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# Corporate Crime: Result of Spontaneous or Constructed Order?

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## Abstract

The article explores the origin of corporate crime through the lens of spontaneous and constructed orders. From a macro perspective, corporate crime can be understood as an emergent phenomenon within a self-regulating market, driven by the interactions of self-interested individuals. From a micro perspective, it is often the result of deliberate actions by individuals within organizations, reflecting a constructed order. Recognizing this dual nature is essential for developing effective strategies to address corporate crime.

**Keywords:** Spontaneous Order, Constructed Order, Corporate Crime

## 1. Introduction

### *1.1 Dual nature of corporate crime*

The idea of spontaneous order, famously associated with Adam Ferguson (1767), Michael Polanyi (1941), and Friedrich August von Hayek (1948), has rarely been applied to the criminal behaviour of businesses. This article seeks to extend the scope of spontaneous order by examining how corporate crime can be understood as a contemporary manifestation of this phenomenon. Corporate crime violates legal rules and ethical standards developed over time, akin to kleptoparasitic behaviour in the natural world, where animals opportunistically exploit resources. Despite efforts by states to curtail corporate crime through laws and penalties, it persists, reflecting elements of both spontaneous and constructed orders.

Corporate crime can be viewed as a specialization in an economy driven by specialization and trade, requiring specific skills for successful execution, which aligns with the concept of spontaneous order. At the same time, corporate crime is the result of constructed order as it is often orchestrated by employees in senior management position and facilitated by complicit followers. Consequently, corporate crime appears to bear the signature of both spontaneous and constructed order. This dual nature is critical for understanding the phenomenon and developing effective mitigation strategies

### *1.2 Characteristics of Spontaneous Order*

The nature and forces of spontaneous order are widely discussed in both natural and social sciences. The discussion applies to diverse topics such as the evolution of species, the development of language, cities, a free-market economy, the division of labour, culture, traditions, and common law (Johnson, 2001; Hunt, 2007). These topics emerge as the outcome of spontaneous order and are unintended consequences of myriad individual actions and interactions that are subject to changing surroundings and human needs (Zywicki, 2008). A fascinating phenomenon that can be observed is that complex systems and organizations arise from the collaboration of basic elements if those elements follow rules of conduct and coordinate their actions without central control (Hunt, 2007). In this way, spontaneous order emerges "through the independent and competitive efforts of many" (Hayek, 1960). On this basis, spontaneous orders are understood as "unplanned," "undesigned," or "emergent" orders (Horwitz, 2008), which are prevalent but not easily recognizable (Potts, 2013). Without any involvement of human invention or design, forces of spontaneous order can create complex systems, where the whole is greater and smarter than the sum of its parts (Ross, 1928). In scholar discussions, the concept of spontaneous order and self-organization have been applied to explain a range of events: from the development of life and the behaviour of flocks of birds and schools of fish to the formation of snowflakes (Zywicki, 2008).

Key characteristics of spontaneous order include free interaction by self-interested individuals, decentralized decision-making, and the evolution of norms and behaviours based on effectiveness. A distinct force in spontaneous order is a complex many-to-many network, advancing through cooperation and behavioural adaptation of network participants (Potts, 2013). The crux of spontaneous order is that actions of participants lead to a coordinated activity without any central authority (Zywicki, 2008). Even though spontaneous order is common, its dynamics and characteristics may not be obvious. The idea of "order without design" is difficult to grasp as it is challenging to imagine design without a designer and order without an ordering hand or mind (Potts, 2013).

While spontaneous order can produce beneficial outcomes, it can also lead to negative consequences, such as corporate crime, which echoes the morally neutral nature of spontaneous processes

## **2. Transition from the Organic to Business World**

### *2.1 Natural Selection and Survival of the Fittest*

The evolution of spontaneous order is influenced by elements such as competition, cooperation, and other interactions of self-interested agents, pursuing their own goals (Hunt, 2007). This is also reinforced by natural selection and the survival of the fittest, which are based on the evolutionary ability to learn and adjust to changing surroundings (Desmond and Moore, 1991; Sugden, 1989). In these settings, self-interest often overrides virtues related to justice, ethics, or morality. Self-centred agents aim to secure their existence, even at the expense of others, driven by effectiveness rather than ethical considerations (Ogus, 1989). The natural selection in the organic world reinforces fitness, but not necessarily generate justice (Sandefur, 2009; Spencer, 1864).

Therefore, the principles of competition play significant roles in both the natural and business worlds. Natural selection favours traits that enhance survival and reproduction, not necessarily those aligned with ethical or moral values. Similarly, in the business world, self-interested actions can lead to corporate crime if they provide competitive advantages, even at the expense of ethical standards.

### *2.2 Injustice in Spontaneous Order*

The result of spontaneous order and the processes associated with this order are per se morally and ethically neutral. As such, the success of spontaneous order does not rest on fairness and justice (Sandefur, 2009) since spontaneous order evolves free from any moral and ethical values or virtues. The organic world and the concept of the survival of the fittest suggest that spontaneous order is not necessarily fair and just (Desmond and Moore, 1991).

The understanding of “just” or “unjust” is being constructed by humans and their subjective perception about these terms. The definition and interpretation of these terms are the products of time and societies. Different societies developed different theories of justice and fairness at different times. Moral, ethical values and beliefs undergo the evolution process and itself are the product of spontaneous order (Sugden, 1989). The standpoint for judgment of behaviours is in group of people, who adhere to convention, norms and rules introduced and reinforced by this group (Sugden, 1989).

In the process of spontaneous order, rules are likely to evolve and persist, which support the survival effort and increase the survival chances (Sugden, 1989). Those rules are based on rationality rather than on morality, fairness, or justice. Therefore, patterns of behaviour can evolve, which are enforced by humans that maintain them as they are benefitting to the achieving of their self-interested goals (Sugden, 1989).

One of the ignored aspects of spontaneous order is that it can produce unwelcome outcomes and generate injustice, for example in a form of corporate crime. Clinard and Yeager (1980) described corporate crime as any offence committed by businesses, which is subject to punishment under administrative, civil, or criminal law. This definition covers variety of illegal practices and activities committed either by business entity or by single employee or a group of employees of the company acting on behalf of and in the interest of an employer. Any institutional and legislative efforts to reduce and combat corporate crime are endeavours to redesign the undesirable result of spontaneous order.

Behaviour, norms, and systems evolving through spontaneous order follow and reflect the principle of effectiveness and less of justice. Any outcomes of spontaneous order have high chance to persist if they are effective and useful for the members of spontaneous order, increasing the opportunities for them to survive and prosper. Over time, less effective rules and norms of behaviour will disappear and will not be followed since they do not benefit to the members of spontaneous order.

It a nutshell, spontaneous order, by its nature, is indifferent to concepts of fairness or justice. It evolves through the actions of individuals seeking to maximize their interests, often leading to outcomes that are efficient but not necessarily just. Corporate crime exemplifies this dynamic, as businesses may engage in illegal activities to gain advantages, mirroring kleptoparasitic behaviour in the natural world. Such behaviour is not inherently criminal in the context of spontaneous order but is judged as such by human societies based on constructed norms and laws.

### *2.3 Kleptoparasitic Conduct and Corporate Crime*

In the natural world, one of the evolutionarily stable strategies applied by animals to secure their survival is kleptoparasitism, i.e. parasitism by theft. The kleptoparasitic behaviour is widespread throughout the animal kingdom and can often be observed in the nature, if animals steal nourishment from another (Crespi and Abbot, 1999). This represents a form of contest competition for resources, resulting in the loss for one party and the gain for another. The successful kleptoparasites prove to be the fittest to survive, if they victoriously go through the natural selection process as a result of their parasitic skills (Cordasco and Bavetta, 2015).

Kleptoparasitism is a form of resource acquisition, where one is harmed by the interaction while another benefits from it. Such behaviour disregards any moral, ethical values and virtues, and only pursues the objective to benefit, even at the expense of others. Arguably, kleptoparasitism is part of the natural evolution and rooted in the struggle for the survival of fittest and the most adoptable. Kleptoparasites acquire resources and food without expending their time and energy for searching and hunting. Why to hunt investing a large amount of energy if you can steal with less effort?

The number of animals engaged in kleptoparasitism is abundant. For instance, kleptoparasitic behaviour is displayed by cuckoo bees and wasps, dung beetles, bugs (the water cricket), dewdrop spiders, seabirds (e.g., gulls, skuas, oystercatchers), cuckoos' birds, the chinstrap penguins, sperm whales and Orcas, hyenas, and lions. Many other species have evolved similar habits and patterns of hunting behaviour.

Such a type of parasitic conduct is not alien to humans. They are the master of piracy and kleptoparasites, deliberately taking food, money and resources from other people. One of the shameful examples of human atrocity is slavery that was based on a long persisting unjust social system constructed by humans.

The kleptoparasitic behaviour is also observed in the business world, especially in the variety of modus operandi of corporate crime (i.e., embezzlement, money laundering, tax violation, bribery, environmental pollution). It does not necessarily mean that corporations directly steal from their competitors. It rather refers to the means applied (i.e., deception, concealment, coercion, an application of force and violence) to gain money, resources, services, and competitive advantage at the expense of others. The modern society perceives such attitude and behaviour as immoral, unethical, or illegal, but spontaneous order is not judgemental, so that the outcome of spontaneous order is detached from any virtues.

The survival of the fittest does not denote the survival of the most ethical and moral individuals, but rather refers to ability to thrive in the given environment. In this context, the criminal behaviour of businesses is not criminal in the sense of spontaneous order but in the judgment of human societies.

It is useful to look at the parasitic conduct in the animal world in order to grasp the behaviour of human agents and consequently of businesses, as the human individuals make the decision in the interest of business organisations. Before taking any actions, kleptoparasites are assessing the risk of retaliation from the intended victim versus the reward in case the theft will succeed. So, do criminals evaluate the odds of getting caught and the chances of reward, before committing the offence.

Similar to kleptoparasitic behaviour in animals, there are rational reasons for criminal businesses to break rules. The primary motivations are securing competitive advantages and increasing profits. For example, bribing officials can reduce bureaucracy and expedite decision-making, benefitting both the corporation and the corrupt officials. Corruption helps officials prioritize and cater to the demands of the briber, especially when the benefits of crime outweigh the penalties.

Criminal behaviour epitomised in departing from legal norms developed by human societies represents a variation - a form of deviant behaviour - in which businesses engage to gain competitive advantage and other benefits, if they cannot obtain them in the legitimate ways. The deviant behaviour, if this is beneficial, can become a regular pattern of conduct through behavioural repetition and imitations by others (Glebovskiy, 2019). In the view of spontaneous order, a deviant conduct is not an error, but rather a test or experiment undertaken by the agents to find out the outcome (Sugden, 1989). As long as deviant behaviour is profitable for criminal businesses, and they are not caught and punished for breaking the rules, this behaviour will propagate further offences.

#### *2.4 Human Nature, Ethic and Morality*

Humans are the core of any business. They directly shape and reinforce organisational culture, internal rules, and norms. Business organisations gather together people working towards common goals. To achieve those goals, employees make decisions on behalf of the company. Consequently, any corporate failings are also attributed to the people within those organizations. In this sense, the human nature is part of the phenomena of corporate crime (Wagner-Tsukamoto, 2003).

Emotions are regarded as the basis for perceiving as to what is good or bad, right, or wrong. Treating others as one wishes to be treated is a guiding compass through universal perception of ethical and moral norms. But do humans have intrinsic ethical and moral values? Lampe (1978) examines this question by discussing as to whether the criminal is born or rather made. In case an offender has been exposed, it is often puzzled as to why and how the wrongdoer becomes a criminal. This assumes that an individual was a good and law-abiding person from the start of his life and then it changes in the course of the time. This logic rests on the presumption that people from the birth are decent, honest, virtuous and have a moral compass to navigate through malicious pitfalls the life presents to test them. Instead, humans are born neither good nor bad but must learn to be upright citizens. Learning requires

discipline, self-control, effort, and endurance. Hence, violating ethical, moral, or legal rules may be easier than adhering to them (Lampe, 1978).

Several biologists and social scientists suggested that the human being is inherently competitive, which is rooted in the biological evolutionary process (Ardrey, 1966; Montagu, 1968; Weidman, 2021). It is observed that at least newborns' behaviour shows some selfish and egocentric inclinations (Lampe, 1978). Capabilities that people learn throughout their life are how to control the egoistic, antisocial, and aggressive tendencies, human beings might have a predisposition to. As such, ethics, morals, fairness and justice are not inborn and have to be learned and internalized by humans to be ingrained in their behaviour. Consequently, moral, and ethical virtues are part of the evolving conduct, which is subject to the rule of spontaneous order: any behaviour is reinforced by the agents if this conduct is beneficial for achievement of their goals.

It can be said that humans are inherently competitive and self-interested, traits that have been shaped by evolutionary processes. Ethical and moral values are not innate but are learned and reinforced through socialization. In the context of business, these values can be overridden by the pursuit of profit and competitive advantage, leading to corporate crime.

A broad agreement on what is considered illegal, immoral, and unethical is essential to set the social rules for prevention and regulation of disputes. Mutual understanding of virtues is a cognitive tool for cooperation and coordination of human activities. Departure from accepted norms often leads to social disapproval and pressure to conform. The desire for approval and avoidance of resentment is a powerful force for compliant behaviour. This appears to be less surprising since humans are, after all, social beings, biologically fitted to live in groups (Sugden, 1989). In other words, cooperation is one of the survival strategies evolving through spontaneous order. General following the established conventions, norms and rules is in the interest of people as it benefits to the overall well-being of society. Accordingly, the followers of rules might regard the deviant behaviour of non-followers as an indirect threat to them. However, it should not be forgotten that the combination of a desire for acceptance and social sanctions can be toxic, especially if the norms do not meet ethical and moral standards (Glebovskiy, 2019).

The processes and mechanism of spontaneous order are however indifferent to the nature of compliant behaviour and the nature of the underlying rules and norms. In the discussion on the forces of spontaneous order, cooperation, compliance, and conformity should not be naturally associated with positive behaviour epitomised in legal, moral, and ethical conduct. It could be opposite of it, but still represent compliant behaviour evolving through spontaneous order.

### **3. Corporate Crime by (Un)Conscious Design**

#### *3.1 Corporate Crime: Coordination with Command*

As previously outlined, the actions of business organizations are essentially the actions of human agents, who are not inherently law-abiding and must learn ethical and moral values and behaviour. According to Hayek (1967), spontaneous order is a product of human action, and not human design. This raises the question: in case corporate crime results from deliberate decisions made by management, can corporate crime be considered an outcome of spontaneous order? If executives of criminal businesses intentionally pursue illegal strategies, it is less about spontaneity and more about conscious human design. This undermines the concept of an "invisible hand" creating spontaneous order (Smith 2009, p. 305). Leaders and top management who foster a culture that permits law violations are actively designing criminal activities. Therefore, it can be suggested that corporation crime is the outcome of constructed rather than spontaneous order. With this in mind, Sandefur (2009) highlights some issues with spontaneous order by pointing out that the distinction between spontaneous order and constructed order is blurry and even collapses under scrutiny. This might be also the case for the assumption that corporate crime only evolves through spontaneous order. The reality shows that many illegal activities are the result of conscious decisions by individuals within organizations. Top management may intentionally foster a culture that encourages or condones illegal behaviour, pointing to a constructed order.

### 3.2 Macro- and Micro-Views

Business organisations adjust to the changing business environment they operate in. On one hand, this emphasises the fundamentals of the spontaneous order. There is no “invisible hand” or “invisible mind” planning and designing that some businesses will be ethical and other criminal as the outcome of the adjustment process. On the other hand, business organisations are hierarchical groups and networks of employees including top management, who are empowered to plan the actions of the business. This brings into question whether corporate crime is a result of human actions (i.e., spontaneous order) or rather of human design (i.e., constructed order). This can be discussed from two different standpoints: macro – and micro level views. Macro-level perspective examines corporations as participants of the free market, which is subject to self-regulation; whereas micro-level analyses corporations as organisations that are designed, managed, and controlled by individuals.

At a macro level, corporate crime can be seen as an unintended consequence of market dynamics, where self-regulation and competition drive businesses to seek advantages, sometimes through illegal means. This perspective aligns with the concept of spontaneous order, where the market operates without central control, and outcomes are shaped by the interactions of numerous participants. At a micro level, corporate crime is often the result of deliberate actions by individuals, suggesting a constructed order. The dual nature of corporate crime, encompassing both spontaneous and constructed elements, highlights the complexity of the phenomenon and the need for nuanced approaches to regulation and enforcement.

#### 3.2.1 Macro View

Despite being illegal, corporate crime fits into the self-regulating nature of the market due to several reasons. From a macro-view, corporate crime can be seen as a form of industry in market economy functioning on the grounds of demand and supply principles. For example, bribery meets the demands of officials, fulfilling the expectations of corrupt corporations. Such actions, while illegal, operate similarly to other legal business activities, coordinated by the market without central control. This market coordination is “...the result of the interaction of self-interested individuals pursuing their own gain without any necessary concern for the good of the whole (Hunt 2007, p. 44)”. The market system evolving through spontaneous order allows businesses to find their roles, regardless any limitations whether this is an illicit role in the market or not. Without any external support, the outcome of spontaneous order echoes the variety of needs of market participants, including illegal demands. (Sugden, 1989). Further, corporate crime exemplifies the outcome of spontaneous order economy that is based on specialization and trade, which were created but never designed by humans (Boettke, 2011). Crime execution with a minimal risk of punishment requires specific skills and knowledge of legal loopholes, similar to specialization in other market sectors. Therefore, corporate crime is a form of trade with unlawful nature, but still emerging through rational behaviour of market participants, which supports the self-regulation of market.

Lastly, cooperation drives spontaneous order. In this context, corporate crime can be seen as collective crime requiring cooperation among many actors: active criminals and passive followers. The former might be represented through the executive management, who has power and authority to lead and control the business. The later are employees, who are reports to the executive management in the chain of command and follow the directive. Illegal behaviour displayed by corporations is therefore possible due to active offenders being assisted by passive bystanders in form of collaboration. In other words, there are bad leaders and bad followers, who freely follow those leaders. Therefore, corporate crime, as an outcome of spontaneous order, involves free interactions and individual choices, including the decision to engage in illegal activities.

#### 3.2.2 Micro View

From a micro-level perspective, corporate crime is always planned by individuals, pointing out to a consciously designed activity rather than spontaneous order. Any illegal activities result from individual intends and fit into the notion of “purposely constructed” order (Zywicki, 2008). Businesses’ engagement in criminal activities are by

default orchestrated by individuals. Consequently, corporate crime is the result of conscious human design and of human actions, which utterly contradicts the concept of spontaneous order.

Further argument to support the idea that the corporate crime is the consequences of a made or order is a lack of free will and free interaction. Individual decisions in a business organisation are heavily influenced by management instructions, organisational culture, and collective behaviour. Thus, free will in the organisational context seems to be a myth as will is constantly subject to the variety of stimulus: coercion, persuasion, inducement, enticement, and other means of influence. At the same time, organisational rules and culture facilitating corporate crime and coercing staff into engaging in illegalities are toxic and undermine the existence of free will. Culture and expectations of others have an ordering character impacting individual choice and the way of interactions. People tend to conform to established norms in order to 'fit in' with the group and be accepted by the majority. Behaving in accordance with opinions of the majority is rewarded with social approval of others and building rewarding relationships. In this context, an idea of a free will decision appears to be unrealistic. It is important to stress that to own a decision does not necessarily mean that the decision was made based on a free choice.

A decision made under the fear of social disapproval, criticism and isolation can unlikely based on free will. Any behaviours shaped by the forces imposed by individuals on other individuals are a result of a human-caused order.

### *3.2 Convolution of Spontaneous and Constructed Orders*

Potts (2013) points out a cognitive blind spot, outlining that emergent unintentional order is often overshadowed by human intention and design. That is why it is difficult to recognise the spontaneously in corporate crime.

From macro-level perspective corporate crime appears to tick all boxes to substantiate the claim that criminal conduct of corporation evolves through spontaneous order. From micro-level view, corporate crime can be regarded as the outcome of constructed order, where the activities are deliberately arranged according to a preconceived plan with a conscious aim in mind. Accordingly, corporate crime has the signature of both constructed and spontaneous order.

Corporate crime represents the instance where the outcome of spontaneous and constructed orders greatly intertwined. Even though behaviour of individuals and businesses could have been driven by deliberately imposed rules according to a predetermined plan, the emerging conduct can still be regarded as part of a spontaneous order (Hayek, 1964). Activities of business organisations, regardless of whether they are legal or not, which are instructed and intentionally enforced lead to the unplanned and spontaneous order, as the businesses are the participants of a larger market with many other players (Sandefur, 2009). The overall market, where any corporations operate in, is not the result of any human invention (Zywicki 2008). Moreover, Hayek (1964) considers the reaction and responsive behaviour of individuals to coercive rules and norms as part of spontaneous order. This would imply that forces imposed on employees to engage in corporate crime also generates activities, which are part of spontaneous order. Therefore, the illegal behaviour of corporation evolving through constructed order would be part of spontaneous order, even though the employees' conduct might have sprung from the coercive forces.

## **4. Conclusion**

It is difficult to grasp the concept of design without a designer and order without an ordering hand or mind. Even though spontaneous order is common, its structure may not be obvious, making it hard to recognize (Potts, 2013). It is even more challenging to see spontaneous order in corporate crime. Yet, beneath the surface, several forces and dynamics unfold, supporting the idea that corporate crime is also an expression of spontaneous and constructed order.

From a macro-view, corporate crime can be viewed as an industry functioning on demand and supply principles within a self-regulating market. It represents a form of specialization and trade, ignoring ethical and legal



constraints while fitting into the mechanics of a market economy. From a micro-level perspective, corporate crime appears as a constructed order, initiated, and designed by individuals or groups within an organization. This perspective emphasizes the role of deliberate human actions and plans in orchestrating illegal activities.

In conclusion, corporate crime embodies both the characteristics of spontaneous and constructed order. Depending on the perspective, it can be seen as either an organizational crime evolving through spontaneous interactions, or a crime meticulously planned and executed by individuals.

This dual nature underscores the complexity of corporate crime, highlighting that it is driven by both human actions and human design. Ultimately, understanding corporate crime requires acknowledging its multifaceted origins and the interplay between spontaneous and constructed elements within the business environment.

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