

Legislating for corporate criminal liability in Finland: 22-year long debate revisited

Abstract

The criminal liability of corporations has been the subject of long debates in many countries. This article scrutinizes the 22-year long genesis of corporate criminal liability legislation in Finland. We are interested in unveiling the turns of the law-making process, and in investigating the struggle between various interest groups from a socio-historical perspective. The research data consist of legislative documents such as committee memorandums and written opinions, and the method of inquiry is content analysis. Our study reveals that the core issue of the process became whether jurisprudential principles should be changed in accordance with societal change or whether they are essentially immutable. The Act of Corporate Criminal Liability took effect in 1995, but its coverage was weakened by imposing discretionary sentencing and leaving employment offences outside of its purview. The initial aim and the very justification of the law – to place liability where it belongs – was achieved only in principle. Furthermore, the final outcome of the 1995 law served to actually prevent corporate misconducts from being processed as crimes.

Keywords: corporate crime, corporate criminal liability, Finland, history, law-making, regulation

Introduction

The harm and suffering caused by corporate crime have been the subject of long debates (e.g. Bittle 2013; Snider 2000; Tombs 2013). Despite serious consequences, corporate crimes – acts and omissions committed by, or to benefit organizations – are not readily acknowledged as ‘real crimes’; instead they are sanitized by corporations and the media with guiltless, agentless metaphors such as chemical ‘spills’, ‘accidents’ at work, or financial ‘irregularities’ (Machin & Mayr 2013, p.64-66; Tombs & Whyte 2009, pp. 137–172).

The reluctance of academics and policymakers to treat corporate executives and corporations as criminals, and the exclusion of corporate wrongdoings from the category of crime has been discussed in criminological literature since Sutherland challenged the stereotypical view of the criminal in the 1940s. Studies have shown how the perceptions of ‘crime’ and ‘corporate crime’, and the way in which contemporary criminal law and doctrine deals with reality, hamper efforts in corporate crime prevention and punishment. This may materialize on the level of criminal policy, in making decisions on the quality and quantity of control measures, on the level of legislation, and on the level of policing (see e.g. Alvesalo 2003; Alvesalo & Whyte 2007; Lacey 1994, pp. 1-35; Levy 1987).

Law itself is a product of multifaceted forces, and the influence of business interest and corporate actors in the law-making process, as well as the ways through which law reflects prevailing economic and political interests, has been scrutinized in numerous studies (Friedrichs 2010, pp. 254-258). Furthermore, legal doctrine and language are significant forces in the ongoing struggle over defining the terrain of legislation (Bourdieu 1987, pp. 814-853). Ideological and socio-economical tensions characterize the processes of criminalization. Concepts and structures such as criminal liability as a system of individual accountability, and crimes as incidents that occur at a certain time in a certain place with a certain weapon, are perpetuated not only in popular images of what ‘crime’ is, but also in

criminal doctrine. These premises have implications for legislation, i.e. the processes by which official criminalizations are constructed. The ideas infused in criminal doctrine and the ‘ideology’ of law have also influenced the level of implementation; the practices of fitting harmful business activities within the categories of crime (Alvesalo 2002, pp. 156-159; 2003, p. 52). Even if the penal code includes criminalisations on corporate offences, applying criminal doctrine and law to corporate offences is difficult and sometimes impossible (see e.g. Benson & Cullen 1998, p. 174; Pontell & Calavita & Tillman 1994, pp. 383-410).

Many democratic nations have had various methods at their disposal, either through legislation or case law, to hold corporations to account for their harmful acts (e.g. Bittle 2012; Geis & Dimento 1995, p. 72). Despite pre-existing possibilities to impute the liability of individuals to corporations (via common law, for example), specific corporate criminal liability legislation has been introduced, because failed prosecutions and problems of enforcement, as well as international treaties, have prompted states to re-consider their criminal law in relation to companies (Engelhart 2014, p. 55; Gobert & Pascal 2011). During recent decades, changes have been made across jurisdictions for various reasons, and today, corporations are sanctioned in many states, even in civil law countries that opposed criminal solutions for a long time. The question as to whether the sanction is criminal, civil or administrative differs among jurisdictions (Engelhart 2014, p. 56).

In the 1990s, several European countries overcame the cultural resistance to punishing legal persons (Engelhart 2014, pp. 54-56). In the Nordic context, Sweden imposed, already in 1986, a mixed model, in which a fine was not described as a criminal sanction but “another legal consequence of crime”. In Sweden, motivation for the new legislation came from an assessment that the sentences appeared to be inadequate to prevent economic crime. (Nuutila 2012, p. 357). Norway introduced its legislation of corporate criminal liability in 1991, imposing a discretionary system in which the court is given the power to decide whether or

not an organization is condemned. In addition to a fine, the company may also be deprived of the right to continue in business (Donaldson & Watters 2008). Iceland enacted corporate criminal liability in 1993, and Finland in 1995. Danish legislation provided corporate criminal sanctions already in 1926, but the criminal liability of collective entities was systematically regulated in the Penal Code only in 1996 (Mongillo 2012, p. 79). The law reform processes in both civil and common law countries have often been laborious and lengthy, and involved intense political debate. Sweden discussed the initiative (Law 1986:1007) for some five years; in the UK, it took 13 years to introduce the Corporate Homicide and Manslaughter Act (2007), and the Canadian government spent six years contemplating the Westray Bill, enacted in 2004.

In the Finnish context, corporate criminal liability means that a corporation is not defined as a culprit as such, but liability may follow if someone commits a criminal offence on behalf of the corporation or in its operations. Despite the fact that the enactment of corporate criminal legislation was a particularly long and winding road in Finland – 22 years – and that corporate fines have been applied since 1995, to our knowledge there are no systematic empirical studies exploring this heavily debated legislative process in Finland.

With this article, we take part in and add to the debate on corporate crime prevention and the historically changing socio-legal meaning of corporate criminal liability by researching the documents that unveil the turns of the corporate criminal liability (Act 743/1995) law-making process in Finland, and investigating the socio-historical struggle between various interest groups. The main questions we ask are: Under what junctures and reasoning was the 1995 law on corporate criminal liability achieved? During the 22-year process, how did the proposals and opinions change according to the law-drafting documents? We are also interested in scrutinising the resistance corporate criminal liability met, and the final outcome

of the process. Before turning to our empirical findings and to our conclusions, we will look at previous debates on how to regulate corporations.

Prior theorizing: Regulating corporate violations

Subjecting corporations to the control of criminal law and criminal justice systems, that is, treating their offences as real crimes, or at least *on a par* with conventional offences, is often deemed unfeasible or, for some, undesirable (Larsson 2012; Tombs 2000 p. 11, 111-131). Academic discussions on the use of penal law to regulate corporations have addressed the following questions: are corporate violations ‘real’ crimes; should penal law be used to control them; and, are corporations entities that can be effectively regulated in the first place? In many states, finding a suitable doctrinal basis for holding organizations to account has been elusive (Gobert & Pascal 2011).

The fundamental question of what crime is, was addressed in the classic ‘Sutherland-Tappan debate’. Sutherland argued for a broad definition of crime, criticizing the legal approach, since corporate crime was not generally dealt with within the criminal justice system. Tappan argued that the label of crime should only be applied to successfully prosecuted cases, and that there is a qualitative difference between criminal offences and regulatory offences. (See e.g. Whyte and Tombs 2015, 131-133.) Many aspects of the debate have remained pertinent. Legislators have been reluctant to associate corporate harm and wrongdoing, deemed *mala prohibita* – acts or omissions that are wrong because they are prohibited – with serious crime, *malum in se*, crimes inherently wrong or evil (Bittle 2012; Snider 2000; Wells, 2001).

The nature of corporate offences, be they administrative, environmental, financial, labour or manufacturing-related violations, or unfair trade practices, is a debated issue, which is

summarized in the question of whether high-level offenders – individuals and corporations – are ‘real’ criminals. Some argue that as they engage in economic, productive activities and are capable of being socially responsible, corporate offenders differ from the traditional image of malicious street criminals (see e.g. Estrada & al. 2014, p.3; Gray 2006, p. 877). Minkes & Minkes (2010) propose that corporate malpractice is not considered readily as criminal or deviant malpractice, but rather as a routine part of corporate convention to maximize profits. The stigma of ‘crime’ is not seen as appropriate, since, despite its failings, the corporation is perceived as the single best way to organize production, and also a motor of social good (Tombs & Whyte 2015, 3). Instead of using the ‘corporate crime’ concept, some scholars thus prefer to use ‘corporate non-compliance’, for example. However, it is the very use of these concepts that maintain the ideological and functional divide between real crime and rather innocent non-compliance (cf. Gray 2006).

The question of whether corporations should be punished or persuaded has also been core in academic debates on the regulation of corporate violations. Gray (2006) termed this the ‘punishment model versus compliance school debate’, in which some (e.g. Pearce & Tombs 1990; pp. 423-443; Snider 2000) argue for a much stronger use of penal law, whereas others (e.g. Hawkins 1990, pp. 444-466) believe that strategies of persuasion and education are the most appropriate means of regulating corporate violations. The compliance strategy for enforcement stresses advisory or educative means, as opposed to the prosecution approach, which is said to alienate business and is deemed ineffective; in fact, counter-effective and unreasonable (for a discussion, see Bittle 2012; Croall 2001; Gray 2006; Larsson 2012; Slapper & Tombs 2006). It is further argued that corporations are in need of advice rather than chastisement (Kagan & Scholz 1984). Some models for business regulation thus try to include both punitive and compliance oriented approaches (Braithwaite 2000; Gunningham & Johnstone 1999).

In the legal arena, there has been repeated contemplation as to whether it is possible at all to consider corporations as culpable entities or whether liability should only be placed on individuals, i.e., corporate criminals, instead of constructing criminal corporations. Fundamental doctrinal principles such as *mens rea* (the guilty mind) and the dogma *societas delinquere non-potest* (a legal entity cannot be blameworthy) have been examined in numerous law reforms across Europe. Moreover, the very idea of punishing corporations challenges – or has been alleged to challenge – the traditional interpretations of penal doctrine. The unsuitability of corporate criminal liability for established legal principles is often referred to when contemplating the possibility of punishing organizations. Individually-based preconditions of culpability, such as intentionality, are commonly used as arguments against corporate liability (Beale 2009; Slapper & Tombs 2006). Nevertheless, these principles have been reinterpreted or sidestepped by imaginative legal constructions on many occasions. States have adopted a diversity of approaches, from vicarious to strict liability, to overcome these dogmatic hurdles (Gobert & Pascal 2011). Corporate liability, in turn, is justified on the very basis of the inability of the legal system to deal with the modern reality of complex and powerful organizations. Regulating and punishing corporate crime is also justified by its motivation, as corporate crime is perpetrated with an intention of profit. The ultimate victim of corporate crime is often the public, in terms of lost taxes and fees, and spoiled environment or health (e.g. Beale 2009; Croall 2007).

The scope and quality of the acts that are criminalized in a given society are defined by complicated processes. Analyses of the processes of regulating corporate activity have sought to understand why, at times, stricter legislation (harming corporate interests) has been successfully passed, even in otherwise pro-business and anti-regulation contexts. According to Tombs & Whyte (2015), none of the most influential theories such as the consensus school, which regards regulation as a rational outcome of a dialogue between competing

interests in a fair political system, nor capture theory, which characterises government regulatory agencies being eventually dominated by the very industries they are charged to regulate, are able to explain the complex politics of regulating corporations. Rather, the driving force behind regulation is dissensus (Snider 1991, 211), the struggles between various interest groups over the existence and shape of the new law, and these processes are essential in understanding corporate crime legislation. Furthermore, regulation is as much about maintaining social order as it is about control efforts, as regulation aims for a stable, uninterrupted system of production (Tombs & Whyte 2015, 156).

Data and methods

Our research data consists of legislative documents pertaining to the Penal Code reform (1972-1994), acquired from the Finnish National Archive and Ministry of Justice archive. We examined a total of four memorandums and their consequent comments given by various organisations, authorities, and NGOs (N=179). We also used official summaries compiled by the Ministry of Justice, and examined the final draft bill for the new penal code (1989) and the consequent statement of the law inspection committee (1990). Lastly, we analysed parliament statements and discussions concerning corporate criminal liability (1993), acquired via the Parliament website.

The method of inquiry was quantitative and qualitative content analysis. Content analysis enables a reader of vast text material to order and group text, to identify narrators of various arguments and the positions they take, etc. (e.g. Braun & Clarke 2006, 77-101; Hsieh & Shannon 2005; pp. 1277-1288). We used the method to first draw a picture of the whole process, and second, to count, identify and describe the various opinions and agents behind it. This was performed by crossing out every opinion in every document and then by copying

these onto a sheet for further grouping analysis. We then moved on to identify recurrent patterns of argumentation, to group and classify the supporters and opponents and their respective claims, and to formulate principal justifications and make theoretically anchored interpretations. The thematic grouping was further developed by studying some of the techniques the players used to construct and defend their ideas and meanings. All the documents used in this research are only available in Finnish and are translated by the authors. A table of all documents used in the analysis is provided in Appendix 1.

The case of Finland: The law-making process in a nutshell

Corporate criminal liability formed a small section of a vast reform of the entire Finnish penal code, which began in 1972. After ‘years of inertia’, the society, the culture, and the law were all in need of revision (Nordenstreng 2013, pp. 1-7). At this time, the social-democratic welfare state took its first steps in Finland, as did Nordic juridical collaboration. The societal atmosphere was now one of less control and more civic activity. (Kekkonen 2013, pp. 8-16.) During the 1960s, Finland had also adopted a model of corporatism, that is, tripartite negotiations on political and legislative matters. The political leverage of the labour movement was increasing, and its heyday was just around the corner. (E.g. Pekkarinen 1992, pp. 298-337).

The Finnish penal code dated back to 1889, and by the 1970s, had become obsolete. The basic structure of the law was deemed old-fashioned and insufficient, meaning inconsistency in punishments, and too much vagueness in the interpretation of the law. Crimes against property were severely punished, whereas employment, health, and the environment were missing from the list of objects in need of legal protection. The reform aimed at renewing the expression of society’s particular disapproval, but was also a reaction to political changes in

society: the penal code was drawn by the gentry, and the working class had had no say in the formulation of regulations or in the definitions and objects of legal protection (Criminal Law Committee memorandum 1972). The impetus for corporate criminal liability legislation was thus not due to some scandal or tragic accident as in some other countries, but rather to the political ideas of equality and justice brought about by the 1960s (cf. Kettunen 1994, 13).

The reform was initiated in 1972 when the Parliament nominated the Criminal Law Committee (CLC). To assist the committee, four commissions were also appointed – Employment, Environmental, Tax, and Traffic offence commissions – these would lay the ground for the reform. All four commissions gave their reports in 1973–74, and at this point, two of them, the Employment and Environmental offences’ commissions, brought forward the enactment of corporate criminal liability. In summing up the work of all the commissions in 1976, the Criminal Law Committee also recommended the enactment of corporate criminal liability (CLC Report 1976).

After the preliminary proposals and comments invited to evaluate both the memorandums of the commissions, as well as the proposal of the CLC, the law-making process was further developed by the newly appointed Penal Code Committee (PCC), which started its work in 1980. Its work resulted in a redeveloped proposal in September 1987. Acknowledging earlier reports and the work of the Nordic penal code committee (Nordiska Straffrättskomiten 1975; 1986) in particular, the PCC suggested that a new chapter be included in the revised penal code, which would define the scope and prerequisites of corporate criminal liability. Criminal acts falling under the scope of new legislation would be named separately in the chapters of the penal code (PCC Proposal 1987).

After the PCC handed in its proposal, a third wave of comments was launched in 1987. In contrast to the earlier rounds, when the commentators widely represented society, the majority of the opinion-givers were now authorities and legal professionals (Puumalainen

1988). After the last round of opinions, the proposal was rewritten as a draft bill by the Ministry of Justice's legislative council in 1989. Next, the draft was evaluated by the Law Inspection Body, which consisted of two members of the Supreme Court and one member of the Supreme Administrative Court. After this final juridical inspection in 1990, the law was ready to be presented in Parliament. It was announced for processing in 1993. Below we have sketched a table of all the essential phases of the process.

(Table 1 about here)

Corporate criminal liability took effect in 1995. As a consequence of political dispute, the law at first applied to only a handful of offences, such as bribing government officials, environmental crimes, benefit fraud, marketing offences, and industrial espionage. Since then the purview has expanded, and today altogether 25 chapters and 70 criminal offences in the Finnish penal code allow the application of corporate criminal liability. Corporate criminal liability is implemented as a corporate fine, which can vary between 850 and 850 000 €.

The reform process lasted for 22 years and invited more than 170 opinions over the years. Various interest groups, such as unions, NGOs, employer organizations, jurists, courts, lawyers' associations, and government agencies took part in the struggle over corporate criminal liability in Finland, and shaped the final legislation in many ways. Next we will turn to our empirical data, and present our findings of the process and debate of corporate criminal liability.

The debate

1970s: Unorthodox proposals vs. employee rights

In 1973, the Employment Offences' Commission (EMPC) and the Environment Offences Commission (ENVC) were the first players to suggest the enactment of corporate criminal

liability. The EMPC justified its proposal of corporate criminal liability using three main arguments: first: placing liability where it belongs; second: deterrence; and third: safeguarding the fundamental rights of employees (EMPC Memorandum 1973). The ENVC in turn stated in its memo that in environmental crimes, the culprit is often a collective, regardless of whether the criminal act is committed by an individual or a group of individuals. Echoing the argument of the EMPC, the ENVC noted that it would be contrived to look for the individual guilty mind, especially in cases in which there has been pressure to act criminally on behalf of the collective. The ENVC also stressed the preventive potency of a corporate fine: in environmental crimes, there were often substantial profits at stake and petty fines targeted at individuals had no deterrent effect (ENVC Memorandum 1973). In compiling its proposal, the Criminal Law Committee agreed with the two commissions and suggested a two-tier model of corporate criminal liability: in offences deemed petty, the punishment would be a caution (rebuke), and in severe and recurrent cases, a corporate fine. The CLC justified its proposal by referring to, for example, the general sense of justice and the idea of placing liability where it actually belongs (CLC Report 1976).

Right from the beginning, the very idea of corporate criminal liability was received tempestuously, especially by employers, industry and commerce. The legal profession also opposed. Opposition was chiefly explained on three grounds: first, penal codes and punishments were not considered suited to business matters, other means should be used to regulate economic activity; secondly, corporate criminal liability represented hostile and unfriendly attitudes towards entrepreneurship and business; and thirdly, corporate criminal liability was antithetic to every jurisprudential principle, and hence, not suitable for the Finnish legal system.

Among those opposing, the idea that economic crime should be dealt with through measures other than criminal law was common. For instance, the Labour Court stressed the

development of co-operation and agreement in employment matters, whereas health and safety officials justified their opposition by emphasizing more extensive enforcement of regulations, more education, and better informing of employers, suggesting an administrative compensation payment instead of penal sanctions. Those parties that neither clearly opposed nor supported corporate criminal liability (e.g. the Ministry of Finance) nevertheless supported other means, such as education and co-operation, as better suited for developing workplace safety and employment relations, for instance. Further, the Chamber of Commerce and the Association of Social Sciences and Jurisprudence in turn proposed confiscation and liability for damages as more appropriate and functional for regulating corporations. Employers and the Advisory Board of Financial Institutions, for example, also feared that corporate liability would undermine both morale and the entire idea of individual liability. Innocent bystanders, such as employees, investors, shareholders and even taxpayers were also believed to be adversely affected by corporate fines.

The idea that corporate criminal liability was hostile to business was repeated in many comments. In 1974, four employer federations wrote a common opinion stressing fairness and justice. They judged the proposal of the Employment Offences Commission as '*anti-employer*' as it '*criminalized entrepreneurship*'. The employers even appealed to the United Nations' agreement on human rights, stating that '*in light of the UN's agreement on human rights, corporate criminal liability is discriminatory and unfair, as it is targeted towards employers only*'. A representative of the employers also expressed a dissenting opinion as regards the EMPC memo, labelling corporate criminal liability as '*unfair and hostile to economic activity*'. Further, the employers of the construction industry disapproved of the commissions' report, stating that '*we have not been able to avoid the perception that the majority of the commission would gladly see all economic action with intent to profit being prohibited*'. In its statement to the proposal compiled by the Criminal Law Committee in

1977, the employers further criticized the whole idea of corporate liability as *‘inappropriate and politically purpose-orientated’*, and pointed yet again to the *‘criminalization of entrepreneurship’*, demanding that criminal sanctions and societal regulation rather be aimed at *‘real criminals’*.

The third, and also the most conclusive reason for opposition was that the representatives of industry and commerce deemed corporate criminal liability antithetic to jurisprudential principles. The employers’ federations stated, for instance, that *‘the whole idea of corporate criminal liability means radical deviation from the essential principles of criminal law and is to be abandoned’*. The employers of the metal industry in turn claimed that *‘The unsuitability of corporate liability to the Finnish judicial system is a fact’*. The background for these sentiments was a memorandum written by Professor of criminal law, Reino Ellilä, who strongly criticized the whole idea of corporate criminal liability. He even attacked the legal expertise of the Employment Offences’ Commission, justifying his opposition by declaring that no criminal justice expert *‘had ever proposed deviating from the basic principles of criminal law’* – that is *mens rea*, the guilty mind, and *nullum crimen, nulla poena sine culpa*, no punishment without guilt.

This reasoning found backing among the majority of jurists (e.g. Association of Finnish Lawyers; Court of Appeal in Turku; University of Helsinki Department of criminal law; Water Rights Appeal Court) both in 1974 and 1977, as their opposition chiefly focused on the same reasons. They stated, for example, that *‘corporate criminal liability has strongly conflicting principles if compared to the prevailing system of criminal law’* and that *‘the idea of corporate criminal liability is not suitable for the Finnish legal system’* as it is *‘against the Finnish concept of justice’* and *‘against the principles of criminal justice’*. This controversy referred to the steadfast juridical idea that only an individual can be regarded as a culpable offender.

The supporters, in turn, (e.g. employee organizations, the Ministry of Social Affairs and Health, the Finnish Institute of Occupational Health) repeated the main argument in favour of the proposal already presented by the commissions: placing liability where it belongs. In 1974, they reminded that liability had often fallen on parties that did not, in actual terms, possess the means or resources to make the significant decisions in organizations.

Furthermore, the supporters appealed to fundamental rights and deterrence, stating, for instance, that *'employees' lives and health need more protection, and with corporate liability, the regulation only rises to the level of the constitutional right to safety'* and that *'stricter punishments would effectively prevent crime'* (e.g. statements of The Finnish Food Workers' union; The Hotel and Restaurant Workers' union). The same reasoning was repeated in other supporting statements, and was backed by statistics that also showed the amount of victims and the impunity of corporations pertaining to employment safety crimes. The Central Organization of Finnish Trade Unions acknowledged the proposal of EMPC by stressing that although penal sanctions are not the only or primary means to improve safety at work, they should nevertheless be available: *'Economic activity that is executed by violating the fundamental rights of employees requires powerful means to sustain law and order'*, stated the Union.

One of the few of the legal profession to support the proposal in the 1970s was the Union of Progressive Legal Policy (Edistyksellisen Oikeuspolitiikan Liitto), a politically centralist group of lawyers, who stated that *'evidence from real life stresses the obvious need for corporate criminal liability'*. This too referred to the argument already presented by the EMPC that liability falls on 'scapegoats', as criminal law does not recognize the effect of complex corporate decision-making. These sentiments that would in the coming years form the backbone of the reasoning supporting corporate criminal liability were backed by another group of lawyers, the Democratic Lawyers of Finland (later known as Demla). As for the

crimes deserving the new punishment, those supporting the proposal explicitly mentioned employment and environmental crimes as the core purview of corporate criminal liability. However, the two-tier model received a critical reception. The idea of rebuke was deemed inefficient and useless. In a climate of strongly colliding opinions and diverse disagreement, it was nevertheless decided to further develop and examine the idea of corporate criminal liability.

1980s: Flawed legislation vs. changing real life requirements

The Penal Code Committee (PCC) issued a redeveloped proposal in 1987. The PCC followed many guidelines already presented by the Criminal Law Committee in 1976, but it nevertheless diverged from the initial proposals by introducing the idea of discretionary sentencing. This had neither been suggested nor debated in the earlier stages of the reform, and was indeed an exceptional formulation ('the corporation [...] *can* be punished'), since the main principle in the Finnish legal system is and was mandatory sentencing.

Discretionary sentencing meant that individual courts would have the right of decision concerning punishment, even in cases in which the preconditions for sentencing prevailed. The PCC justified the model with notions of flexibility and of avoiding excessive results, stating in a complex way that '*discretion ensures that corporate liability is applied only in cases when its application is not excessive*' (PCC Proposal 1987).

In the 1980s, the main thread of the debate became the juxtaposition of the jurisprudential system and changing real life requirements, as the majority of jurists started to support corporate criminal liability. In addition, the debate concentrated on developments in other countries, which further undermined the power of argumentation in favour of immutable principles of liability. In the opinions given in 1987, only a small minority of 12 strictly opposed corporate criminal liability (e.g. employers, the Court of Appeal in Turku, the

Central Chamber of Commerce, and the Central Criminal Police). The opponents held on to their view of corporate liability as being intrinsically flawed, anti-business, purposeless legislation, and thus unsuitable for the legal system.

The most committed opponent along industry and commerce was the Court of Appeal in Turku, which stated in 1988 that it did not see any reason to change the opposing opinion it had voiced 11 years earlier. The Court pointed out that the PCC had exaggerated arguments in support of the proposal, while underestimating those against it. '*While societal developments might require changes to the liability of corporations*', stated the Court, '*the proposal, which chiefly aims at punishing, and is moreover very slow, does not serve these purposes.*' According to the Court, other measures, such as an administrative penalty payment system, would lead to better results. Nevertheless, many legal experts who had earlier opposed the proposal now mainly supported it, and altogether 25 commentators were in clear support, whereas the rest took no sides.

However, the idea of discretionary sentencing evoked a very contradictory reception, and it was criticized by lawyers such as the Finnish Bar Association, the Association of Finnish Lawyers, the faculties of law in Turku and Tampere, as they expressed support for the mandatory model. Others, such as The Court of Appeal in Vaasa and the National Research Institute of Legal Policy in turn applauded the idea of discretion, basing their views on the manner of regulation in other countries and process economy. Employee federations in turn offered a joint opinion stating that '*the proposal is acceptable only in outline*', communicating their disappointment especially with the idea of discretionary sentencing.

Many jurists wrote lengthy opinions giving detailed comments to several grounds of the draft, supporting some, opposing others. The two most often mentioned arguments in support of corporate criminal liability were, firstly, the need to adjust criminal liability in light of recent, real life experiences – reasoning having been given already in 1970s by the few jurists

supporting the bill. Also, developments in other Nordic countries were another reason to support the corporate liability. Concrete examples of the need to change the idea of liability were highlighted, for instance, in the opinion of the Finnish Bar Association:

Lately, in real life legal praxis, there have been an increasing number of situations in which those acting on behalf of a corporation, usually operational management and supervisors, have ended up being prosecuted with grave charges on unclear grounds. Some individuals, even though their powers to affect the corporation are limited, are thus scapegoats for the actions of a wider community.

The Bar Association also explained that through corporate criminal liability, society actually avoids misplacing its complaint and only improves the legal protection of all individuals, as charges with false grounds are not prosecuted.

The lengthy problem of juridical principles, which had been core in the opposition of both industry and commerce as well as jurists, was finally alleviated during the 1980s as the lawyers came around and started to support the novel juridical idea of corporate criminal liability. They stated, for instance, that *'the novel legislation required by the social change should not be thwarted by principles of individual liability: rather, theory needs to adapt to reality'* (e.g. the Association of Finnish Lawyers), and that *'juridical or conceptual theories should not stand in the way of adopting new juridical methods'* (the Finnish Bar Association). Further, the University of Turku's faculty of law stated that *'the problem of criminal law principles should be solved by reforming the principles in the ways required by societal development'*. As the jurists started to support the idea of corporate criminal liability the industry and commerce lost the backing of jurisprudential reasoning.

One crucial factor to enable the interpretations of real life requirements and societal change being more important than holding on to theory were developments and experiences pertaining to corporate criminal liability in other Nordic countries. Many supporters referred

to legislation enacted in other countries, but it was especially endorsed by the National Research Institute of Legal Policy, which was caught between its political commitment to less punishments and the evident shortcomings of existing criminal liability. The Institute was also among the few to advocate the model with rebuke stating that *'experiences from other countries indicate that public rebuke has a deterrent effect'*.

After the final comments, the law was once again rewritten by the Ministry of Justice. The final draft followed many of the alterations suggested by the supporters of the act. The most significant change compared to the proposal of the PCC was that sentencing was imposed according to the principal rule of obligation and the maximum fine was raised from 2 to 4 million FIM (673 000 €). The idea of rebuke was removed from the draft. (Proposal of draft bill 1989.) The draft then proceeded to the final juridical approval by the Law inspection body which suggested that the minimum and maximum amount of the fine be lifted considerably. The inspection body also strongly supported mandatory sentencing, and specifically used environment and employment offences as examples of crimes that should be covered by the new law (The Law Inspection Body 1990, pp. 2–23). At this point it seemed that corporate criminal liability would materialize in the way advocated by the NGOs, unions and the initial commissions.

The 1990s: 'The Grand Finale'

It took some three years, until in September 1993, bill 95/1993 to impose corporate criminal liability was finally announced for processing in the Parliament. At this point, political, economic, industrial and societal circumstances had thoroughly changed yet again from those that had prevailed during the 1970s and 80s. The influence of the labour movement had declined, the welfare state was in turn deemed obsolete and overripe, and public discussions had turned from fundamental rights and economic growth to economic hardship. Massive

recession had raised both unemployment and national debt sky high. Strict economic discipline and discourses of austerity prevailed (Lähtenmäki 2013). In addition, after years of left-wing administration, in 1991 Finland had elected a right-wing majority Parliament, headed by the Centre Party and the National Coalition. The left-wing parties were now in opposition, for the first time since 1976.

The bill the Parliament started to deal with in 1993 differed greatly from the final draft that was formulated in 1989. In spite of critical comments and the recommendation of the Law inspection body, the law had been redrafted by proposing discretionary sentencing. Furthermore, even though offences concerning employment relationships had been regarded as core area of corporate criminal liability, they were not included in the new act. The maximum fine was nevertheless raised from 4 to 5 million FIM (841 000 €). In introducing the bill to the Parliament, the Minister of Justice stated that the bill had yet again been ‘*carefully scrutinized*’ by the MPs and the ministers of the ruling parties (Parliament Records 93/1993: 2236). This final ‘scrutinizing’, of which there are no official records available, apparently led to the changes mentioned above.¹

After the initial introduction, the Parliament decided to send the proposal to two parliamentary committees. The Law Committee did not take a stand on the coverage of corporate criminal liability, but the Employment Affairs’ Committee supported the bill as it was, stating that ‘*[the committee] supports the idea that employment offences are not included, since corporate criminal liability is to be imposed with caution and only on a few offences*’. Echoing the earlier views of the employers, the Employment Affairs’ Committee further explained that ‘*the present system of sanctions pertaining to employment offences is wide and versatile enough, and new sanctions are not needed*’. Nine out of 16 members of the Committee supported these formulations.

This roused opposition in some MPs and dissenting opinions were filed, demanding that employment offences should be included in the list of offences applicable to corporate criminal liability. Nevertheless, in the actual hearings, the bill for corporate criminal liability and its details were no longer debated. In debating the entire penal code and the chapter on employment crimes, MP Tarja Halonen (Social Democratic Party), supported by MP Iivo Polvi (Left Alliance), addressed the Parliament one more time, proposing that corporate criminal liability would cover employment offences. The Parliament voted on their proposal, but it was dismissed by 91 to 74 (Parliament Records 185/1994).

Bill 95/1993 of corporate criminal liability was passed in the Parliament, but its coverage was vitiated and its applicability restricted. Employment offences were excluded from corporate criminal liability, even though they had been deemed essential purview of legislation throughout the years of the reform project. Moreover, corporations were given a great deal of legal protection with discretionary sentencing as the courts were granted the power to leave corporations unpunished. With the supporting majority of right-wing members in the Parliament, employers managed, firstly, to restrict the punitive power of corporate criminal liability and, secondly, to eschew it in employment crimes altogether.

Concluding Discussion

The struggle for corporate criminal liability in Finland was a long and winding road. It took 22 years to materialize in legislation, as Act 743/1995 finally took effective in April 1995. Altogether four memorandums sketching the bill, and 179 opinions commenting on the law were handed in during the process. The core issue of the debate for corporate liability became that of whether jurisprudential principles should be altered according to societal change or whether they were essentially immutable. Nevertheless, even when the doctrinal barriers

preventing the law reform were finally resolved at the very end of the process, the political tide changed the course of action.

The tug-of-war between the formal jurisprudential system and changing real-world life captures the essence of the struggle, as the main impulse for the whole process was the growing significance of both the working class and civil society; the multifaceted, evolving systems of paid work and corporate action; interest in protecting the environment; and the incompetence of the criminal law in dealing with crimes that took place within these areas of life. The argumentation during the debate echoes the well-recognized difficulties that arise in various jurisdictions when corporations and economic actors are the perpetrators. As the struggle overtly concentrated on the disagreement over juridical principles, it was simultaneously anchored in the sentiment that corporations cannot and should not be punished, and that means other than those of criminal law should be used to regulate corporate wrongdoings. Hence, the Finnish debate over corporate criminal liability was not an exception, but rather it followed in many respects the same reasoning and similar divides as in other jurisdictions.

The employers and the industry lobby repeatedly declared that the whole reform was futile and anti-business, emphasizing the status quo that served to uphold the ideological and functional distinction between corporations' innocent non-compliance and real crime. The stigma of crime was not seen as appropriate, and the use of criminal law was perceived as causing harm to blameless stakeholders, criminalizing not only corporate workings but entrepreneurship, and ultimately capitalism altogether. The arguments presented during the process replicate those addressed in academic debates on the nature of corporate crime and the possibilities for regulating it (e.g. Gray 2006, Snider 1991; Tombs & Whyte 2015).

Moreover, during the debate, comments utilising jurisprudential argumentation took the centre stage whereas argumentation rising from everyday experiences was mainly dismissed

and deemed political and purpose-oriented. As a consequence, the supporters of the initiative were compelled to take part in the formalistic juridical debate, and to somewhat waive the arguments pertaining to, for example, the everyday of the employees. On the other hand, in the end, the legal profession nevertheless acknowledged the weight of ‘real life’, as the justifications for their reversed view were now attached to ‘real life legal praxis’ and to actual societal circumstances.

As the debate focused on the principles of criminal law, it simultaneously served to silence the supporters’ claims that mainly rested on flesh-and-blood individuals and their experiences. Relating to this, the manner of argumentation in committee reports, and mostly in opinions too, was very detached. During the 1980s, even the unions ceased to reason their support through employee experiences; some failed to give an opinion altogether. The actual outcomes of misplaced individual liability were hardly addressed. The focus on jurisprudential theorizing sanitized the social, economic and human consequences of corporate crime.

The struggle for corporate criminal liability is an example of a struggle between interest groups over the existence and shapes of a new law (Snider 1991) in which ‘anti-business’ regulation was – more or less – successfully passed, as both the supporters and opponents, in the end, had their way. The commissions, who initially proposed corporate criminal liability, gave a powerful sign of societal will that legislation was not functional but in need of a reform. This was backed by the unions, and labour and environment movements in particular, but also by lawyers. By signalling a view that legal definitions and jurisprudence should serve society and the people, and not vice versa, the majority of the legal profession finally also furthered the passing of the reform. The developments that took place during the 1980s in other Nordic countries balanced the score, as they paved the way for the Finnish legal profession to backtrack and start to support the idea of corporate criminal liability. In this

sense, the opponents were not triumphant, since their claim to put an absolute end to the proposition was dismissed as the reform progressed.

Nevertheless, the final outcome questions whether, at the end of the day, the passing of the law was about maintaining social order, or whether the outcome ultimately only served to prevent corporate harms from being processed as crimes (Tombs & Whyte 2015, 156). The opponents had time, and the political tide in particular, on their side, as they were, in the end, able to restrict the scope of punishable acts and omissions. Discretionary sentencing, a suggestion greatly criticized even by the opponents of the entire law, and the last-minute exclusion of employment crimes realized the efforts to eliminate the stigma of crime from corporate harm. Furthermore, theory was only partly applicable to reality, since the doctrine of *mens rea* survived the struggle: even though the Finnish legislator was able to define corporations as punishable, it did not construct corporations as culpable offenders – as criminals. The initial goal of the penal reform, and the very justification for corporate criminal liability – to place liability where it belongs – was thus achieved only in principle.

Unsurprisingly, as the law was imposed with the discretion clause, the application of the law was very rare in the years following the reform. The story of Finnish corporate criminal liability legislation did not, however, end in 1995. In 2003, discretionary punishment was changed to mandatory, and occupational safety crimes were finally added to the list of crimes punishable under corporate criminal liability. This was achieved through a reform that was part of the government's ongoing 'battle against economic crime', a control initiative with widespread political and popular support for the constriction of business crimes (Alvesalo 2003; Alvesalo & Tombs 2001). Grounds and circumstances of the later phases of corporate criminal liability legislation would indeed be worth further research.

We recognize the limitations of document analysis pertaining to factors outside official documentation. However, as our primary aim was to scrutinize the official reasoning during

the law-making process, the data representing the official process and actors, is appropriate.

Data	Year	Main observations
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On the
other

hand, our study was limited to the years of 1973-1995 as the comments given during the 2002 reform were not obtainable. Nevertheless, political and societal factors outside official documentation deserve detailed investigation too. Another point in need of scrutiny, is how the essential idea of the core purview of corporate criminal liability legislation seems to have become reality: today, according to Statistics Finland (2015), 90% of corporate criminal liability convictions concern occupational safety crimes. Since promulgation is only one part of the legislative process, we also welcome closer scrutiny of actual application and the deterrent effect of corporate criminal liability.

Appendix 1: Data flow in chronological order.

Proposal of the Employment Offences' Commission (EMPC)	1973	Proposing corporate criminal liability
Proposal of Environmental Offences' commission (ENC)	1973	Proposing corporate criminal liability
Comments to the proposal of EMPC, N=33 (+ Ministry summary)	1974	33% supported, 42% opposed
Comments to proposal of ENC N=31 (Ministry summary only)	1974	55% supported, 27% opposed
Proposal of the Criminal Law Committee (CLC)	1977	'Placing liability where it belongs'
Comments to the proposal of CCL, N=57 (Ministry summary only)	1978	47% supported, 40% opposed, commentators representing unions, authorities, NGOs etc.
Proposal of the Penal Code Committee (PCC)	1988	'Individual liability is insufficient but corporate punishment must be discretionary'
Comments to the proposal of PCC, N=58	1989	43% supported, 21% opposed, commentators mainly legal professionals
Draft bill	1989	Mandatory sentencing, employment safety and environmental crimes core purview
Statement of the Law Inspection Body	1990	Recommending mandatory sentencing; employment safety and environmental crimes core purview
Statement of the Law committee	1993	No comment on the coverage
Statement of the Employment Committee	1993	9 members supported, 7 opposed the idea of excluding employment safety crimes
Bill 95/1993	1993	Sentencing discretionary, excluding employment safety crimes, including environmental crimes
Parliament voting on Act 743/1995	1994	Supporting discretionary sentencing, 55% of MPs voted yes on exclusion of employment safety crimes

Table 1: Phases of the law reform

Years	Phase/Actors
1972–1976	The Criminal Law Committee (CLC)
1973	Memorandums of the Environmental Offences' commission/ Employment Offences' Commission
1974	Comments to the Memorandums
1976	Proposal of the CLC
1977	Comments to the CLC Proposal
1980–1987	The Penal Code Committee (PCC)
1987	Proposal of the PCC
1988	Comments to the PCC Proposal
1989	Draft by the Ministry of Justice
1990	The Law Inspection Body
1993–1994	Parliament

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Notes:

¹ The postponing of corporate criminal liability and the penal code was obviously connected to the fact that the Parliament election took place in 1991. After the election, the Centre party and the National Coalition formed the majority of the cabinet. The cabinet discussed draft bills weekly in its “night school”, convened by the Prime Minister. According to some of the participants (personal communications Jan 2015) it was the wish and command of the National Coalition and especially the Minister of Finance Iiro Viinanen, that corporate criminal liability should not be implemented, especially not as regards employment crimes. His reasoning was, that during a time of such economic hardship as the first years of the 1990s, corporate criminal liability would send an incorrect message to businesses.