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## CORPORATE CRIMES

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### ABSTRACT

*There are no qualms about abundance of talent and intelligence throughout the world but there is a shortage of hard work and contentment. Some people want to enrich themselves within no time by avoiding hard work, they want easy money, want to show off and want to lead a life of luxury away from struggles. Corporate Crimes is the best example where the skilled perpetrators conspire in groups and take advantage of others' ignorance. These people want to get rich within no time, such crimes cause great burden and economic loss to the country. The innocents are victimized for no fault, a person with a flamboyant personality easily cheats the victims and the victims being innocent lose their lifelong savings, in some cases a precious life is lost within seconds. Strict laws and stringent punishments for Corporate and White collar crimes is the need of the hour and should not be ignored thinking it as will-o-the-wisp leaving it on its fate.*

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**Key Words:** Corporate Crimes, Silent crimes, Stock Market, Vicarious liability, Fugitives etc.

### Introduction

The needs and greed of man can never be fulfilled and Corporate crimes are the best examples how a heartthrob and charming person of well to do strata smartly indulges in crimes which are only for his greed and sham. The offender least regards his activity as immoral or illegal and mostly targets the elderly people who are sometimes technology unfriendly, these people have pleasant personality fluent english and often project themselves as ones from affluent families. The victims

are easily cheated, befooled and trapped they realize about their victimization much late. Corporate Crimes are types of White collar crimes but with slight difference, in Corporate Crimes a few individuals or some members conspire together, rather than an individual for the benefits of the corporation or personal benefits.

One of the oldest cases cited in England is the *Anonymous v. The Sheriff of London*<sup>1</sup> (the case of Carrier who broke the bulk) This case is also called as The *Carriers case of 1473 of England*<sup>2</sup> is often documented as the oldest case of larceny and falls in the category of White Collar Crimes; this was a case of an agent enriching himself by stealing wool while transporting it to Southampton for selling. This case is often referred as a precedent setting case and White Collar Crime's first reported case. Though the term White Collar Crime came much late but the Carriers case became the landmark case in the history and the English court adopted the doctrine of "breaking the bulk" meaning opening it without permission and using it for own profit. Similarly, Corporate Crimes are the ones which are committed by people serving on high positions and deliberately misusing the property or finances for personal use especially for enrichment. A renowned sociologist Edwin H Sutherland noticed crimes by people of high positions and he in 1939 defined White Collar Crimes as "crimes committed by a person of high social status in the course of their occupation".<sup>3</sup> In criminology Corporate Crimes are defined as 'the crimes committed by a corporation or by individuals working on behalf of a corporation or other business entity'. Corporate crimes are also called as organizational crimes as they fall in the category of White Collar Crime committed by individuals within their legitimate occupations for the benefits of the employing organization or corporation. Corporate crimes and White collar crimes are somewhat similar as they take place in the business world and the motive is greed and enrichment. The simple difference between both is that in corporate crimes the crime can be committed by a group of people for the benefits of corporation and in White Collar crimes only one person or a few individuals are involved mostly for personal gains.

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<sup>1</sup> Y.B.Pasch.13Edw.IV.f.9.pl.5(1473)

<sup>2</sup> Carriers case is regarded as the oldest case it's a landmark English case in the history of the definition of larceny. The case fall between the law of larceny and futum a Roman law concept of theft. The carrier converted the goods to his own use and later the defendant was arrested and charged with larceny and felony an opt punishment for such crimes in those days.

<sup>3</sup> Sutherland. Edwin Hardin, *White Collar Crime* 9 Dryden Press, New York 1950

Man's urge to earn more and more, showoff attitude, luxurious lifestyle, competition, maintaining a lifestyle which is not possible in certain salaries, so Corporate crimes is the easiest way for such people to earn illegally taking benefits of others ignorance about certain financial matters and misusing high positions. Detection of corporate crimes is not a herculean task but often a person comes to know about them when it's too late. A person using a personal space of the office such as his cabin or a personal room and working on his computer doesn't give any suspicion to others what that person is up to. Corporate crimes lead to psychological problems, economic losses and plays a big role in economic depression. These days the example of Mr Vijay Shekher Sharma the owner of Paytm is often cited how smartly he was cheated by his personal secretary Sonia Dhawan and three of her accomplices. He had to go through lot of inconvenience and suffered mental harassment as his personal secretary Ms Sonia Dhawan along with her three accomplices.<sup>4</sup>

The corporations are group of people authorised by law to act as a legal personality and having its own powers, duties and liabilities the shareholders and stockholders are the ultimate owners of a corporation these people have certain rights because of their position in an organisation such as the right to vote, right to elect and share the profits of the corporation but when these people become materialistic they forget all the ethics their only aim is to earn more and to fill their pockets while doing such type of activity they do not even once think of themselves as criminals and neither do they consider the activity as criminal activity.

#### **Nature and identifiable features of Corporate Crimes**

Corporate crimes take place within the business world, such crimes are committed by people sitting in high positions and enjoying a high status in any organisation and having the privilege of experts in fields such as accounts, finance, tax matters and other money related matters. For Corporate criminals/ offenders committing a crime is just a task which is for the benefit of the organisation. The Corporate crimes have very low visibility it is not easy to detect such crimes neither do these people realise about the huge loss to the company by their selfish motives, it is seen that the offender is known to the victim or vice versa, detecting the corporate crimes is corporate crime

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<sup>4</sup> Mr Vijay Shekhar Sharma the owner of online payment app paytm had to go through lot of inconvenience and suffered mental harassment as his personal secretary Ms Sonia Dhawan along with three of her accomplices joined SAIF as corporate communication adviser and cheated Mr Sharma by stealing personal and private data, business plans and tried to extort Rs 10 crores putting Mr Sharma in great mental anguish. On the basis of FIR Sonia Dhawan was arrested and spent around five months in jail and was released on bail by Allahabad Court.

book of not an easy task rather it is a herculean task as they are performed in such a way that nobody gets to know the intentions of the offender, he deliberately conceals the information on important matters and sensitive issues thus leading to corporate frauds these types of frauds are sometimes complicated and tangled which cannot be easily detected by the lay person mostly the experts such as FBI ,CBI and other law enforcement agencies have been incorporated to detect such crimes.

### **Corporate crimes metaphourised as Business crimes**

Corporate crimes are also called business crimes because they are committed for the benefit of the organisation in the course of business. Corporate crimes are dangerous to the cooperation as well as the country but such crimes hardly receive the same amount of courage as other traditional crimes, though these crimes are taken seriously by the government but the punishments are not strict as a result the people easily get involved in such crimes.

According to John Breathwaite, a well-known criminologist of Australian origin, Corporate Crimes include “the conduct of corporations or employees acting on behalf of a corporation which is described and punishable by law”.<sup>5</sup> Corporate crimes are a greater version of White collar crimes as they are committed by a group of experts serving on high positions. There are certain financial matters and transactions which seem a herculean task for elderly people, common citizens, businessmen and even their staff members. The offenders grab the opportunity and assure the victim to take him out of the woods, the victims too feel secure and sometimes reveal the passwords, and this is how offenders trap the victims as they are soft targets. As these people are experts in accounts and finance matters one hardly doubts about their credibility and these people totally forget the ethics and morals the only target is to enrich themselves and befooling the innocent victims.

### **Corporate Crimes metaphourised as Silent Crimes**

The corporate crimes have also been metapharised as the quiet acts or silent crimes as they are done in such a manner that the victim realizes about it when it's too late. The offender silently does his work and the victim is not even aware that what all has happened with him, unknowingly he becomes a scapegoat in the hands the shrewd offender whose motive was to enrich himself or

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<sup>5</sup> 12-Oct-2021, (PDF) **Corporate Crime Deterrence: A Systematic Review**,<https://www.researchgate.net> ›

to please the boss. It has been noticed that the workplace culture of the corporation sometimes create situations where the employees in their occupational activity commits corporate frauds by leaking important information for pleasing their bosses for promotions or incentives or perquisites, in this way they indulge in the silent corporate crimes and for them it is just a task or regular routine work. The corporate crimes are committed by people for organisation's selfish interests, personal gains and competition with other corporations, in such situations insider trading is the best technique adopted by the offender. *ImClone stock trading case*<sup>6</sup> of America is often cited as the best example of Insider trading by Mr Samuel D. Waksal the CEO and founder of ImClone Company dealing with anti-cancer drugs. Mr Samuel asked his family and friends to sell the shares of his company as he came to know that the Food and Drug Administration will not give approval to the drug which was being manufactured by the company, he was arrested for insider trading. As mentioned earlier these crimes are very quiet that is why they are metaphorized as silent and nonviolent crimes, the result of these crimes is fatal placing the victim in a juxtaposition where he is clueless whom to blame and on whom to rely upon these types of silent crimes leave amateurish and dreadful impression on the minds of the victims and the society.

It is evident that Corporate crimes are committed for the gains and enrichment and there are no qualms that economic impact of Corporate crimes are extremely excruciating these crimes are far more costly than the traditional crimes as these crimes destroy the life of the victims as well as leaves a bad impression in the minds of public about the image of any organisation or bank or company. Some people opine that corporate crimes destroy the life of a victim more than a gunshot wound because all the lifetime savings of a person are gone in one shot. The victims of corporate crimes have long lasting effect they often suffer from frequent flashbacks about their victimisation some of the victims even go in depression in extreme cases some even commit suicide.

### **Psychological and Socioeconomic factors underlying corporate crimes**

The victims of any crime experience different types of effects; which include psychological, physical, physiological and economic effects. In Corporate crimes psychological effects can be witnessed more as compared to traditional violent crimes. Corporate crimes are not easy to predict and detect nor is it easy to predict what effect it will leave on the victim as no individual is alike.

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<sup>6</sup> 20-Jan-2005, **SEC Settles ImClone Insider Trading Case - The New York ...**<https://www.nytimes.com> ›

It has also been observed that different effects are noticed in different types of victims; some experience short term effects and some experience long lasting effects for a similar offence. Anxiety, guilt, trauma, depression, lack of confidence, flashback, loss of appetite are some of the effects which can be witnessed in the victims who have been the targets of Corporate crimes, such victims are always surrounded by continuous thoughts of their scapegoating which are not easy to get over their mind. These thoughts keep on hurting them especially when they are sitting idle and alone, they often curses the ill-fated day, corporation or bank where they invested and often feel had they been vigilant this situation would have been avoided, these haunting thoughts leaves long lasting psychological effects on victims, as mentioned earlier the psychological effects of the corporate crimes have great and lasting effects on the victim though the intensity of effects varies from victim to victim as per the gravity of the offence .

The victim of Corporate crimes often feels to be mocked by his relatives and near dear ones though the people around him are sympathetic, concerned and feel sorry for them but the victims mental state make him feel as a failure who could not avoid this type of situation, the victim starts suspecting the sympathizers often stops socializing with the relatives secludes himself to his house or only his room, in such circumstances the family of the victims also suffer along because every time there is fear in the minds about the victims mental state that he might not take any wrong step and loose his life, as the victim is always lamenting and may take step which is wrong for himself and his family.

Corporate crimes harm the society and economy of the country the financial position of the country gets affected by such crimes, these crimes creates negativity amongst the investors and leaves a great impact on the society the image of the company or organisation dealing with financial or economic matters is shattered within no time, if any employee or a group of employees of particular organisation indulge in any type of illegal activities such as cheating, embezzlement, insider trading, money laundering black marketing and many other such activities it is likely to hinder the financial position of the organisation and the country. Corporate Crimes endangers employees through unsafe working conditions it has also been noticed that corporate crimes are often called as nonconventional in nature as these types of crimes are less punitive so automatically the offender is sure that he is not going to spend much time in prison and takes risks he is confident enough of his release even if he is caught and also would be saved by his bosses

and political links and will not have to spend much time in prison only it's a matter of some days or months and he would be out again as a respected person.

The Corporate Crimes causes excruciating mental pain to the victims and damage to the economy of the country, the employees and investors of the company suffers losses, savings of the innocent investors is lost, the family life of the investors who are now victims is ruined and disturbed, the elderly citizens who confidently invests in certain medical schemes and medical insurances of certain corporations suffer, their dreams are shattered they often suffer from setback and shocks and it has also been witnessed that a company suffering huge losses because of corporate crimes fires its employees in order to meet its expenses as it is no more in a position to keep surplus employees as a result many times the innocent employees becomes scapegoats because of the misdeeds of somebody else.

#### **Corporate crimes as organised crimes**

Corporate crimes are often called as organised crime which are non violent in nature and the offender with his physical and motor dexterity commits them, these crimes are often committed during the course of legitimate business activities of the employees and the professional workers are more involved in such crime that is why these crimes are also referred as White Collar crimes because of the simple reason as the professional workers or employees are dressed up in a well organised and sophisticated manner and no one can doubt on their character but during the course of the employment sitting in a personal cabin and using personal computers these professional workers indulge in the so called White Collar or Corporate Crimes. The Corporate Crimes and White Collar crimes are different from the traditional crimes or the Blue collar crimes because generally the blue collar crimes are violent in nature mostly involving people of lower strata and in the olden days the workers preferred dark clothes while performing manual work many a times these workers got involved in heated exchanges with fellow workers and often committed crimes of hurt, grievous hurt, murder, culpable homicide, mayhem and so on so that is why these violent crimes were metaphorised as Blue collar crimes. ***In State of Gujrat v. Mohanlal Jitamalji Porwal and Anr***<sup>7</sup> the Supreme Court of India laid down a difference between White Collar Crimes and Blue Collar crimes. It has also been noticed that in many places especially the business

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<sup>7</sup> AIR 1987 SC1321



organizations the upper class or the upper middle class indulge in these types of crimes in order to fulfil certain expensive desires such as houses in posh locality, imported cars or bikes, imported dogs and other pets jewellery demands of wife, frequent foreign trips and vacations with the family to foreign destinations and maintaining the so called pseudo standard in the society which is impossible in their salary. Credit card frauds, bribes kickbacks, swindles, tax evasion, pilfering, soliciting medical frauds, cyber security frauds, cybercrimes frauds, corruption, black marketing, forgery, insurance fraud and telecommunication frauds are some of the the Corporate Crimes committed by the people sitting on high positions misusing their status and power without even realizing how fatal these types of crimes are for the victim, the society and the nation.

It is often seen that in many Corporate Crimes the criminals consider their activities normal which is a part of their day-to-day working they believe that while working in any organisation they have to be loyal towards it along with the loyalty they have to generate new sources which can profit the organisation, following different types of illegal means is considered normal by the employees for the growth of the organisation. These criminals have a mindset that in order to take the organisation to the zenith following certain illegal means is not bad and consider it as a commitment toward the organisation they are working with. These days a number of Companies are involved in corporate crimes as a routine matter without even realising how much loss they are doing to the country.

Many psychologists, sociologists, jurists and anthropologists took keen interest in topics of White Collar crimes and Corporate Crimes at, they tried to know why people of high strata commit such crimes, and why these crimes are called as White Collar crimes and Corporate Crimes they also tried to understand what is the difference between the both and also how they are different from the normal Blue Collar crimes<sup>8</sup> and Green Collar crimes.<sup>9</sup>

Based upon the observations and understanding of different sociologists, criminologists anthropologists and psychologists the corporate crimes have been categorised into tax evasion, fraud ,money laundering, embezzlement ,insider trading, scams, cybercrimes,kickbacks,e breach of trust ,pin ponging, scams in off shore market, food adulteration scams etc

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<sup>8</sup> The Blue Collar crimes are also called the traditional crimes as the workers working in the factories preferred wearing blue coloured or dark coloured clothes in order to avoid them from getting dirty and crimes committed by such workers were called Blue Collar Crimes.

<sup>9</sup> The Green Collar crimes is not a very old term such crimes are conducted against the Environment and Wildlife.

### **Vicarious liability of Corporation in Corporate Crimes**

It is evident rule of Vicarious liability that whenever a servant does any immoral act during the course of his employment or causes harm to the another person then obviously the master is liable for the acts of his servant, similarly when we talk about the vicarious liability of Corporation in case of Corporate crimes we see that the company is vicariously liable for the acts of its employees. Vicarious liability is based upon two maxims of Latin origin *respondeat superior and qui facit per alium facit per se*. The first maxim *respondeat superior* means that ‘**a principal must answer for the acts of his subordinates**’ and the second maxim *qui facit per alium facit per se* means that ‘*he who employees another person to do something, does it himself*’ or in other words we can say ‘*he who acts through another is deemed to act in person*’. When the question of vicarious liability arises the above maxims are taken together these maxims place the master in the same position as he had committed the wrong himself making him answerable for the acts/wrongs of his servant who is in his employment.

The vicarious liability of the master arises:

When there is relationship between employer and his employees

When there is relationship between the corporation and its directors

When there is relationship between the partnership and its partners

The corporate offices are liable and responsible for any wrongful conduct of their employees their bosses are vicariously liable for the wrongs automatically and the corporation is vicariously liable for the employees conduct, if that offence is carried out in course of employment, as mentioned earlier the legal maxims fits here and it is believed that the offence is done by the employer himself because of his relation with his employees. Law of Torts and Section 11 of Indian Penal Code talks about Corporate Criminal Liability. In Indian Penal Code the Corporate criminal liability means the extent to which a corporation as a legal person can be held criminally liable for acts or omission of offences, a corporation can be treated as an individual and can be prosecuted in the offence involving means rea. The vicarious liability of the master is evident if the wrong has been committed by his servant but if there is evidence that an individual has committed an offence and there is relevant evidence of his direct involvement along with the company or on behalf of a company then that person can be punished for his conduct. It is often

seen that the Bosses such as Directors of the companies are held liable for any moral and immoral activity of the employee if they have signed certain important papers such as guaranteed money loans and other property papers. The master sometimes is not even aware that something fishy is going on in his employees mind sometimes in goodwill also innocent people suffer because of the act of somebody else but in this type of situation for any type of wrong the vicarious liability of the master arises and it is believed that the master has done the act himself whether it is moral or immoral. When we talk about vicarious liability in torts the motive of making the master liable for the acts of the servant is that the master is always in a better position or in a sound monetary position as compared to his servant. It is also believed that the master is vicariously liable for the acts of his servant because he is a more promising source for recompense, he can even control his servant as he benefits from the servant's act, and he has the deepest pocket.

### **Corporate crimes and Cyber law**

Corporate crimes are a serious concern throughout the world as it breaks the economy, mental health, and reputation and confidence level of the people who have been victimized. Cybercrimes fall in the category of corporate crimes and Whitecollar crimes. Basically Cybercrimes are the ones which are committed through the internet, it has been noticed that the White Collar crimes and the corporate crimes are mostly committed by the people to fulfill their certain desires and needs which are not possible in a certain amount of salary. Cybercrimes fall in the category of Whitecollar crimes committed by people of higher strata or lower strata, these crimes are committed by people expert in IT field. Corporate crimes are committed by individuals or a group for personal gains but Cybercrimes are committed by people for pleasure, defamation, insult, revenge and in the end for personal gains. Illegal activities on computers like espionage, child and women obscenity, forgery, frauds, falsification of accounts have become common. Cyberattacks in many corporate organisation are becoming very common, sensitive and confidential information is stolen and leaked in public, making the computers a mode and this may lead to defaming of certain corporations and sometimes the shares value of these corporations is affected especially when activities like insider trading, embezzlement, credit card frauds occur involving the computer network.

### **Corporate Crimes and Laws of India**

In India the biggest reason for Corporate Crimes is lesser and less harsh punishments, it has been

believed and felt had the punishments been strict enough there would have been less crimes of such nature, also had the above crimes been in Criminal offense category rather than the civil and administrative category there would have been a check in such crimes.

Indian youth is talented and potential enough but unemployment and desire to earn more and more easily distracts them from doing hard work they are getting involved in immoral and illegal activities, the educated youth especially the ones with professional and technical qualification are getting involved in corporate crimes sometimes by creating false IDs, fake websites, fake bank accounts, fake credit cards and much more. In one of the reports of the Reserve Bank of India it registered 921 cases of credit and debit card frauds. As mentioned earlier the youth is smart enough these days their greed prompts them to indulge in corporate crimes as it is the easy way to get rich and successful.

It is difficult to keep a check on individuals as well as corporations who have indulged in corporate crimes but the Indian government is trying its level best to check this menace by incorporating laws, the government introduced many regulatory legislations in order to prevent different Corporate crimes and White collar crimes, the main aim of introducing these regulatory legislations is to keep a check on those who try to enrich themselves by doing corruption and other corporate frauds and try to play with the lives of the innocent beings. The Indian government has also framed committees to inspect and examine the reasons why people are involved in corporate frauds and other types of corporate crimes.

The following are some of the project reports which the Indian government incorporated to check various types of corporate crimes

- Vivian Bose commission of enquiry 1963
- Central Vigilance Commission 1964
- Das Commission report 1964
- Law Commission 47th report 1972
- Santhanam Committee report 1972

Talking about Corporate Crimes in Indian scenario India is no exception, in India corporate crimes of different nature are becoming common and witnessed in almost every sector the traces can be felt in medical profession, engineering profession, banking sector, cyber field, legal profession. Offences like blackmailing, black marketing, corruption, credit card frauds and security scams are

witnessed daily. The Hawala scam of the 1990's shook the country from its core, Harshad Mehta a prudent stock broker was involved in a scandal of 4999 crore rupees, smartly in a manipulative manner he accumulated enormous wealth by cheating Bombay Stock Exchange and producing fake bank receipts, in 1992 he was arrested and charged with 27 charges and spent nine years in prison under the securities scam of 1992.<sup>10</sup> In one of the cases the owner of Madhavpura Mercantile Cooperative bank Mr Ketan Parekh a Mumbai based stockbroker was arrested for rigging price artificially of the chosen securities and involved in manipulation of securities it was a great scam of stock market during 1998-2001.<sup>11</sup> The example of blackmailing can be cited by the famous case of Vijay Shekhar Sharma the founder of Paytm a famous transaction app who was cheated and black mailed by his personal secretary Sonia Dhawan who wanted to extort a huge amount of 10 crores from him. There was also a famous case of corporate fraud where Sterling Biotech a Vadodra based company founded in 1985 dealing with Gelatin production, was involved in an 8,000 Crore debt and fraud case. The owners brothers Nitin Sandsera and Chetankumar Sandsera had good political connections led active life and often seen hobbing with film stars but they had a debt of Rs 8000 crores once the bank became strict and tightened its noose to pay the loans the Sandesara brothers fled the country and in 2019 declared fugitives.<sup>12</sup>

There are number of examples of different scams in India which have caused huge economic loss to the government and the investors such as Bofors scandal, Commonwealth games scam, Coalgate scam, 2G spectrum scam, Scam by Vijay Mallya, Scam by Mehul Choksi, Nirav Modi PNB bank fraud, Agustawestland Chopper scam, Satyam Computers scam, Hawala scam and many more such scams these all are examples of Corporate crimes and the White Collar crimes where the innocents were victimized and the offenders enriched themselves along with this some of the offenders even fled the country causing great economic losses to India.

### Conclusion

Since the Corporate Crimes in India are dealt by Administrative and Civil laws rather than the criminal laws the offenders are sure that even if they are caught they will be released soon by

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<sup>10</sup> 20-Oct-2020, **Story of Harshad Mehta, financial frauds and the lessons** <https://www.indiatoday.in>

<sup>11</sup> 04-Nov-2017, **Ketan Parekh held in 2001 case linked to scam - Times of India**, <https://timesofindia.indiatimes.com> >

<sup>12</sup> 28-Sept-2020, **Sterling Biotech fraud case**: <https://scroll.in> >

paying fines and avoiding prisons and in some cases where the offenders are charged with offence they are released on bail within a few months or in less than one year, because of political affiliation. The offenders even take the risk of involving in big scams of corporate nature with the assurance that they will be out of it soon using their political connections who sometimes shelter the offenders because of vote bank and other monetary gains. Including the Corporate Crimes in the category of the criminal offence category is the need of the hour in order to save the country from economic losses. A vociferous representation of strict criminal laws for corporate crimes is needed with the government implementing and embracing the laws as strenuous protagonists rather than the antagonists.

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