

Corporate Criminal Liability and the Veil of Incorporation: Reassessing Individual Responsibility

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Abstract

Background: The corporation is the dominant vehicle of economic activity, yet criminal law was built around individual human wrongdoers. The doctrine of separate legal personality, which makes incorporation so useful, also creates a structural opportunity for responsibility to dissolve between the entity and the people who direct it. **Objective:** This paper examines how contemporary legal systems attribute criminal responsibility to corporations and whether those systems adequately preserve the accountability of the natural persons behind the veil. **Methods:** A doctrinal and comparative narrative review was conducted, with reporting organised around the transparency principles of PRISMA-ScR. Primary authorities (judgments and statutes) and secondary scholarship published in or before 2024 from England and Wales, the United States, India, Australia, Canada, France, Italy and Germany were analysed through five attribution models. **Results:** Identification-based attribution systematically favours large, decentralised firms; vicarious liability expands entity liability but does not by itself generate individual liability; culture-based and failure-to-prevent models improve organisational accountability while leaving a persistent “responsibility gap” for individuals. Negotiated resolutions further weaken individual prosecution. **Conclusion:** Entity liability and individual liability should be designed as complementary, mutually reinforcing pillars. The paper proposes a four-part framework: functional attribution, a duty-based senior-officer standard, conditional corporate leniency tied to individual disclosure, and transparent reporting of individual outcomes.

Keywords: corporate criminal liability; veil of incorporation; directing mind; individual responsibility; failure to prevent; deferred prosecution; comparative criminal law

1. Introduction

Modern economies are organised through corporations. Corporations employ workers, hold assets, enter contracts, extract resources, manufacture medicines and move capital across borders. They are also responsible, in the descriptive sense, for a large portion of the harm that criminal law is asked to address: deaths in workplaces and transport disasters, environmental contamination, price manipulation, financial fraud, bribery and the concealment of product hazards. The study of such conduct began as a sociological challenge to the assumption that crime is a phenomenon of the poor, and it has since matured into a distinct field of legal and regulatory scholarship [1,2].

The legal technology that makes the corporation economically valuable is separate legal personality. Since the House of Lords decided that a company is a legal subject distinct from its members, the corporate form has allowed investors to limit their exposure and managers to act on behalf of an entity that owns property, sues and is sued in its own name [3]. The same technology has a less discussed effect on criminal responsibility. When an offence is committed through a company, the entity can be prosecuted, the individuals can be prosecuted, both can be prosecuted, or neither can. Which outcome occurs depends less on the moral structure of the wrong than on evidential and doctrinal rules about how the

conduct and mental state of human beings are to be treated as those of the organisation. This paper uses the phrase “veil of incorporation” in two senses. The first is the classic civil-law sense: the barrier that prevents creditors and claimants from reaching shareholders. The second is the criminal-law sense developed here: the epistemic and doctrinal barrier that prevents prosecutors from reaching the individual decision-makers whose choices produced the offence. The two are related but not identical. Courts pierce the civil veil rarely and only in narrow circumstances [4]. The criminal veil, by contrast, is frequently impenetrable not because a court refuses to look behind it but because organisational complexity hides who knew what, who decided what, and who had the authority to stop what.

The central argument of the paper is that the expansion of corporate criminal liability over the last half-century, though normatively defensible, has been accompanied by an under-theorised decline in the pursuit of individuals. Legislatures and prosecutors in several systems have shifted toward models that make it easier to convict or settle with the entity, while the practical prospects of prosecuting senior officers have not improved proportionately and in some settings have worsened [5,6]. This asymmetry matters for three reasons. First, deterrence theory predicts that sanctions imposed solely on an entity are diluted by diffusion across shareholders, employees and creditors who did not choose the conduct [7]. Second, retributive and expressive accounts of criminal law require that blame be addressed to those who are in fact culpable. Third, a legal order that routinely sanctions the organisation but not its decision-makers invites a cynical inference, namely that serious corporate wrongdoing is a cost of doing business rather than a wrong.

The study pursues four objectives: (i) to map the principal doctrines of corporate attribution and their relationship to the veil of incorporation; (ii) to compare how selected jurisdictions allocate responsibility between entity and individual; (iii) to synthesise the findings of prior scholarly reviews and empirical or doctrinal studies; and (iv) to propose a reform framework that treats individual responsibility as an integral, rather than residual, element of corporate criminal law. The analysis is deliberately realist. It asks not only what the law says but how legal rules interact with organisational structure, evidential difficulty and enforcement incentives, and what the documented outcomes of leading cases reveal.

2. Methodology

2.1 Design

The study is a doctrinal-comparative narrative review. Doctrinal analysis was used to identify and interpret primary legal authorities, namely appellate judgments, statutes and official policy instruments. Comparative analysis was used to examine functional equivalents across legal systems, following the long-established practice of comparing the solutions that different systems adopt to the same social problem, here the problem of attributing criminal responsibility to an organisation [8]. To promote transparency, the review was reported with reference to the structure of the PRISMA-ScR checklist for scoping reviews (rationale, objectives, eligibility criteria, information sources, charting of data, synthesis and limitations), adapted for legal scholarship in which primary authorities, rather than empirical studies alone, form the evidence base.

2.2 Eligibility criteria

Sources were eligible if they were (a) judgments, statutes, treaties or official policy documents addressing the criminal liability of corporations or of natural persons acting through corporations, or (b) books and peer-reviewed articles analysing such liability from doctrinal, economic, criminological or philosophical perspectives; and (c) published, enacted or decided in 2024 or earlier. Sources

published after 2024 were excluded, so that the evidence base corresponds to a defined temporal boundary. Sources concerned only with civil corporate liability were excluded unless they bore directly on the veil of incorporation or on group-level responsibility.

2.3 Information sources and selection

The review is purposive and canon-based rather than an exhaustive database retrieval. The sources were selected to represent (i) the foundational authorities on corporate personality and attribution; (ii) the principal statutory models; (iii) the leading theoretical contributions; and (iv) the scholarship that has reviewed or evaluated these developments. Jurisdictions were chosen to represent the main models of corporate criminal responsibility: common-law identification (England and Wales), common-law vicarious attribution (United States), hybrid common-law development with codified corporate liability (India), culture-based codification (Australia), senior-officer codification (Canada), civil-law criminal liability of legal persons (France), administrative-criminal hybrid liability (Italy), and administrative regulatory liability without criminal liability (Germany). No numerical screening counts are reported, because a count of sources identified and screened would suggest a systematic database search that was not performed; the review claims analytical, not statistical, representativeness.

2.4 Data charting and synthesis

For each source, the following items were charted: jurisdiction; attribution model; the mental element required; the treatment of individual liability; sanctions available; and the principal finding or normative claim. Findings were synthesised thematically under five attribution models and cross-checked across jurisdictions. Case studies were used as an analytical device to test whether the doctrinal models perform as they are described. The summary tables below are the product of this charting.

2.5 Research integrity

Primary authorities were read in their authoritative form and described in the author's own words, with brief reference only where necessary. Principles of research ethics in the social sciences, including honesty in reporting, fidelity to sources and avoidance of misattribution, guided the handling of sources [9]. Because originality and transparent attribution are central to scholarly publication, the draft was prepared with attention to similarity-detection practice and to proper paraphrase and citation [10].

3. Conceptual Foundations: Personality, Limited Liability and the Criminal Veil

3.1 Separate personality and the logic of the veil

Separate legal personality holds that the company is a legal person distinct from its shareholders and managers, so that rights and obligations attach to the company rather than to the individuals who own or operate it [3]. In its classic form the principle protects investors from the debts of the company. As the law of the corporation developed, the principle was extended and, in some contexts, qualified. Courts have occasionally disregarded the corporate form where a company was interposed to evade an existing obligation, as in the case of a former employee who formed a company to circumvent a covenant [11]. They have also, more often, refused to do so where the claimant sought a general principle that group structures can be ignored whenever fairness appears to demand it [12].

The modern English statement of the position distinguishes between concealment, where the

corporate structure hides the true facts and a court may simply look behind it, and evasion, where the structure is used to defeat a legal right that exists independently of the company. The court confined true piercing to the second category and treated it as a principle of last resort [4]. The result is that civil piercing is rare, which confirms that the veil is not generally a doctrine of accountability for individuals.

3.2 Why criminal law cannot rely on civil piercing

Criminal responsibility raises distinct problems. A civil claimant seeks compensation and may be satisfied by access to assets. A prosecutor seeks conviction, which requires proof of conduct and fault by reference to a specified person. If the defendant is the company, the question becomes how a non-human entity can be said to have acted and to have had a state of mind. If the defendant is an individual, the question becomes how that individual's responsibility is to be established when decision-making was distributed, delegated and documented in ways designed to allocate roles rather than to preserve evidence of culpability.

The conceptual answer to the first question has been the subject of a rich philosophical literature. One tradition argues that organisations have decision structures, policies and procedures that can be understood as expressions of corporate intention, so that the corporation is a genuine moral agent in its own right [13]. A related account argues that organisations are group agents whose attitudes are not reducible to those of any member [14]. A third argues that organisations are better understood as systems that create incentives and reduce information, so that law's task is to structure those incentives [15]. These accounts do not by themselves resolve doctrinal controversies, but they establish that entity liability can be coherent without being fictional, and that a system may legitimately hold both entity and individuals responsible without double-counting.

3.3 The responsibility gap

The "responsibility gap" is the zone in which an offence has plainly occurred, an organisation has plainly benefited or been implicated, and yet no individual can be convicted because no person satisfies all the elements of the offence. The gap arises from the fragmentation of knowledge. In a large organisation, the person who knew of the risk may lack authority to act; the person with authority may lack knowledge; and the person who benefits from the offence may be several layers removed from both. Early criminological work showed that such offences are typically embedded in organisational routines rather than being isolated acts of rogue individuals [16], and later normative work argued that the law's failure to target the structures that generate harm leaves a gap that neither entity nor individual liability alone can close [17].

4. Models of Corporate Attribution

Five models can be distinguished. The classification is analytic: legal systems often combine them, and each has different consequences for individual responsibility.

4.1 Identification (the "directing mind") model

Under the identification doctrine, the acts and mental states of persons who constitute the "directing mind and will" of the company are treated as those of the company itself. The metaphor originated in a shipping case, in which the court distinguished the company's controlling officers from its subordinate agents [18]. A famous judicial image portrayed the company as a body with a brain and nerve centre that controls what it does, and hands that carry out instructions; only the acts of the first category were attributed as the company's own [19].

The doctrine was consolidated in a case concerning a supermarket company charged with a false price display. The House of Lords held that the store manager was not part of the company's directing mind, so that his fault was not the company's fault, and the company was able to rely on a statutory defence [20]. The decision made clear that the model is narrow: it attributes only the fault of a handful of very senior persons. The Privy Council subsequently clarified that identification is one expression of a broader principle, namely that the rule of attribution should be derived from the purpose of the particular provision creating the offence. On that approach, the question is whose act, knowledge or intention the substantive rule should count as the company's [21].

The model's consequences for individual responsibility are paradoxical. In a small firm, the directing mind is also the offender, so entity and individual liability coincide. In a large, decentralised firm, the offence is typically committed lower in the hierarchy, and the model prevents the entity from being convicted. Because individuals are not usually prosecuted in these cases either, the net effect is impunity at both levels. The law therefore penalises small firms more reliably than large ones, an inversion that critics have long identified [22,23].

4.2 Vicarious liability (respondeat superior)

The federal law of the United States adopted a broader principle. In a case concerning an unlawful rebate scheme operated by railroad employees, the Supreme Court held that a corporation could be held criminally liable for the acts of its agents within the scope of their employment and for the corporation's benefit, reasoning that otherwise it would be impossible to control many classes of corporate crime [24]. The principle has been applied expansively, so that the conduct and knowledge of even junior employees may be attributed to the company if they acted within the scope of employment and with at least partial intent to benefit it.

Vicarious liability solves the identification model's under-inclusiveness. It does not, however, solve the problem of individual accountability and may even worsen it. Because the entity can be convicted without identifying who in the hierarchy knew or decided what, prosecutors are not obliged to develop the evidential chain that would be necessary to charge senior managers. The model also creates a wide discretion. The same conduct may be prosecuted or not, depending on prosecutorial policy, and this has led to negotiated settlements as the dominant mode of resolution [5]. A particularly instructive episode is the prosecution of an auditing firm following the collapse of a major energy company: the conviction was overturned by the Supreme Court because of defects in the jury instruction on the obstruction offence, but by then the firm had effectively ceased to function, demonstrating the collateral consequences that entity prosecution can have on innocent employees [25].

4.3 Aggregation and collective knowledge

Aggregation models address the fragmentation of knowledge by treating the knowledge of several persons as the knowledge of the entity, even if no single person had all the information necessary for the mental element. The justification is that an organisation can be wilfully blind through its structure in a way that no individual is. English courts have not accepted aggregation in the criminal sphere; in the ferry-disaster prosecution discussed in Section 7, the court required that gross negligence be found in an identified individual who could be equated with the company [26]. Some United States courts have accepted a form of collective knowledge. The doctrine has been criticised for blurring individual culpability, because it permits conviction of an entity on the basis of a mental state that no human being possessed, and it offers no pathway to individual liability [27,28].

4.4 Organisational fault and corporate culture models

Organisational fault models locate the offence in the failure of the organisation to maintain adequate systems. The Australian federal criminal code is the most influential codification. It attributes a fault element to a body corporate that expressly, tacitly or impliedly authorised or permitted the commission of the offence, and it identifies, as one route to such authorisation, a corporate culture that directed, encouraged, tolerated or led to non-compliance with the relevant provision, or the failure to create and maintain a culture requiring compliance [29]. The scholarship that influenced this approach emphasised the concept of reactive fault: an organisation that, after an offence, fails to investigate and to correct its systems exhibits a culpable state of mind of its own, which can be proved without reference to any individual [30,31]. A realist model along similar lines has been advanced as a way of grounding corporate liability in organisational policies, procedures and structures rather than in the biography of any individual [32].

Culture-based liability improves entity accountability, but the mismatch with individual responsibility is stark. A corporate culture finding does not identify any person who created or tolerated the culture. Moreover, the evidential weight placed on compliance programmes can push responsibility away from individuals. A body of scholarship argues that compliance structures may become symbolic and that rewarding them in sentencing encourages the creation of documentary evidence of compliance rather than substantive compliance [27,33]. The United States Sentencing Guidelines illustrate the tension. They reduce the culpability score of an organisation that maintains an effective compliance and ethics programme, which gives managers a rational incentive to build such programmes, but they simultaneously reward the organisation for cooperating in ways that may involve limiting the pursuit of individuals [34].

4.5 Failure-to-prevent and senior-officer models

Two recent legislative strategies are especially important. The first is the failure-to-prevent offence. The United Kingdom's Bribery Act created an offence committed by a commercial organisation that fails to prevent bribery by persons associated with it, subject to a defence that the organisation had adequate procedures in place [35]. The offence removes the need to prove a directing mind's fault; it reverses the evidential burden onto the organisation. This was influenced by international anti-corruption obligations requiring effective, proportionate and dissuasive sanctions against legal persons [36]. The second strategy is the senior-officer attribution model. The Corporate Manslaughter and Corporate Homicide Act 2007 creates an offence where the way in which the organisation's activities are managed or organised by its senior management is a substantial element in a gross breach of a relevant duty of care causing death; it also expressly excludes secondary liability of individuals for the new offence [37]. The first conviction under the statute concerned a small geotechnical company in which a single employee died in an unshored excavation, which reveals that the statute's early application concentrated on small firms in which senior management was readily identifiable [38]. A broader reform in 2023 extended senior-manager attribution to a range of economic crimes [39], and an official review of the area canvassed further options including extension of failure-to-prevent offences and reform of the identification doctrine [40].

Canada's 2003 amendments, passed after the Westray mine explosion, established an organisational liability model in which an organisation commits a negligence-based offence where its representatives' conduct, taken together, shows that a senior officer departed markedly from the standard of care that could reasonably be expected to prevent the representative's offence [41]. This functionally disaggregates responsibility, since the senior

officer's departure and the representatives' acts can be separate and still be added together. The failure-to-prevent model has an important but under-appreciated feature: it does not criminalise any individual, and it is silent on whether managers who neglected prevention should themselves be accountable. The more it is relied upon, the more it displaces individual liability. This is the hypothesis tested in the sections below.

5. Comparative Analysis of Selected Jurisdictions

Table 1 summarises how the eight jurisdictions allocate responsibility between entity and individual.

Table 1. Comparative models of corporate and individual criminal responsibility in selected jurisdictions

Jurisdiction	Dominant attribution model	Representative authority	Individual liability	Distinctive feature
England and Wales	Identification (directing mind); statutory exceptions	Tesco v Nattrass; Meridian; Corporate Manslaughter Act 2007; Bribery Act 2010	General criminal law applies; excluded for corporate manslaughter offence	Move toward failure-to-prevent and senior-manager attribution
United States (federal)	Respondeat superior; Model Penal Code variant in some states	New York Central; Model Penal Code s 2.07	Responsible corporate officer doctrine in some regulatory offences; policy emphasis on individuals	Extensive prosecutorial discretion; deferred and non-prosecution agreements
India	Identification, extended by case law to offences requiring mens rea; statutory vicarious liability	Standard Chartered; Iridium; Sunil Bharti Mittal	Statutory "officer in default" provisions; case-law limits on vicarious liability of directors	Company may be fined where imprisonment is mandatory; codified offences in Bharatiya Nyaya Sanhita 2023
Australia (Commonwealth)	Corporate culture and authorisation	Criminal Code Act 1995, Part 2.5	Separate liability of individuals under general provisions	Express codification of "corporate culture"
Canada	Senior-officer model	Criminal Code ss 22.1-22.2 (2003 amendments)	Organisation liability does not extinguish individual liability	Post-Westray reform; aggregation of conduct across representatives
France	Liability of legal persons for acts of organs or	Code pénal art 121-2	Cumulative: natural persons remain liable	Liability limited to offences on corporate account

Jurisdiction	Dominant attribution model	Representative authority	Individual liability	Distinctive feature
	representatives			
Italy	Administrative liability of entities decided in criminal proceedings	Legislative Decree 231/2001	Natural persons separately liable	Compliance model as defence or mitigation
Germany	No criminal liability; administrative fines	OWiG ss 30, 130	Individuals liable under criminal law; duty of supervision	Fines on the entity linked to breach of supervisory duty by management

Sources: [20,21,24,29,35,37,41-49]

5.1 Common-law jurisdictions

England and Wales illustrate the transition from a narrow identification model to hybrid models that add statutory liability. The identification doctrine remains the default for most offences, so that the entity is convicted only if a person who constitutes its directing mind satisfies the elements [20]. The legislature has responded through offence-specific mechanisms rather than general reform, producing a patchwork. The result is a set of regimes with different tests, under which the same underlying conduct may or may not be capable of leading to corporate conviction depending on how the offence is labelled. The official reform review documented this fragmentation and the consequent difficulty of prosecuting large companies, and described the options as incremental reform of attribution rules, new failure-to-prevent offences, and a more general regime for senior managers [40].

The United States provides a contrasting picture. The respondeat superior principle makes entity liability easy to establish [24]. The Model Penal Code, widely influential among state codes, takes a narrower view for offences other than regulatory ones, requiring authorisation or recklessness by the board or a high managerial agent, with a due-diligence defence for the supervisory officer [42]. At the federal level, the effect is that entity liability is almost always available but is a matter of discretion. This discretion has shaped enforcement policy. Official memoranda since 2015 declared that corporations seeking cooperation credit must identify all individuals involved in the misconduct, and that individual accountability is a primary objective [50]. A later policy revision in 2022 maintained the emphasis on individuals while recalibrating the process, requiring prosecutors to develop individual cases promptly and to consider the full record of a corporation's history [51]. The recurring need to restate the emphasis suggests that earlier policies had not fully accomplished the objective.

India offers a third trajectory. The Supreme Court held that a company may be prosecuted for offences for which imprisonment is a mandatory punishment, resolving the objection that a company cannot be imprisoned by treating the fine as the only sentence that can be imposed on the entity [43]. The Court later held that a company may be liable for offences requiring mens rea, through the mental state of those who control it [44]. In a further decision concerning the prosecution of senior executives of a telecommunications company, the Court held that the criminal acts of the company's controlling individual may be attributed to the company, but that the converse attribution to directors requires either

express statutory vicarious liability or proof of the individual's own participation, and the status of director alone does not suffice [45]. This is an important protection against mechanical prosecution, but it also demonstrates the evidentiary burden that stands between entity wrongdoing and individual liability. The Court has also emphasised procedural symmetry: under the statutory provision on offences by companies, the company must itself be arraigned before directors can be held vicariously liable [52]. Parliament has, in the Companies Act 2013, built liability on the concept of an "officer in default" and criminalised fraud in the conduct of company affairs with penalties for individuals [53]. The Bharatiya Nyaya Sanhita, which replaced the colonial penal code with effect from 1 July 2024, brings companies within the definition of "person" and thereby confirms the doctrinal possibility of entity criminal responsibility [46].

5.2 Codified culture and senior-officer models

Australia and Canada show two distinct codification strategies. The Australian federal model, discussed above, authorises a finding of corporate fault on the basis of corporate culture [29]. In practice, the model's evidential value depends on access to internal documents and on the willingness of courts to treat tolerance of non-compliance as authorisation. The Canadian model is more structured: it focuses on the "senior officer", defined by function rather than title, and requires departure from the standard of care for negligence offences [41]. The functional definition is important for individual responsibility because it identifies the persons whose conduct is relevant and so creates the analytical pathway for pursuing them. Whether the new provisions have changed enforcement against senior officers is an empirical question on which systematic public data are lacking, which itself suggests that doctrinal reform alone cannot be assumed to transform enforcement practice.

5.3 Civil-law jurisdictions

France introduced general criminal liability of legal persons in its revised penal code, applicable where an offence is committed on the legal person's account by its organs or representatives, and it provides that liability of a legal person does not exclude that of natural persons who committed or were accomplices to the same acts [47]. The doctrinal solution, cumulation, is explicit and avoids the question of whether entity liability should displace individual liability. Italy adopted an administrative liability regime for entities, adjudicated in criminal proceedings, under which an entity is liable for offences committed in its interest or to its advantage by senior persons or subordinates, subject to a defence for entities that adopted and effectively implemented an organisational model suitable for preventing the offences [48]. Germany declines to adopt criminal liability for corporations as such, but allows administrative fines against the entity where a person in a leading position commits an offence or breaches the supervisory duty whose observance would have prevented it [49]. The German model is notable because it explicitly links the entity's liability to a duty imposed on managers, so the failure to supervise is simultaneously an individual and an organisational wrong.

5.4 Cross-cutting observations

Three patterns emerge. First, even in jurisdictions that have broadened corporate attribution, the doctrinal route to individual liability remains largely governed by general criminal law, which requires proof of the personal elements of the offence. Second, jurisdictions that expressly cumulate entity and individual liability (France, Italy, Germany through the supervisory duty) have clearer statements of principle but do not necessarily have better enforcement against individuals. Third, the global trend toward preventive and compliance-based models, encouraged by international

instruments [36,54], tends to place the evidential focus on organisational systems rather than individual decisions.

6. Related Research Reviews, Findings and Perspectives

An authentic research contribution should locate itself within the existing evaluative literature. This section reviews the principal reviews, theoretical studies and doctrinal evaluations that have assessed corporate criminal liability and individual responsibility, summarises their outputs, and analyses their implications. Table 2 provides a charted summary.

Table 2. Charted summary of principal related research, outputs and implications for individual responsibility

Study (type)	Principal output or finding	Implication for individual responsibility
Coffee 1981 (normative and economic analysis)	Fines on corporations cannot deliver the stigma and incapacitation associated with individual punishment; penalties may be passed to innocent stakeholders	Individual sanctions and corporate stigma sanctions are necessary complements
Fisse 1983; Fisse and Braithwaite 1993 (theoretical and comparative)	Reactive corporate fault and self-regulatory accountability; organisations can be required to discipline responsible individuals	Law can harness internal discipline, but requires oversight to avoid sham discipline
Stessens 1994 (comparative)	Convergence toward recognising criminal liability of legal persons across systems, with divergent attribution rules	Differences in attribution rules produce differing exposure for individuals
Khanna 1996 (economic analysis)	Questions whether criminal liability adds deterrence beyond civil liability, since the stigma and procedural protections are not distinctive for entities	Strengthens the case for focusing criminal law on individuals
Arlen and Kraakman 1997 (economic modelling)	Duty-based liability that rewards monitoring, reporting and cooperation outperforms pure strict liability	Cooperation credit should be conditioned on information about individuals
Wells 2001 (doctrinal and critical)	Identification doctrine is structurally biased; need for organisational models	Gap in prosecuting large firms and their managers
Laufer 2006 (critical)	Compliance-centred reforms and culture models may shift focus away from individual culpability and encourage symbolic compliance	Risk that organisational reform substitutes for personal accountability
Clough 2007 (theoretical)	Proposes a realist model grounded in organisational policies and structures	Allows entity liability without identifying individuals, but needs complementary individual duties
Beale 2009; Hasnas 2009 (debate)	Defence of corporate criminal liability as a practical tool versus critique as unjust to innocent stakeholders	Debate illustrates that justification for entity liability is contested, strengthening the argument for individual

Study (type)	Principal output or finding	Implication for individual responsibility
		accountability
Uhlmann 2013; Garrett 2014 (empirical and doctrinal)	Negotiated resolutions have become the dominant mode of corporate enforcement; individuals are infrequently charged	Settlement practice weakens deterrence unless tied to individual accountability
Law Commission 2022 (official review)	Documents inadequacy of identification doctrine; options include failure-to-prevent offences and senior-manager attribution	Reform options largely address entity liability

Sources: [5-8,22,27,28,30-32,40,55-57]

6.1 Economic and deterrence perspectives

The economic literature frames corporate liability as a question of optimal enforcement design. A leading account shows that strategies for controlling corporate conduct differ in cost and effectiveness: direct individual liability may be ineffective because individuals are often judgment-proof, while entity liability uses the firm's capacity to monitor and discipline its agents [58]. A subsequent analysis argues that liability regimes should be structured to induce firms to invest in prevention, monitoring, self-reporting and cooperation, and that pure vicarious liability may be inferior to duty-based regimes that differentiate according to such behaviour [55]. A related contribution warns that expanding liability can have perverse effects: where information obtained through monitoring may expose the firm to liability, firms may rationally choose to monitor less [59].

The economic literature supports the principle that entity liability is useful because it creates incentives for the organisation to deploy information that no external enforcer has. It also supports, indirectly, a precise role for individual liability. Individuals, unlike firms, can be incapacitated through disqualification or imprisonment, and the prospect of personal sanction affects the incentives of those who make decisions inside the firm. If entity liability is the only sanction, managers may calculate that the firm will bear the cost. A model in which firms receive credit only where they deliver information leading to individual prosecution aligns the firm's incentive with the state's interest. The Yates and Monaco memoranda in the United States adopt this logic, but the evidence examined below suggests that conversion into actual prosecutions is limited [5,50,51].

6.2 Criminological and sociological perspectives

Criminological studies provide the factual premise for the debate. The early work on white-collar crime established that persons of high status commit offences in the course of their occupations and that such offending is under-prosecuted compared with ordinary crime [1]. Later studies of pharmaceutical and other industries documented organisational pathologies in which regulatory violations were produced by structural pressures and normalised within the organisation [16]. A sociological synthesis of corporate crime identifies organisational, environmental and interpersonal explanations, and concludes that effective control requires attention to all three levels [2]. A comparative study of corporate crime emphasises that the social meaning of corporate offences, and the willingness of the state to treat them as crimes, are historically contingent [60].

This research supports a nuanced view of individual responsibility. If corporate crime is produced by structures, then sanctioning individuals alone will not eliminate it. But if

structures are created and maintained by individuals, then ignoring individuals reduces the pressure for change. A responsive approach to regulation therefore suggests an enforcement pyramid in which persuasion and self-regulation form the base, supported by credible escalation to punitive sanctions, including sanctions on individuals [61]. The credibility of the apex is crucial; if individual prosecution is practically unattainable, the pyramid collapses to a negotiation between regulator and firm.

6.3 Philosophical and normative perspectives

Philosophers have argued that moral responsibility can be ascribed to organisations as agents with internal decision structures [13,14], but they typically add that this does not remove the responsibility of members who contributed to the organisational decision. A parallel debate in the legal literature asks whether criminal liability of corporations is justified. Critics argue that the concept is a century-old mistake that imposes penalties on innocent shareholders and employees and offers less than what regulatory and civil tools can achieve [28,57]. Defenders respond that corporations are real actors whose structures create risks, that entity liability is necessary because individual liability is often infeasible, and that stigma attached to criminal conviction creates incentives that civil penalties cannot [56]. The debate has an unexpected implication for this study. Both sides agree that criminal law's coherence depends on assigning blame to those who are in fact responsible. The critics' strongest argument, that entity liability may punish the innocent, becomes weaker if entity liability is accompanied by credible personal accountability; and the defenders' strongest argument, that individual liability is often infeasible, is a challenge to be solved by law reform rather than a justification for abandoning individuals.

6.4 Perspective of victims and the Global South

A further perspective is that of victims and affected communities. The Bhopal gas disaster is the paradigmatic case in which multinational enterprise structure, subsidiary arrangements and jurisdictional obstacles combined to delay and diminish accountability. Studies of the disaster emphasised that the legal doctrines of separate personality and the corporate group made it difficult for victims to obtain redress from the parent company and for the state to prosecute those with ultimate control [62]. In litigation arising from a separate industrial gas leak in Delhi shortly after Bhopal, the Indian Supreme Court developed the principle of absolute liability for enterprises engaged in hazardous activities, removing the exceptions applicable under the English rule [63]; the Bhopal civil claims themselves were resolved through a court-approved global settlement [64]. Later transnational litigation has tested the limits of parent company responsibility. The United Kingdom Supreme Court allowed claims against a parent company and its subsidiary to proceed on the basis that a parent may in some circumstances owe a duty of care to those affected by a subsidiary's operations [65], and later confirmed that the inquiry turns on how far the parent in fact assumed responsibility for the subsidiary's operations, including through group-wide policies and supervision [66]. International soft-law has endorsed the principle that businesses have a responsibility to respect human rights and that states should ensure access to remedy, including through criminal sanctions where appropriate [54]. These developments are civil in form but are significant to this study because they show that the veil of incorporation is increasingly examined in terms of control and foreseeability, concepts that may be transferable to the criminal context.

6.5 Synthesis of the review

Four conclusions follow from the review. First, there is broad scholarly agreement that the identification doctrine is inadequate for large organisations [22,40]. Second, there is substantial, though not unanimous, agreement that organisational fault models and failure-to-prevent offences improve entity accountability [30,32]. Third, the evaluative literature shows a recurrent concern that

entity-centred reforms may displace, rather than reinforce, individual accountability [5,6,27]. Fourth, the literature offers few systematic empirical data on the conversion of corporate enforcement actions into individual prosecutions, which indicates a research gap that reform should address through mandatory reporting.

7. Analytical Reality: What Leading Cases Reveal

Doctrinal models can be tested against documented outcomes. The following cases are not a statistical sample; they are analytical exemplars chosen because they are well documented and because they illustrate different mechanisms by which responsibility is diffused.

7.1 Transport disaster and the failure of attribution

In 1987, a roll-on roll-off passenger ferry capsized shortly after leaving the Belgian port of Zeebrugge with its bow doors open, and 193 people died. The subsequent prosecution of the operating company and several individuals for manslaughter was heard in 1990. The trial judge accepted that a corporation could in principle be convicted of manslaughter by gross negligence, but the court directed acquittals because the evidence did not show that any individual who could be identified with the company had been guilty of the offence [26]. The case reveals the mechanics of the criminal veil. The court was prepared to accept that the company's systems were inadequate, but the identification doctrine required that the gross negligence be located in a person who was the company's directing mind. The inquiry into the disaster had already described a systemic failure extending from the ship to management, but the criminal law could not convert a systemic finding into an individual conviction. The statute enacted in 2007 was a legislative response [37]. Its first conviction involved a small employer [38], which suggests that the reform may have addressed the formal gap without altering the practical difficulty of prosecuting large organisations or their senior managers.

7.2 Product safety and the criminal process

The indictment of a motor manufacturer for reckless homicide arising from the fuel-tank design of a small car, tried in 1980, was among the first in the United States in which a corporation was prosecuted for deaths caused by a design decision, and it ended in acquittal [67]. The case remains significant for two reasons. It showed that the criminal process could be applied to product design decisions that were previously understood as matters for civil litigation. It also showed the difficulty of establishing recklessness, as opposed to negligence, in a context in which the decision was the product of cost-benefit analysis distributed across engineering and management. The case is therefore relevant to the choice of mental element: if the law demands proof of conscious disregard by an identifiable senior person, such prosecutions will seldom succeed.

7.3 Financial collapse and collateral consequences

The collapse of a major energy trading company in 2001 and the subsequent prosecution of its auditor demonstrated both the power and the danger of entity prosecution. The conviction of the auditor for obstruction was followed by the effective end of the firm, with large numbers of employees losing their positions, and the Supreme Court later overturned the conviction on the ground that the instructions given to the jury had permitted conviction without proof of the requisite consciousness of wrongdoing [25]. The episode influenced prosecutorial practice, which since then has leaned toward deferred and non-prosecution agreements as a way of avoiding collateral consequences. The consequence for individual accountability is double-edged. On one hand, the agreements can be structured to require cooperation and reform. On the other, empirical and doctrinal analyses show that they often lack judicial scrutiny, vary in transparency, and are sometimes negotiated without commitments to pursue individuals [5,6,68].

7.4 Industrial disaster, jurisdiction and the group structure

The Bhopal case demonstrates how group structure and jurisdiction interact with criminal law. Criminal proceedings were brought against the Indian subsidiary's officers and against the foreign parent's chief executive, but the foreign defendant never appeared and the matter was long delayed [62]. In terms of the framework adopted here, the corporate group exploited, whether intentionally or not, the separation between the entity that operated the plant and the entity that designed and controlled its safety systems. Indian jurisprudence in the aftermath developed the principle of absolute liability for hazardous enterprises [63] and the civil claims were settled globally [64], but the criminal process was marked by delay and by sentences, imposed decades after the event, on local managers. The case thus illustrates the inversion of responsibility: individuals at the base of the structure faced formal criminal outcomes, while those at the top, who controlled the design and policy decisions, were never tried.

7.5 Interpretation

Three analytical lessons emerge from these cases. First, the gap between organisational and individual responsibility is a function of the evidentiary structure of criminal law, not an accident of case-specific facts. Second, the direction of the gap is predictable: it favours those at the top of complex organisations. Third, reform of entity liability has not been accompanied by comparable reform of the rules and practices that determine whether individuals are prosecuted. These lessons suggest that reform should not be considered complete unless it addresses the individual pathway.

8. Reassessing Individual Responsibility

8.1 Why individual responsibility remains essential

Four arguments support the retention, and indeed the reinforcement, of individual responsibility. The first is deterrence. Individuals respond to personal penalties in ways that entities cannot, and the personal consequences of conviction extend beyond fines to reputational harm, disqualification from office and loss of liberty [7]. The second is desert. Criminal law is distinctive in expressing moral condemnation, and condemnation is most intelligible when it is directed at those who made culpable choices. The third is legitimacy. A legal order in which corporate offences are resolved through negotiated payments paid by shareholders risks the perception that wealthy actors enjoy a separate system of justice [5]. The fourth is information. Individual exposure creates an incentive to cooperate and to disclose, which is the source of the evidence that is otherwise inaccessible to prosecutors [55].

8.2 Doctrinal tools for reaching individuals

Legal systems have developed several tools to reach individuals acting through corporations.

Participation and accessory liability. General doctrines of aiding, abetting, counselling, procuring and conspiracy allow conviction of those who contribute to a corporate offence. They are underused because they require proof of intention or knowledge and the paper trail of delegation obstructs it.

Statutory officer liability. Many statutes impose liability on directors or officers where the offence was committed with their consent, connivance or neglect, or on the "officer in default". The Indian company statute follows this approach [53]. However, the Indian Supreme Court has insisted that such provisions must be applied only to persons who were actually in charge of or responsible for the company's conduct, and that a person's position alone does not constitute proof [45], and has held that the company must itself be prosecuted

as a condition for vicarious prosecution of directors under the relevant statute [52]. These limits protect against over-criminalisation but make clear that statutory officer liability is only as effective as the evidence of actual involvement.

Responsible corporate officer doctrine. In some regulatory contexts in the United States, an officer who has authority to prevent or correct a violation and fails to do so may be liable, without proof of personal participation. The doctrine's rationale is that those who bear responsibility for public welfare offences should bear the risk of failure to prevent them. Its moral acceptability depends on limiting its use to public welfare offences with modest penalties, and in that domain it offers a model for a duty-based approach.

Duty-of-supervision offences. The German approach links the entity's fine to a manager's breach of the duty to supervise [49]. A comparable approach for individual liability would create an offence for senior officers who knowingly fail to maintain adequate prevention systems, distinguishing negligent from reckless or deliberate failure.

Disqualification and civil penalties. Where criminal conviction is not feasible, disqualification from holding office and civil penalties for individuals can supplement. These tools reduce evidential burdens and impose consequences that matter to senior executives.

8.3 The influence of negotiated resolutions

Negotiated resolutions deserve special attention because they are now the dominant mode of corporate enforcement in several systems. The central criticism is that, while such agreements can secure cooperation and reform, they also tend to be negotiated by the same prosecutors who would have to try individual cases, creating conflicting incentives; they can be structured to protect senior management from prosecution in return for corporate payment; and they are rarely subjected to meaningful judicial scrutiny [5,6]. A defence of such agreements stresses their capacity to deliver structural reform, such as compliance monitors, governance changes and cooperation, which conviction would not achieve [68]. Both claims can be accurate. The question is therefore not whether such agreements should exist but how they should be conditioned. The principle advanced in this paper is that the benefits of settlement should be tied to demonstrable individual accountability: either the entity provides substantial assistance in identifying and prosecuting responsible persons, or it provides a reasoned justification, subject to review, for the absence of individual action.

8.4 The problem of the compliance defence

Compliance programmes occupy an ambivalent position. They can reduce offending when they are embedded in organisational practice and supported by leadership. They can also serve as a form of insurance, mitigating the entity's liability without altering behaviour [27]. The statutory defence of adequate procedures in the Bribery Act and the organisational model defence in Italian law both depend on judicial assessment of the quality of such programmes [35,48]. For individual responsibility, the critical question is whether a compliance defence for the entity should also protect individuals who knowingly circumvented or ignored the programme. A sound answer is no: the defence should reward organisations whose systems work in practice, and should not protect officers who undermine them.

9. A Proposed Framework

On the basis of the analysis, a four-part framework is proposed. It is offered as a normative proposal grounded in the preceding review, not as an empirical finding.

(1) Functional attribution. Attribution rules should be tied to the purpose of the offence

and to the actual structure of decision-making rather than to formal titles. The approach approved in the Privy Council, which interprets the rule of attribution by reference to the policy of the substantive provision [21], provides the doctrinal foundation. Statutory definitions of “senior officer” or “senior manager” should be functional, focusing on persons who play a significant role in making or managing decisions in the relevant area [39,41].

(2) A duty-based standard for senior officers. Legislatures should consider offences, or aggravating principles, for senior officers who, with knowledge or recklessness, fail to take reasonable steps to prevent serious offences within their area of responsibility, modelled in part on the German supervisory duty [49] and on the responsible corporate officer doctrine. The offence should be confined to serious harms and to recklessness or worse, to avoid over-criminalisation.

(3) Conditional corporate leniency. Credit for cooperation, compliance programmes and settlement should be conditional on assistance in identifying individuals, as adopted in United States policy [50,51], with a requirement that prosecutors record the reasons for declining to charge individuals.

(4) Transparency and measurement. States should publish annual data on corporate enforcement actions and the resulting individual charges, convictions and disqualifications. The absence of systematic data identified in the review prevents evidence-based reform.

Figure 1 summarises the conceptual relationship between the veil of incorporation, attribution gateways and accountability outcomes, and indicates where the proposed reforms intervene.

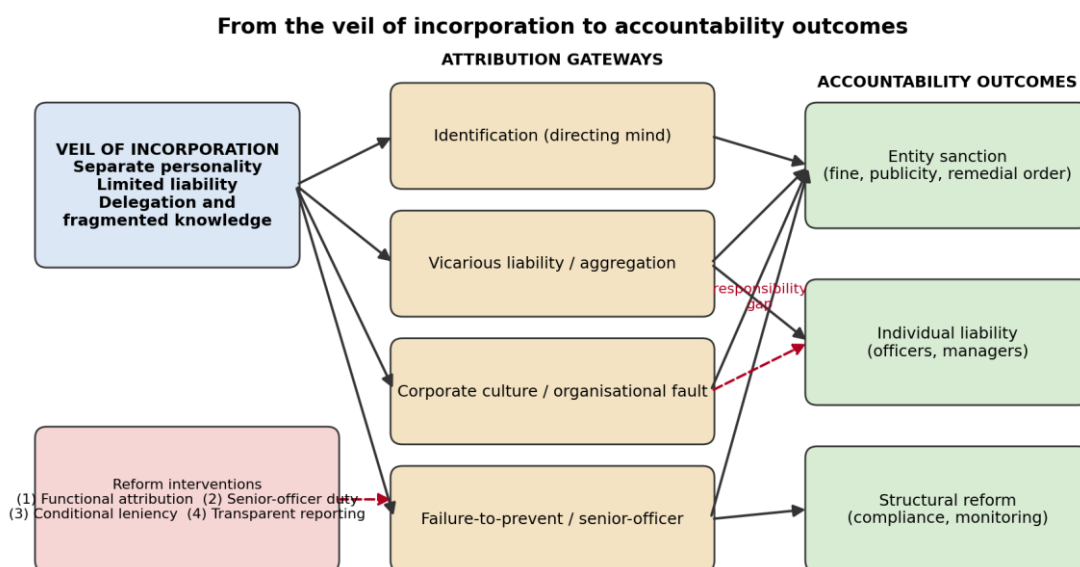


Figure 1. Conceptual framework: from the veil of incorporation to accountability outcomes, with the four proposed reform interventions

9.1 Anticipated objections

Over-criminalisation. Critics may argue that duty-based offences would deter capable individuals from taking senior office. The response is that the offence is confined to serious harms and requires recklessness or knowledge, and that the structure of the proposal leaves ordinary business judgment outside the scope of criminal liability. **Fairness to subordinates.** The framework seeks to relieve the

pressure on junior employees, who are the most frequently prosecuted, by focusing attention on those with decision-making authority [20]. *Evidence*. The proposals rest on doctrinal and comparative analysis rather than on controlled empirical evidence, and the transparency measure is designed to generate such evidence.

10. Discussion

The analysis shows that the central challenge of corporate criminal liability is not whether entities can be criminally responsible. Most legal systems have answered that question affirmatively, and the conceptual objections have lost most of their force [13,14,32]. The challenge is to ensure that the extension of liability to entities does not obscure or replace the responsibility of individuals.

The comparative evidence suggests that doctrinal reform on its own is insufficient. The same system that formally broadens attribution may continue to produce few individual prosecutions if enforcement institutions face evidential, resource and incentive obstacles [5]. The experience of the United States is instructive. Despite repeated policy statements emphasising individual accountability [50,51], scholarship continues to identify negotiated resolutions without individual charges as a central weakness [5,6]. The experience of England and Wales suggests that statutory reform tends to be incremental and offence-specific, and so creates anomalies [37,40]. India's jurisprudence demonstrates the benefits of an incremental judicial approach that expands entity liability but also the persisting evidential demands for individual liability [43-45].

A final point concerns the normative significance of the veil. The law of corporate personality was developed to enable enterprise by limiting liability [3]. It was never intended as a grant of criminal immunity. The veil, properly understood, protects the investor as investor; it does not protect the decision-maker as decision-maker. A criminal law that reflects this distinction would permit the entity to be convicted where the organisation's systems or culture permitted an offence, and would equally permit the individuals who designed, tolerated or concealed those systems to be held to account. That is the sense in which entity and individual liability are best understood as complementary.

11. Limitations

Several limitations qualify the conclusions. First, the review is purposive and canon-based; although it covers the principal authorities and scholarship up to 2024, it does not claim exhaustive coverage and it did not report numerical screening results. Second, the temporal boundary excludes later developments, including reforms and judgments after 2024, which may affect the position in particular jurisdictions. Third, the comparison covers eight jurisdictions and excludes other systems with significant developments in corporate criminal liability. Fourth, much of the literature is doctrinal or theoretical, and the analytical cases are illustrative rather than representative. Fifth, the proposed framework is normative and has not been tested empirically. Sixth, descriptions of statutory provisions are summarised for analytical purposes and should be verified against the authoritative texts before being relied upon in practice.

12. Conclusion

This paper has examined how the veil of incorporation operates in criminal law and whether contemporary models of corporate liability adequately preserve individual responsibility. The review of doctrines, comparative regimes, related research and leading cases supports five conclusions.

First, the identification doctrine produces an inverse relationship between organisational size and criminal exposure, and has been widely criticised as inadequate [22,40]. Second, broader models, including vicarious liability, organisational culture, failure-to-prevent and senior-officer attribution, improve entity accountability but do not by themselves address individual responsibility [24,29,35,41]. Third, negotiated resolutions, while offering benefits, risk institutionalising a pattern in which entities pay and individuals do not [5,6]. Fourth, the evidence from leading cases indicates that responsibility is most easily diffused at the top of complex organisations and most easily assigned at the bottom [20,26,62]. Fifth, the absence of systematic data on individual outcomes is a significant obstacle to evidence-based reform.

The proposed framework of functional attribution, a duty-based senior-officer standard, conditional corporate leniency and transparent reporting is intended as a coherent response. Its premise is that corporate criminal liability should not be treated as a substitute for individual responsibility but as its partner. The corporation may be a legal person, but it acts only through human beings, and a criminal law that forgets this will protect the powerful while appearing to confront them.

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