

CORPORATE HOMICIDE: DEFINITIONAL PROCESSES IN THE CREATION OF DEVIANCE

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A conception of corporate behavior as criminal has entered the scientific and popular vocabulary. This has been accompanied by an expansion of common law to include the activities of corporations. The definitional change is exemplified by the indictment and trial of Ford Motor Company on charges of reckless homicide. The present work focuses on the history of events surrounding this precedent action. Using information from media accounts, it explores the definitional processes by which the world's second largest automobile manufacturer was indicted as criminal. Content analysis of these reports suggests that the expansion of legal parameters to include formerly exempt behavior was preceded by the development of a vocabulary of deviance, personalization of harm, and attributions of nonrepentance to the offender. Public reevaluation of corporate actors and actions in terms of a vocabulary previously reserved for conventional criminality, the transformation of the definition from one of product defect and diffuse consumer cost to one of personal injury, and depiction of the corporation as refusing to recognize the harms associated with its acts, it is argued, opened the way to the application of criminal statutes.

Concern with the criminal activities of corporations coincided with the emergence of corporate capitalism during the late nineteenth century. Both legal scholars (e.g., Edgerton, 1927) and social reformers (e.g., Sinclair, 1905) argued that corporations were capable of committing crimes and should be held responsible for such actions. Social scientific attention was soon to follow. In his presidential address to the American Sociological Society in 1939, Edwin H. Sutherland (1940) called for the systematic study of corporate criminality. He argued that, while not ordinarily called crime, corporate crime is, in fact, "real crime . . . because it is in violation of the criminal law" (1940: 5). Sutherland went on to document the widespread existence of corporate offenses in his study of white-collar crime (1945; 1949), a work that brought attention to the phenomenon as a legitimate area of social scientific research.

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Interest in the misconduct of corporations continued to grow in the academic community throughout the next four decades. However, much of the recent literature on this issue is prescriptively oriented. In describing the social harms produced by certain practices of industrial executives, scholars have argued that these activities should be considered criminal and punished as such (see, for example, *Yale Law Journal*, 1961; Geis, 1972; Nader and Green, 1973; Douglas and Johnson, 1977; Ermann and Lundman, 1978; Johnson and Douglas, 1978; *Yale Law Journal*, 1979). In the public sphere, a similar trend has been evident. Popular distrust of labor unions, Congress, and large corporations has grown steadily (*Opinion Research Corporation*, 1975).

Many activities are already subject to legal sanction. Unsafe work conditions, defective products, air and water pollution, food and drug adulteration are illegal. Regulatory agencies are charged with the control of such offenses, and civil protections compensate personal loss. Increasingly, however, the vocabulary has turned from regulatory and civil liability to criminal liability. A conception of corporate behavior as criminal has entered the scientific and popular vocabulary.

I. THE PARAMETERS OF CRIMINAL LAW

In order to understand the changing definition of corporate liability, it is important to recognize that the parameters of criminal law are both statutory and culturally implicit. Liability, that is, is not only determined by legislative enactment but by popularly diffused, implicit assumptions regarding the nature of criminality (Harris, 1977). Statutorily, children and the insane are not responsible for their crimes. Others, however, are exempt because of their failure to fit the implicit parameters of the law. Chambliss and Seidman (1971: 82) illustrate the point in their discussion of the statute that forbids sleeping in public transportation facilities. The behavior proscribed is clearly discernible, and the statute creates no distinction among kinds of offenders. In practice, however, certain types of public sleeping and sleepers may be less acceptable than others. The sleep of a homeless, poorly dressed, unshaved middle-aged male more clearly violates the meaning of the law than does that of the neatly attired business executive awaiting a commuter train. That the behaviors of each are identical may be less relevant than conformity of the actor and event to the implicit parameters of the statute.

Culturally implicit parameters of law are also evident in the case of homicide. A fatal argument between friends following a Saturday evening of drinking, for example, would leave little doubt as to the applicability of criminal statutes. Fatal bodily harm, however, may just as easily be a product of dangerous factory conditions, polluted air, or unsafe motor vehicles as it is of bullet wounds, knifings, or beatings. The latter fall clearly within the cultural meaning of homicide; the former do not. The distinction is an implicit one. There are no statutory exemptions from criminal responsibility accorded those whose damages to human life occur within the context of the manufacture and sale of consumables. Rather, they have enjoyed a *de facto* exemption which has become institutionalized in the law.

Cultural definitions of crime do undergo change. Parameters are expanded or contracted, and behaviors are realigned relative to the new definitional limits. The impact of the *Carrier's Case* of 1473 on contemporary conceptions of theft is a case in point (Hall, 1952). Legal proscriptions against unlawful taking predate the *Carrier's Case* by centuries. The confiscation of goods by someone temporarily entrusted with the property, however, fell outside the culturally defined limits. Loss of private possessions to a burglar was a crime; their loss to a hired transporter was only indicative of the owner's poor judgment of character. The fifteenth-century indictment and conviction of an errant carrier altered traditional definitions of unlawful taking. There was no new legislation, only a judicial decision to recognize a new form of property crime.

A similar event may alter the current parameters of criminal homicide. On September 13, 1978, a county grand jury in Elkhart, Indiana, indicted the Ford Motor Company on three counts of reckless homicide and one count of criminal recklessness.¹ The charges stemmed from the death of three teenage girls who suffered fatal burns when their Ford Pinto burst into flames following a low-speed rear-end collision. As with theft in the *Carrier's Case*, the new homicide has emerged because of the application of extant statutes to formerly exempt behaviors.

Although Ford was subsequently acquitted on the merits of the case (March 13, 1980), the trial of a corporation for criminal homicide is a precedent-setting event in American jurisprudence. The Ford trial, moreover, appears to be the

¹ At the prosecutor's request, the charge of criminal recklessness later was dropped.

culmination of a series of definitional changes that have occurred in the eight-year period following the Pinto's introduction to the automotive market. An analysis of the events preceding this action provide insight into the process by which deviance is created.

II. THE CORPORATION AND THE LAW

The indictment and trial of Ford Motor Company was a contemporary effort to establish the position of the corporation before the law. The issue of corporate liability has been ambiguous throughout history. The problem has been one of reconciling a legal commitment to individual responsibility with the emergence of a social entity capable of actions independent of readily identifiable human agents. Since the middle ages, the law has attempted to resolve the dilemma by defining the corporation as a person (Coleman, 1974: 13-18; Stone, 1975: 11-12). Until the seventeenth century, legal decisions based on this definition posed little problem. Given the limited size and complexity of organizations, individuals could usually be identified to bear responsibility for corporate actions. The law could thus recognize the corporation while maintaining its individualistic orientation.

By 1612, however, when the East India Company determined that trading "should be only by the corporation" (Stone, 1975: 14), the situation had changed dramatically. With large-scale shipping and the expansion of the number of individuals involved, the accountability of any one person could no longer be easily ascertained. Rather, the decisions that led to wrong-doing were diffused among the suppliers of capital, the managers of enterprise, and the corporation as a whole. The problem of accountability persisted and became more acute during the period of industrialization. The rules for incorporation and corporate activity were relaxed: "the corporation could operate where it wanted to, grow to whatever size it wanted, manufacture any products, and provide any services it chose" (Stone, 1975: 22). As a result, organizations became even more complex, and responsibility for their activities was further diffused. Throughout the period, the law continued to place liability on the corporation as an actor, but shifted the burden of sanction to its shareholders.

It was only in the nineteenth century that the corporation itself became accountable under the criminal law. In 1846, an English court upheld an indictment against a railroad for illegally destroying public property (Stone, 1975: 24). In its

decision, however, the court also ruled that corporations could not be guilty of treason, felony, perjury, or offenses against the person, since these crimes required human agents.

In the United States, representatives of corporations were ruled accountable for personal injury crimes in 1904 (*U.S. v. Van Schaick*). Furthermore, both New Jersey (*State v. Lehigh Valley Railroad Company*, 1917) and New York (*People v. Ebasco Services, Inc.*, 1974) have recognized that corporations can, through misfeasance and nonfeasance, commit manslaughter. The dominant precedent, however, first established in 1909 in *People v. Rochester Railway and Light Company*, has been that corporations are incapable of forming intent and, therefore, cannot be held liable for crimes against persons (19 American Jurisprudence § 1436 et seq.; see also Stone, 1975).

While the issue of locating *mens rea* in the corporate structure has been and continues to be the object of legal debate (Edgerton, 1927; Epstein, 1980), the force of the *Rochester* decision has been weakened within recent years. Courts have held that the “killing of a human being by a corporation is an act that *can be proscribed* by the Legislature” (*People v. Ebasco Services, Inc.*, 1974; emphasis added). Failure to sustain indictments against corporations lies less in the logic of corporations as potential offenders and more in the language of particular state and federal statutes. Most typically, homicide is defined in these codes as the criminal slaying of “another human being,” with “another” referring to the same class of beings as the victim (Clark, 1979).² The developing trend within the courts which recognizes the possibility of corporate homicide has come to be reflected in the rewording of state and federal model penal codes to include corporation in the definition of criminally liable persons (Clark, 1979).

The state of Indiana adopted the definition of corporations as criminally liable in 1976. This statutory revision formed the basis for the September 13, 1978, indictment of Ford Motor Company on charges of reckless homicide. After three days of deliberation, the grand jury determined that a crime had been committed and that Ford was to be tried as the responsible party. The applicability of the criminal definition was based on

² In its motion to dismiss the indictment, Ford Motor Company urged that a strict interpretation of “another” as referring to a human being be adopted. The trial judge, however, ruled that corporations can be indicted under the Indiana Statute (Clark, 1979: 919-920).

evidence that the manufacturer had known that the fuel tank on its subcompact Pinto was defectively designed and had consciously decided to proceed with production in spite of the potential hazards. This decision, the grand jury found, was predicated on a cost-benefit analysis. Officials at Ford allegedly predicted the number of severe burn injuries and deaths that would result from the defect, and estimated that the cost of repairing the car would exceed anticipated court settlements.

The use of human life in calculations of corporate profits is by no means unique to Ford Motor Company. Concern over the practice was expressed early in the twentieth century. Max Weber commented on the issue in relation to its implications for capitalism in American cities. In 1904, he observed that:

After their work, . . . [Chicago] . . . workers often have to travel for hours in order to reach their homes. The tramway company has been bankrupt for years. As usual a receiver, who has no interest in speeding up the liquidation, manages its affairs; therefore, new tram cars are not purchased. The old cars constantly break down, and about four hundred people a year are thus killed or crippled. According to the law each death costs the company about \$5,000, which is paid to the widow or heirs, and each cripple costs \$10,000, paid to the casualty himself. These compensations are due so long as the company does not introduce certain precautionary measures. But they have calculated that the four hundred casualties a year cost less than would the necessary precautions. The company therefore does not introduce them (cited in Gerth and Mills, 1958: 16).

What is unique in the case of Ford is the definition attached by the Indiana grand jury to such a profit strategy. A calculation of the costs of reducing the number of injuries and deaths became evidence of the willfulness and intentionality of the corporate action. Once the company policy had been defined in these terms, the indictment became possible.

The events surrounding the Ford indictment are the focus of the analysis that follows. The significance of the case lies in its implications for an expanded application of common law rules of criminal liability. As a recent attempt to resolve the status of the corporation before the criminal law, it provides insight into the processes by which traditional definitions of criminality are altered.

III. METHODOLOGY

Media accounts provide the information used to explore the definitional processes which attended the homicide indictment of the world's second largest automobile manufacturer. The importance of such accounts in the study of deviance has been noted by Kai Erikson in his study of colonial America. These reports, he argues, "constitute one of our main sources of information about the normative outlines of society.

In a figurative sense, at least, morality and immorality meet at the public scaffold, and it is during this meeting that the line between them is drawn" (1966: 12).³

Ford's Pinto appeared on the automotive market in the fall of 1970. Using the Index of the Washington Post, all news items pertaining to the subcompact were identified for the period January, 1970 through September, 1978.⁴ Microfilm tapes of these items were obtained, and all reports were photocopied and chronologically organized for analysis. First, changes in the newsworthiness of the automobile were assessed in terms of the number of column lines devoted to a discussion of the vehicle over time. Content analysis was then employed to depict the dimensions of public concern and corporate response reflected in these reports. The goal was to ascertain the changing nature of each, as measured by the frequency with which relevant content categories appeared in news accounts. Content categories established to assess public concern included: *danger*, references to fires, explosions, deaths, and injuries associated with the Pinto fuel tank; *intent*, references to Ford's knowledge of and unwillingness to rectify the problem; *civil liability*, statements regarding the manufacturer's responsibility for the problem and accounts of pending civil suits; and *criminal liability*, explicit references to crime, criminal procedure, and punishment.

There is evidence to suggest that legal intervention into corporate activities is frequently inspired by personal injury crises. For example, the Food, Drug, and Cosmetic Act of 1938 came only after 100 deaths resulted from a deadly elixir; and federal regulation of pre-market testing was a response to the tragedy of thalidomide. Similarly, the emerging legislative concern regarding the medical device industry has been motivated by failures in such life-sustaining devices as baby incubators, respirators, and defibrillators (McNeil and Minihan, 1977: 478). Personal injury, therefore, seems to play an important role in shaping the parameters of the law. In order

³ We are not arguing that the media cause behavioral boundaries or that they are a perfect mirror of popular moral sentiment. Rather, in the stories covered and the words used to describe events, symbols are utilized that both depend upon and reinforce shared meanings. Thus, while readers may disagree as to the content of particular reports, that content is nonetheless recognizable as a definition of the situation to which the report pertains. These are the meanings that we have sought to identify in the analysis that follows.

⁴ While the *New York Times* was originally considered for analysis, an employee strike during the period July through October, 1978, precluded its use. However, a comparison of articles published by the *Times* with those found in the *Chicago Tribune*, *Los Angeles Times*, and the *Washington Post* revealed no apparent differences.

to assess this influence in the indictment of Ford Motor Company, an analysis was made of the extent to which media accounts focused on personal (as opposed to mechanical) aspects of the issue. All discussions of Pinto-related deaths and injuries were categorized as personalized accounts, while descriptions of design flaws were coded as mechanical accounts. A summation of the news lines devoted to a discussion of each was used as the measure of *personalization of harm*.

Perception of the deviant as nonrepentant or “enemy,” it has been argued, “seems to be the greatest stimulus to efforts to designate [the] act as publicly defined deviance” (Gusfield, 1967: 184). Failure to legitimize the norm by refusing to acknowledge that it has been breached, intensifies public resentment and opens the way for formal designation as deviant (Gusfield, 1967). Thus, for example, the development of the moral crusade against industrial polluters in Japan (Upham, 1976) was inspired by the unwillingness of offending manufacturers to admit guilt and accept moral responsibility for the harms produced. At issue was not the monetary compensation of those afflicted with chemical poisoning, but the indignation of the community against a nonrepentant deviant. A Japanese journalist reporting on the trials observed:

The significance the patients attached to this suit — it wasn't just money, just the compensation. It was to make the presidents of the companies that had inflicted this illness on them say just one word, “I'm sorry.” The advocacy system pretty completely shattered this hope. At the very instant that the plaintiffs' lawyers were denouncing the defendants' crimes, at the very instant that the patients were making their embittered appeal, “Mr. President” was sitting in his nice, deep office sofa, not in court! Is money an excuse for even this? (quoted in Upham, 1976: 597).

Perceived lack of repentance preceded violent attacks against the manufacturers and subsequent criminal litigation.

In the present study, an attempt was made to tap the corporation's response to public sentiment through media accounts of Ford's repentant and nonrepentant reactions. These reports were considered both in terms of Ford's own response to the events as they transpired, and those attributed to the manufacturer by others. In this case, the measure involves a comparative summation of references to repentant and nonrepentant responses.

Finally, an effort was made to reconstruct the specific events that preceded the September indictment. This was accomplished by drawing upon all reports of the Pinto published in the *New York Times*, *Chicago Tribune*, and *Los Angeles Times*, as well as those in the *Washington Post*. The

patterns that emerge from this and the more general analysis may provide insight into the application of a public definition of criminality to corporate behavior, a definition which anticipated the altered parameters of the law.

IV. THE EMERGENCE OF THE CRIMINAL DEFINITION

Until the Highway Safety Act of 1966, automobile defects fell largely within the purview of manufacturer and implied warranties. The manufacturer's warranty is an agreement designed to protect consumers against faulty production of specified parts of the automobile. Implied warranties, on the other hand, are additional protections provided the purchaser by the courts. If it is determined that a product is not reasonably suited for its use and purpose and, as a result, injuries occur, then an implied warranty has been breached and damages may be recovered from the manufacturer. With the increasing popularity of the doctrine of strict liability, all that injured persons have had to demonstrate in recent years is that the product was defective at the time it left the manufacturer. The claimant need not prove negligence or when the defect became problematic, the reasoning being that the manufacturer who profits from the sale of the product should also be liable for any defects that result in injury to others.

Both manufacturer and implied warranties required that the purchaser identify product defects. The 1966 federal regulation, however, shifted the focus of responsibility. Upon discovery of flaws either in design or production, the manufacturer was bound to notify individual owners and to recall the automobile for correction. All attendant costs were to be borne by the manufacturer. The National Traffic Highway Safety Administration was created to oversee enforcement of the Act.

The debut of the Ford Pinto occurred within the latter context of regulatory liability. Within a month of its appearance, the 26,000 early production models were recalled for an accelerator linkage problem. Before the end of its first year, all 220,000 cars were again recalled, this time to correct a defect in a pollution control device that had resulted in engine compartment fires. It was not until December 30, 1976, however, that the automobile's fuel tank was brought to public attention in a syndicated editorial appearing in the *Washington Post*. Columnists Jack Anderson and Les Whitten alleged that:

Buried in secret files of the Ford Motor Company lies evidence that big auto makers have put profits ahead of lives. Their lack of concern has caused thousands of people to die or be horribly disfigured in fiery car crashes. Undisclosed Ford tests have demonstrated that the big auto makers could have made safer automobiles by spending a few dollars more on each car (Anderson and Whitten, December 30, 1976: B7).⁵

Newsworthiness and the Vocabulary of Deviance

The analysis of media attention accorded the Pinto fuel tank, and the nature of the vocabulary utilized, reflect the changes in public concern regarding the automobile. The cells in Table 1 show the number of article lines devoted to the problem fuel system over time, and the corresponding frequency with which indicators of danger, intent, and civil and criminal liability appear in those lines. As indicated in Table 1, during the first trimester (12-30-76 to 7-25-77) of the period December 30, 1976, through September 14, 1978, a total of 68 lines were addressed to the issue. The vocabulary of these reports is one of danger and intent. Consumers are warned of potential impact explosions, and incidences of burn deaths and injuries are recounted. Allegations are made that the manufacturer was fully aware of the hazards of the vehicle and had willfully failed to make corrections in order to protect profits.

Table 1. Newsworthiness and the Vocabulary of Deviance

Trimester	Newsworthiness		Content Categories			
	Article Lines n	%	Danger n	Intent n	Civil Liability n	Criminal Liability n
I (12-30-76 to 7-25-77)	68	(6)	6 (8)	3 (9)	0 —	0 —
II (7-26-77 to 2-18-78)	338	(30)	16 (22)	12 (38)	2 (12)	13 (39)
III (2-19-78 to 9-14-78)	708	(64)	51 (70)	17 (53)	15 (88)	20 (61)
Total	1114		73	32	17	33

The second trimester (7-26-77 to 2-18-78) saw a dramatic 500 percent increase in the newsworthiness of the Pinto, with 338

⁵ Ford Motor Company is not the only manufacturer to have difficulties with product defects. All car manufacturers have been held responsible for producing defective and dangerous automobiles. What makes Ford unique is the criminal definition applied to its actions by the Elkhart, Indiana, Grand Jury.

column lines focused on the vehicle (see Table 1). It was also during this period that the manufacturer was first described in terms of civil and criminal liability. Two events appear to have been particularly important in shaping the emergent vocabulary: publication of an exposé charging Ford Motor Company with deliberately endangering the public, and a spectacular award to a Pinto burn victim.

The exposé (Dowie, 1977) was summarized by the Post in several consecutive news releases. The article, allegedly based on documents obtained from Ford, charged that the manufacturer had, for a period of six years, sold cars known by company officials to have improperly designed fuel tanks that would rupture on impact. The author claimed that between 500 and 900 burn deaths had resulted from ensuing explosions. He further alleged that, in order to speed production and save costs, the company had ignored tests indicating that the car was dangerous.

Following publication of this article, the Transportation Department began an investigation of all subcompacts for the possibility of gasoline tank fires. An initial survey by this federal agency revealed that, since 1975, 26 Pintos had been involved in fatal fires that took 35 lives. Consumer advocate Ralph Nader brought increasing public attention to the controversy by charging Ford with "corporate callousness," and demanded that the vehicle be recalled immediately. In May of 1978, the National Traffic Highway Safety Administration determined that a safety defect did exist in the fuel system of the 1.9 million Pintos produced from 1970 through 1976. Ford was ordered to recall the car for corrective repairs in June, 1978.

At the same time the federal regulatory agency was investigating possible hazards of the Pinto, civil actions were also being brought against its manufacturer. An estimated 20 to 50 civil suits were reportedly pending against Ford for damages suffered by Pinto owners. The largest and most publicized of court settlements involved the case of a 13-year-old boy who suffered burns over 95 percent of his body when the Pinto in which he was a passenger was struck from behind and exploded. In what his attorney described as the "loudest noise that the jury has made in any civil suit in American jurisprudence" (Washington Post, February 8, 1978: A22), the court awarded the litigant \$2.841 million for personal compensation and an unsolicited \$125 million in punitive

damages.⁶ In order to award punitive damages, it is necessary to establish intentional injury or negligence so gross as to amount to intentional injury. In its decision, the jury thus found that Ford should not only be held responsible for the boy's personal suffering, but for willful disregard for the safety of consumers (Harris, February 15, 1978: A2).

The attention accorded the Pinto continued to escalate throughout the third trimester (2-19-78 to 9-14-78), with more than a 100 percent increase in column lines (see Table 1). Substantial increases may also be seen in the frequency with which the vocabulary of deviance enters the news account.⁷ It was also during this period that a court awarded a seven-year-old boy \$600,000 in damages after he was burned and his parents killed in the fiery rear-end collision of the Pinto in which they were traveling. Counsel for the child argued before the court that Ford had "deliberately failed to warn consumers of the potential dangers of the . . . [fuel]. . . tank and had made a decision to accept deaths and injuries rather than correct the defect" (Morris, August 25, 1978: A3).

Diffusion of the emergent definition of willful harm was also evidenced by a number of events in the public sector. The State of Oregon removed hundreds of Pintos from state service in April, 1978. Likewise, the Pacific Northwest Telephone Company sold its fleet. In each case, employee protection and fear of damage suits were cited as the reasons for this action. The United States General Services Administration, too, withdrew 300 of the vehicles from the federal motor pool. In August, the press reported that the American Trial Lawyers Association issued an appeal to Ford to recall all of the cars in question; while class action suits in both Alabama and California sought relief for all owners of the cars, which had come to be viewed as "negligently designed and engineered so that they are dangerously vulnerable" (Stuart, April 21, 1978: D13).

⁶ The \$127.8 million award was subsequently reduced by the trial judge to \$6.3 million.

⁷ The increased use of a vocabulary of deviance is not independent of the number of lines the newspaper devotes to the issue. In fact, across trimesters, references to danger, intent, and civil and criminal liability comprise 13.2, 12.7, and 14.5 percent of the lines, respectively. We are not arguing, therefore, that there has been an increase in the relative use of the vocabulary of deviance, but rather that there have been absolute increases in both the newsworthiness of the problem and the deviance vocabulary used to describe it.

Personalization of Harm

Accompanying the escalated attention to the Pinto and utilization of a vocabulary of deviance was a transformation of the problem from one of mechanical defect to one of personal harm. Media attention to the deaths and injuries associated with Pinto explosions increased throughout the period of analysis. By the close of the second trimester, the column space describing personal harm had increased 750 percent; there was an additional 111 percent increase in news lines by the end of the third trimester. This pattern is accentuated by the relative decline in the treatment of the issue of mechanical defect. Thus, during the first trimester, the fuel system was discussed in eight (57 percent) of the news lines, while descriptions of human injuries were found in six. This contrasts substantially with the corresponding figures for the second and third trimesters. By the latter period, 38 percent of the lines were devoted to the automobile's defects, and 62 percent (50 lines) to accounts of personal harm.

Table 2. Personalization of Harm

Trimester	Lines Devoted to Machine Defects		Lines Devoted to Personal Harm		Total n
	n	%	n	%	
I (12-30-76 to 7-25-77)	8	(57.1)	6	(42.9)	14
II (7-26-77 to 2-18-78)	39	(46.4)	45	(53.6)	84
III (2-19-78 to 9-14-78)	31	(38.3)	50	(61.7)	81

The quantitative shift toward personalization of harm also seems to have been accompanied by a qualitative change. In earlier news reports, machine defects and personal injuries were generally treated as separate issues. For example, the Anderson and Whitten editorial of December 30, 1976, contained the assertion that the "lack of concern [of the big automakers] has caused thousands of people to die or be horribly disfigured in fiery car crashes." This harm-oriented statement is set apart from the columnists' defect-oriented comments that: "In most American-made cars, the fuel tanks are located behind the rear axle. In this exposed position, a high-speed rear-end collision can cause the tank to explode, turning the car into a giant torch."

Distinguishing between accounts of personal and mechanical issues becomes increasingly difficult as news items approach the date of indictment. On February 8, 1978, for example, the Post reported that punitive damages were awarded to a "teen-ager who suffered severe burns over 95 percent of his body when the gas tank of a 1972 Pinto exploded" (Washington Post, February 8, 1978: A22). Similarly, in its August 25, 1978, coverage of the \$600,000 award to a Pinto crash victim, the newspaper recounted that the litigant's "father was trapped inside as the fuel tank ruptured and burst into flames" (Morris, August 25, 1978: A3). The same article followed its description of the extent of the boy's injuries with a statement that even more explicitly links the personal harm with the machine defect:

Jeremy lost six toes and still suffers from severe, deep burns on his legs that have required 15 skin grafts. He also must undergo several more orthopedic operations, according to his attorneys.

The case is one in a nationwide series involving Pinto models that focus on the design of the car's fuel tank (Morris, August 25, 1978: A3).

With the fusion of the two issues, mechanical defect no longer competed with personal harm as an appropriate definition of the problem. Rather, through increased association of the fuel tank with death and injury, product defect was established as the cause of personal harm. While these data do not allow an in-depth analysis of this qualitative transformation, it might be suggested that once the link was made between the Pinto fuel tank and human death and injury, references to the defective product may, in themselves, have elicited images of personal harm.

Media Accounts of the Corporate Response

Definitions of deviance are shaped not only by public reaction but by the repentant or nonrepentant responses attributed to those who are so defined. An investigation of this issue in the present study showed that accounts of Ford Motor Company's response to the problems of the Pinto fuel tank were virtually absent from media reports until the second trimester (see Table 3). From this time, through the period of indictment, Ford was consistently depicted as refusing to acknowledge the problems and unwilling to accept responsibility. Only 18 percent of the references to the corporation's response attributed repentance to the automobile manufacturer. Illustrative of these repentant accounts are reports of statements from the National Traffic Highway Safety Administration and by Henry Ford II himself. Responding to

allegations that Ford Motor Company was delaying its recall of the automobile for fuel system repairs, an NHTSA official is quoted as having stated that Ford has, in fact, been “pretty responsive” (Kramer and Rowe, August 22, 1978: B3). This attribution of repentance is complemented by a reported assertion of Henry Ford that “the lawyers would shoot me for saying this, but I think there is some cause for the concern about the car. I don’t even listen to the cost figures—we’ve got to fix it The Pinto . . . recall campaign is a matter . . . of great concern to Ford Motor Company and to me personally” (Kramer, August 26, 1978: D8).

Table 3. Media Accounts of the Corporate Response

Trimester	References to Repentance				References to Nonrepentance				Total n
	By self		By others		By self		By others		
	n	%	n	%	n	%	n	%	
I (12-30-76 to 7-25-77)	0	-	0	-	0	-	1	(100)	1
II (7-26-77 to 2-18-78)	0	-	0	-	13	(81)	3	(19)	16
III (2-19-78 to 9-14-78)	5	(22)	2	(9)	12	(52)	4	(17)	23

The large majority of accounts during the second and third trimesters (82 percent), however, depicted Ford as resisting a definition of harm and liability. For example, in the same news article that reported Ford’s claim of “personal and corporate concern” is a quotation from Ralph Nader stating that “this is the first expression of concern that Henry Ford has made regarding the Pinto fuel tank problem since 1971” (Kramer, August 26, 1978: D8). This was followed by a report alleging that the General Motors Vega gas tank was as dangerous as Pinto’s. Here, Nader was quoted as saying that “the reason the controversy over unsafe gas tanks has so far centered on the Pinto . . . was because Ford decided to fight lawsuits from crash victims, while General Motors chose instead to settle Vega lawsuits out of court” (Kramer, August 31, 1978: D5).

Three-quarters of the nonrepentant responses were attributed to corporate spokespersons. The unwillingness of the corporation to acknowledge the seriousness of the issue is depicted in accounts of Ford’s public statements regarding the \$125 million punitive damages award, and the Elkhart, Indiana, grand jury’s request for the testimony of Henry Ford II and

former president Lee Iacocca. In the first instance, a Ford official was quoted as saying that the award was so “unreasonable and unwarranted” that it would be appealed (Harris, February 15, 1978: A2). Regarding the indictment hearings, the corporation reportedly announced that “the needs of the grand jury can be met by the appearance of other company personnel and . . . it will not be necessary for Mr. Ford or Mr. Iacocca to appear” (Washington Post, September 8, 1978: F2). This stance was repeated in a subsequent account of the indictment. Again, Ford is described as having “resisted efforts to have high company executives come to Indiana to testify about the company’s knowledge of the possible fuel tank problems” (Kramer, September 14, 1978: C1).

The emergent vocabulary of deviance, personalization of harm, and accounts of nonrepentance were soon to culminate in the September 13, 1978, indictment. This indictment and the trial that followed constituted official recognition of a new public harm—homicide by a corporation. Evidence that Ford weighed the cost of repairing the vehicle against probable death and injury payments convinced the grand jury that the automobile manufacturer had acted deliberately to endanger human life.

As previously indicated, cost-benefit analysis is not unique to Ford Motor Company. Corporate profits depend upon a rational calculation of income and expenses. In addition, it has been argued that consumer safety regulations themselves encourage such calculations. “When, therefore, the prosecution said that Ford had made a conscious choice to ‘trade’ cost against safety, the answer is that this is precisely what the tort law . . . establishes as the limit of its legal obligation . . .” (Epstein, 1980: 19).

Although the calculation of human against monetary loss may be a strategy found universally in corporate decision making, Ford’s own cost-benefit analysis came to be viewed as unreasonable. Explanation of this public response must, without additional information, remain speculative. It might be suggested, however, that the persistent pattern of contending civil damage suits rather than settling out of court, efforts to block the National Highway Traffic Safety Administration’s request for a recall of all defective automobiles in the face of accumulating evidence of their danger, and unwillingness to cooperate with grand jury investigations may have contributed to the growing public suspicion that the corporation was acting with intent to injure.

This suspicion may have been exacerbated by Ford's continuing resistance despite the loss of sales on a car that was critical to the company's sales volume.

While the State of Indiana saw grounds to indict, the trial jury, after listening to ten weeks of testimony and deliberating three days, returned a verdict of not guilty. Opinions regarding the potential impact of the acquittal are mixed. As reported in the *National Law Journal* (Bodine, 1980: 3), the president of the National District Attorneys' Association predicts more criminal prosecutions against corporations: "A psychological barrier has been broken, and the big corporations are now vulnerable." Conversely, P.A. Heinen, vice president and general counsel for the Chrysler Corporation in Detroit asserts in the same report: "I have a feeling we have peaked in the wave of attempts to pound away at the corporations in court."

Continuing legal actions would suggest, however, that the concept of corporate homicide may have become part of an enduring vocabulary of crime. Thus, on February 23, 1979, Norfolk and Western Railway Company was indicted in Delaware County, Indiana, on charges of reckless homicide (Clark, 1979: 920), and a three-count information in Toledo, Ohio, charging Conrail with aggravated vehicular homicide is also pending (Bodine, 1980: 3). A bill was introduced by Democratic representative George Miller of California and 41 co-sponsors (H.R. 4973, July 26, 1979) to the Subcommittee on Crime of the House Judiciary Committee to deal with:

[I]njuries and deaths allegedly resulting from asbestos production in New Jersey, corporate poisoning of water wells in California, use of the chemicals DBCP, kepone, and benzedene, production of the Firestone 500 tires and "an alleged eight-year coverup by Ford of a design flaw in the siting of the gas tank on Pinto automobiles. . . These case histories describe a pattern of corporate behavior which cannot be tolerated" (Bodine, 1980: 17).

Revisions of state and federal penal codes to include corporations as criminal offenders, the indictment against Ford Motor Company and other major corporations, and the legislative action intended to control activities perceived as dangerous suggest that the corporation, whose actions have traditionally been excluded from the cultural parameters of criminal homicide, no longer enjoys definitional immunity.

V. CONCLUSION

Until the Ford indictment, automotive manufacturers, like corporations generally, have tended to be exempt from common-law proscriptions regarding personal harm. Although officially recognized as an entity with all the rights and

obligations of a natural person, the inability of the corporation to form intent has shielded it from felony liability. Thus, legal discussions repeatedly point out that a "corporation is not a 'person' within the meaning of that word as used in defining homicide" (19 American Jurisprudence 2d, § 1436: fn 17), and legal scholars iterate that "it is unlikely that the intention to commit . . . murder will ever be imputed to a corporation" (James, 1976, 9th ed.: 160; see also Stone, 1975: 25, 51). The question emerges concerning the reasons for the significance of the application of a homicide definition in the case of Ford Motor Company.

Assessing the importance of the definitional shift to criminal liability requires consideration of the very purpose of law. According to some legal scholars (e.g., Ball and Friedman, 1965), the distinction between civil and criminal law is primarily economic. The cost of criminal litigation is borne by the state; that of civil litigation by the private citizen. Thus, the "morality or immorality of proscribed conduct has little to do with whether the law labels the conduct criminal or leaves enforcement in private hands" (Ball and Friedman, 1965: 212). In some instances, the potential award to the litigant is assumed incentive enough to motivate civil action against an offender; in others, the benefits of private litigation are outweighed by the cost of such proceedings. In order to ensure punitive action against rule violators, these latter instances have been "socialized" through the use of criminal law. Similarly,

[T]he shift to administrative enforcement takes place partly because criminal sanctions drag with them all the traditional safeguards surrounding the defendant. Proof beyond a reasonable doubt, trial by jury, and other forms of protection are required. The socialization of remedies thus has the dysfunctional result of making large-scale enforcement difficult for reasons irrelevant to the purpose of making the proscribed acts criminal (Ball and Friedman, 1965: 214).

From this perspective, then, the application of criminal codes to corporate misconduct is largely a matter of administrative efficiency.

An alternative argument suggests that the distinction between civil and criminal law lies in the nature of the harm proscribed. According to Durkheim (1904: 65-73), criminality is that which offends the moral conscience of the collectivity; it is an attack upon the whole. The purpose of civil law, on the other hand, is to reconcile differences between individuals whose private interests have become imbalanced (see also Edgerton, 1927: 836). While Durkheim envisioned criminal law as the consequence of the community's collective sentiments

regarding its moral boundaries, others contend that the designation of behaviors as criminal, itself a political act, can also lead to the development of common consciousness (Sutherland, 1945; Quinney, 1970; Geis, 1972). In this view, the relationship between criminal law and moral boundaries is reciprocal.

The events surrounding the definitional changes in the Pinto case suggest that the moral distinction between crime and tort is the more useful model. An elaborate civil and regulatory machinery was well established by the time the Pinto appeared on the market. Individual recovery for personal injury, retaliatory punitive awards, and regulatory actions against Ford Motor Company were evident throughout its eight-year history. The emergence of a vocabulary of deviance, personalization of harm, and depictions of the corporation as nonrepentant suggest a shift from a definition of the situation as an imbalance of private interests to an offense against the community's moral sensibilities (see also, Friedman, 1979). The collective indignation that was reflected in the public response foreshadowed the creation of a new moral boundary, corporate homicide.

The application of criminal statutes to formerly exempt behavior is predicated on a definition of that behavior in terms applied to events that already fall within the statute. In the present case, this outcome was preceded by a period of public reevaluation and redefinition of relevant actors and actions in terms of a vocabulary traditionally reserved for conventional criminality. Questions emerged that previously had been unasked. Distinctions among the consequences of the behavior of individual and corporate actors became less clear. In the asking of the question and recognition of generic similarities, the implicit parameters of homicide were expanded.

The emergence of a vocabulary of criminal liability depends upon the extent to which the harm produced by the corporation is, in fact, *like* the harm already associated with conventional criminality. Traditionally, the illegal activities of corporations and those of conventional criminals have been defined as involving very different consequences. Corporate misbehavior has been viewed as entailing a diffuse, impersonal cost to society. The harms produced by price fixing, false advertising, or mislabeling, for example, have been perceived as increased financial burdens on the consumer. This differs dramatically from the imagery of personal threat or injury suffered at the hands of the robber, rapist, or murderer. These

social definitions of harm provide important distinctions between air and water pollution, on the one hand, and assault and battery, on the other; or false advertising and theft, or unsafe product liability and homicide. Before the activities of corporations can be recognized as instances of conventional crime, the social harms produced by those activities must be recognized as conventional harms. In the case of the Pinto, this seems to have been accomplished through a personalization of harm. Throughout the period of investigation, we found increased attention to the injuries and deaths of Pinto burn victims, and a relative decrease in attention to the consumer issue of product defect. This public recognition of personal harm, we might suggest, was ultimately reflected in the grand jury decision that the Pinto-related deaths of three Indiana teenagers were *like* homicide.

A similar process of personalized injury may be seen in other spheres of corporate activity. Particularly illustrative are the recent concerns with chemical disposal, industrial use of asbestos, and "windfall profits" by oil companies. The social harms associated with these behaviors have been depicted in terms of the loss of homes and property by Love Canal victims, the fatal lung diseases of shipbuilders, and exposure deaths by those who could not afford heating fuel. To the extent that the victims of these activities are perceived as similar to the victims of theft, assault, and homicide, we might expect legal definitions to follow accordingly.⁸

Finally, the indictment against Ford may be viewed as an attempt on the part of the state to assert moral integrity in the face of enemy deviation. In its decision to contest civil suits, the corporation refused to recognize that moral boundaries had been transgressed. This opened the way to a definition of the manufacturer as a force against whom the power of the law must be directed. In light of National Traffic Highway Safety Administration findings that other subcompacts also had improperly designed fuel tanks, regulatory actions against Ford, in the form of governmental investigations and the threat of recall, may have led corporate officials to feel unfairly singled out. Consequently, the company may have intensified its efforts to fight openly the charges from both public and private sectors. These maneuvers, however, appear to have

⁸ It must be acknowledged that efforts to control corporate activities may be rendered ineffective if stringent regulations are construed as responsible for the economic failures of the corporation. That is, as layoffs and plant closings increase, ostensibly as a result of the cost of complying with the new standards, popular demands for official sanctions may diminish.

reinforced the public's perception of the enemy nature of the corporation. The emerging public imagery of the manufacturer was confirmed in media accounts of its production policies. Newspapers reported that the company was aware of the defectively constructed fuel tank and of the death and injury that it produced. Based on a cost-benefit analysis, however, Ford chose to continue production and sale of the vehicle. This depiction of the corporation, along with the application of a vocabulary of deviance and the personalization of harm, had the effect of transforming a consumer problem into a crime. At issue was no longer bad-faith sales to unwitting consumers, but reckless violence against individuals in exchange for corporate profit.

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