only to provide their own particularistic rules, but also to furnish particularistic principles of responsibility as an aid to public prosecution should violations subsequently occur.

The strengths and weaknesses of a particularistic approach to corporate crime control have been considered in detail elsewhere (Braithwaite, 1982). That discussion need not be repeated here. The general point to be stressed is that, from a quite different direction, we have reached the same impasse. Organizations are so different that any universalistic approach to controlling them will encounter difficulty. Inevitably, models of accountability, just like models of rule creation, are pushed towards particularism. There may be less injustice and better protection of the public by making private justice systems more explicit and giving them public recognition than by imposing universalistic laws upon organizational structures with which those laws are out of line. Certainly, there can be no universalistic solution to the fundamental problem of ensuring that the legal control of organizational crime is consonant with the diverse forms of organizational accountability in any modern society, even in the case of Japan with its supposedly homogeneous organizational cultures.

CONCLUSION

Interview data from Japanese companies have been used to explore diversity in the way responsibility for wrongdoing is allocated in large organizations. The four types of individual responsibility discussed—*noblesse oblige*, captain of the ship, nominated, and fault-based—are not neat categories. Mixtures of competing accountability principles are evident in both the Japanese companies considered here and the American, European and Australian companies studied by the authors in previous work (Fisse and Braithwaite, 1983; Braithwaite, 1984; Braithwaite, 1985). We have shown how principles of individual accountability also compete with disparate principles of collective responsibility which exist in both corporate cultures and law.

Accepting the premise of this article that the law is likely to be more effective in controlling organizational crime if there is consonance between law and corporate cultures, what conclusion is to be drawn about the four logical possibilities for bringing the two into alignment?

(1) Because corporate accountability structures are so diverse, there is no law reform package which will produce a set of principles of responsibility that is widely consistent with corporate cultures. Moreover, particularistic, after the event, courtroom determinations of the nature of corporate accountability structures tend to hopeless obfuscation at the hands of defendants who have an interest in painting a picture of confused accountability. Therefore, it is extraordinarily difficult and prohibitively expensive in research resources to align legal principles of responsibility with corporate principles of responsibility on a case by case basis after the event.

(2) It is more feasible than some sociological dogma would have one believe for law to require companies to change their accountability structures to conform to legal principles of responsibility. However, state-imposed corporate accountability structures may render law enforceable at the expense of compromising economic efficiency by straightjacketing management systems.

(3) Changing both the structure of law and the structure of corporate decisionmaking to conform to a set of ethical principles of responsibility is unrealistic. It is a solution which combines the problems of the first two solutions and raises the vexed question whether there is any set of ethical principles of responsibility suitable for adoption by both the law and all corporate cultures.

(4) Allowing each organization in advance to register principles of accountability consonant with its unique corporate culture may be the most attractive solution. It is a solution which recognizes the impossibility of anything but particularistic matching of corporate and legal principles of responsibility. Provided that safeguards are incorporated so as to minimize the risk of scapegoating or contrived allocation of internal

responsibility (regulatory approval of accountability principles, rights of appeal for individuals before the event against unfair allocations of responsibility, an "impossibility" defense after the event), this approach offers the most promise.

In short, under the criteria both of effectiveness in achieving compliance with the substantive requirements of the law and justice in punishing the blameworthy, the fourth option is the most attractive, followed in order by the second, the first and the third. The most significant problem with all the options, including the pluralistic matching option—oppressive nominations of "vice-presidents responsible for going to jail"—requires further study. The related major concern with the pluralistic matching option—that companies will design accountability principles which ensure that illegal schemes flourish with minimal legal disruption—also demands further research.[26]

BRENT FISSE *is a Professor of Law at the University of Sydney Law School, Sydney, Australia.*
JOHN BRAITHWAITE *is a Senior Research Fellow, Department of Sociology, Australian National University.*

NOTES

1. Jenkins (1980: 122) is one recent advocate of law being made to conform to culture:
   > " . . . if the mediating order that law posits is to be accepted and woven into the social fabric, it must be made congenial to the settled habits and aspirations of people. . . . The problem that law faces here might be compared with that which medicine confronts in organ transplants. . . . The defense mechanisms that conserve the body against foreign intruders will not accept these alien elements. . . . Two methods are employed to alleviate this difficulty: the transplanted organ is matched as closely as possible with the host body as regards tissue, blood type, and other biological factors, and the host body is prepared in various ways to accept and accommodate itself to the stranger in its midst. As an initiator of social reform, law encounters a similar difficulty and must employ similar techniques."

   See also Aubert, 1952; Moore, 1978; Allott, 1980: 45–72; Henry, 1983.
2. There is redundancy in distinguishing organizational structure from organizational culture because the former is a subset of the latter (Hoult, 1969: 93, 304). It will become clear that the aspect of organizational culture crucial to this analysis is the structure of responsibility for decisionmaking. Organizational structure in this article therefore refers to who or what is responsible for whom or what. Organizational culture means this in addition to the rest of the way of life in an organization, including the values, norms, institutions and artifacts which distinguish it from other organizations. Even a narrower conception of corporate culture as the social or normative glue that holds an organization together (Smircich, 1983: 344; Tichy, 1982) must incorporate agreement on who will be responsible for what.
3. Mitsui and Co., Nippon Steel, Toyota Motor Sales, Sumitomo Corporation, IHI, Idemitsu Kosan.

4. Justice, International Trade and Industry, the Environmental Agency, and the Fair Trading Commission.
5. The Polish Penal Code, for example, provides for higher penalties for economic crimes in proportion to the seniority of the offender (personal communication from Professor Leszek Lernell). "Also it is maintained the positions of social power and prestige, held by many corporate offenders, carry heavier demands for social responsibility" (M. Saxon, *White Collar Crime: The Problem and the Federal Response*, Congressional Research Service, Library of Congress 61 (1980)). "I believe that white-collar criminals are more culpable than their street counterparts. Having more advantages than other people, they bear more responsibility to set a good example. This idea of *noblesse oblige* dictates that white-collar criminals get heavier penalties than street offenders for equivalent depredations" (Professor Gil Geis, Testimony before Subcommittee on Crime of the Committee on the Judiciary, House of Representatives. 95th Congress, 2nd Session, on White-Collar Crime, June 21, 1978, p. 30). The legal systems of some non-literate societies provide for more severe sanctions on powerful than on powerless offenders (Nader and Todd, 1978: 20).
6. Chief executive suicide following corporate scandal has also occurred in the United States. The best known case was the leap of the Chairman of United Brands from the Pan Am building in New York following a bribery scandal in Honduras (Jaccoby *et al.*, 1977: 105–7). However, symbolic overtones of requital do not seem to loom large in such American suicides.
7. On the other hand, it was alleged by the Transport Ministry that the company's personnel department was at fault for failing to ground a person who should have been recognized as insufficiently stable to fly a plane safely (*Mainichi Daily News*, March 11, 1982, p. 12B).
8. Here we see at work the well-known organizational phenomenon of "anticipated reactions" (Simon, 1965: 129).
9. In the literal captain of the ship context, it is interesting that the omnipotence of the captain is being undermined by the automation of controls and by the consequential dependence on systems engineers, electrical engineers and other members of the new maritime technocracy (one British company runs its ships by means of on-board committees). More fundamentally, owners and charterers are directing more and more of their ships' activities from on-shore. See Perrow (1984: 200).
10. Dore (1973: 224) found that while the organization chart for the British company was made up of individual positions,

    > . . . a chart for the Hitachi factory, by contrast, shows as individual positions only those of the factory general manager and his four deputies. Below that, even for what are clearly staff as well as for line functions, there are only collectivities.

11. The examples we encountered were that of IHI and, to a lesser extent, Mitsui.
12. Unlike a Western counterpart, a Japanese subordinate will often accept this lot without demur because peer group approval attaches to acting as a lightning rod for the collective.
13. Air Pollution Control Law No. 97 of 1968 (Amended by Law No. 18, No. 108 and No. 134 of 1970, No. 88 of 1971, No. 84 of 1972 and No. 65 of 1974); Water Pollution Control Law No. 138 of 1970 (Amended by Law No. 88 of 1971, Law No. 84 of 1972, Law No. 47 of 1976 and Law No. 68 of 1978); Nature Conservation Law No. 85 of 1972 (Amended by Law No. 73 of 1973); Basic Law for Environmental Pollution Control Law No. 132 of 1967 (Amended by Law No. 132 of 1970, No. 88 of 1971, No. 111 of 1973, and No. 84 of 1974).
14. It is in fact possible under the Industrial Safety and Hygiene Law for large plants to nominate the second in charge of the plant as accountable for what

would normally be the ultimate safety responsibilities of the general superintendent. However, it is not common for the Ministry of Labor to permit the deputy to be nominated.

15. Consider e.g., "The Complex Case of the *U.S.* vs. *Southland*: To What Extent are Companies Liable for Their Employees' Crimes?", *Business Week*, Nov. 21, 1983, pp. 108–11.
16. Interviews with Professor Koya Matsuo, Law School, University of Tokyo, and Mr. Akio Harada, Ministry of Justice, March 1982. The absence of a provision enabling the imposition of criminal liability upon a corporation for unlawful homicide was recently the subject of much-publicized judicial criticism in the Sennichi-Mae Building case (*Asahi News*, May 16, 1984, p. 1).
17. This does not mean that an individual need necessarily be convicted before a corporation can be. It simply means that the requirements of proof against a guilty employee must be satisfied before the corporation can be convicted. See references *supra* n. 13.
18. There is also the initial problem of imposing criminal responsibility on an unincorporated entity. For an unsuccessful attempt to impose corporate criminal responsibility on an unincorporated corporate division see *United States* v. *Gulf Oil Corporation*, 408 F. Supp. 450, 469–70, 1975. But consider *Public Util. Comm'n of Calif.* v. *Pacific Gas & Elec. Co.*, Decision No. 91107, 2 C.P.U.C. 2d 596 (1979) (reduction in rate of return as penalty confined to Electric Department, the area of responsibility in which the Utility's performance was found unsatisfactory.
19. Some corporations do, nevertheless, make efforts to ensure that some of the effect of fines is felt by subunits. For example, Bethlehem Steel has an accounting system which charges workers compensation payouts and fines for violations of safety laws to the individual coal mines wherein the costs for the corporation are incurred (Braithwaite, 1985).
20. For example, the Mine Safety and Health Administration imposes some 140,000 civil penalties a year, all on companies alone. Criminal cases are much less common and are roughly equally divided between cases against companies alone and cases against both individuals and the companies for which they work. See also Schrager and Short, 1978: 410; Braithwaite, Vale and Fisse, 1984. Peter Grabosky and John Braithwaite are currently analyzing data on the overwhelming reliance on corporate rather than individual liability by 96 Australian business regulatory agencies.
21. See *Harvard Law Review*, 1979: 1247–8. For an exception where the collective knowledge of several employees was pieced together and held to be a sufficient mental element for the purpose of imposing corporate criminal responsibility, see *United States* v. *T.I.M.E.—D.C., Inc.*, 381 F. Supp. 730, 738–9, 1974. See generally Fisse, 1983: 1185–1213.
22. There are also a variety of other policy reasons (Fisse, 1978). Moreover, as Clark (1979: 130) cynically points out, " . . . in the West decisionmaking is presented as individualistic until adversity proves it collective."
23. Compare the extensive, time-consuming studies of organizations occasionally undertaken by academic sociologists, e.g. Bosk, 1979; Selznick, 1953.
24. This is not to deny that extensive presentence reports on corporate defendants are prepared from time to time in some jurisdictions (see e.g., *United States* v. *Olin Corporation*, Criminal No. 78–30, slip op. (D. Conn. June 1, 1978)). However, this practice is rare, at least in the United States (interview with U.S. Federal Probation Service, San Francisco, Jan. 18, 1984). Moreover, it must be wondered how effective probation officers are in penetrating the smokescreen which often surrounds accountability in large organizations.
25. This is not to say that this power would never be blocked in specific situations

where the costs of compliance with the law were enormous. Organizations can readily empower people for routine purposes while suspending that power in special situations.

26. One useful start would be to ascertain whether this had happened in New South Wales coal mines since 1982 when the law was changed to permit pluralistic matching of criminal liability to predetermined corporate accountability structures.

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