Collective Organizations as Meta-subjects*

From Collective Guilt to Structural Responsibility Paradigm

By Dr. **Javier Cigüela Sola**, Barcelona

The discussion about corporate guilt can be divided into four levels: the criminological/sociological, the ontological, the conceptual and the political. In this article, I try to argue the specific connection between the second and the third one. In this regard, I describe organizations as "meta-subjects", subjects composed by multiple subjects, as well as by organizational and technological resources, whose identity is located somewhere in-between agents and mere objects. Given that, I maintain that a specific type of responsibility could be addressed to complex organizations, different from personal guilt and from security measures, which could be structured around what I have called a "structural responsibility paradigm".

I. Introduction: the four levels of discussion

1. The old and still very alive discussion about collective criminal guilt can be structured around four different levels of argumentation: on a first level, the criminological or sociological one, we ask what do organizations have to do with criminality, why do we have to think about corporations, political parties or private associations when we think about crimes; on a second level, the ontological or philosophical one, we would respond to the question of what is an organization, what is its nature; on a third level, the dogmatic-conceptual one, we ask which type of responsibility should apply to collective subjects, and what should be the requirements applying to them; lastly, we have a fourth level, the criminal-politics one, where we analyze the effectiveness of punishing organizations, in comparison to other types of intervention (civil law, administrative law, etc.).[1]

In my opinion, a correct answer to the question of sanctioning corporations should deal with all four levels or perspectives. I believe, also, that all of them are interconnected: Depending on what we say about the nature of organizations, we will build up one type or another of responsibility;[2] depending on what we say about the criminological question, we will have one theory or another about the political effectiveness of certain legislative measures.

In this article, I will focus on the second and the third level; in particular, on the relationship between the nature of the organization and the question of what should be its responsibility for crimes committed by its members. I exclude the first and the fourth level. The first one because it's the only level where there is a relative agreement. The 20th century has shown the importance of the organizational and contextual factors on criminal behaviors through facts, experiments and theories. What happens in collective organizations, such as corporations, political parties or bureaucratic entities, is not comprehensible only from the perspective of the individual disposition to crime. In other words: the structural conditions of such organizations – if they are transparent or not, if they have enough control or not – can have a very important influence on the criminal disposition of those who constitute them.[3]

2. Many of the historical events of the past century reinforce this idea, and therefore, we say that the totalitarian violence worldwide wouldn't have been possible without the "power of organization" that certain individuals had on their side.[4] The same could be said about the economical and political crimes committed in the context – or causation – of the financial crisis in the beginning of the present century. By only considering the magnitude of this huge and serious crisis, whose consequences are still to be calibrated, we can see how all of these events can't be explained as punctual and individual bad decisions or dispositions, but rather as something that has to do also with systemic and structural failures in economic, political and administrative entities.[5] The influence of structural conditions on individual criminality has been largely demonstrated in political philosophy by *Arendt*

* This article contains, with some modifications and developments, the lecture given at the Universität Münster, on September 18, 2015, as part of the conference "Bewältigung der Finanzkrise mit den Mitteln des Strafrechts – Europäische Standards für die Voraussetzungen individueller und kollektiver strafrechtlicher Haftung?". It also approaches some of the aspects of my doctoral dissertation: "La culpabilidad colectiva en el Derecho penal (Marcial Pons, 2015), in which a deeper argumentation and a complete reference to the bibliography can be found.

[1] Recent studies, where these different levels have been discussed: *Schmitt-Leonardy*, Unternehmenskriminalität ohne Strafrecht?, 2013; *Kirch-Heim*, Sanktionen gegen Unternehmen, 2007; *Mittelsdorf*, Unternehmensstrafrecht im Kontext, 2007; *Lewisch/Parker*, Strafbarkeit der juristischen Person, 2001; *Kohlhoff*, Kartellstrafrecht und Kollektivstrafe, 2003; *Artaza Varela*, La empresa como sujeto de imputación de responsabilidad penal, 2013; *Nieto Martín*, La responsabilidad penal de las personas jurídicas: un modelo legislativo, 2008; *Cigüela Sola*, La culpabilidad colectiva en el Derecho penal, 2015.

[2] *Dan-Cohen*, Journal of Law and Public Policy 19 (2010), 15; *v. Freier*, Kritik der Verbandsstrafe, 1998, p. 115; *Schmitt-Leonardy* (fn. 1), p. 103 f.; *Haas*, in: Kauffmann/Renzikowski (eds.), Zurechnung und Verantwortung, 2012, p. 125 (133).

[3] A wide study, from different perspectives: Jurkievicz (ed.) The Foundations of Organizational Evil, 2012.

[4] *Arendt*, Origins of Totalitarianism, 1966, p. 364 ff.; *Bauman*, Modernity and The Holocaust, 1991.

[5] *Jurkievicz*, in: Jurkievicz (fn. 3) p. 1 (9 ff.); *Crotty*, Cambridge Journal of Economics, 33 (2009), 533. See also: *United Nations Conference on Trade and Development*, The Global Economic Crisis, Systemic Failures and Multilateral Remedies, 2009.

or *Bauman*[6], for example, in psychology by *Milgram*[7], and in criminal theory by *Jäger*, *Schünemann* or recently by *Rotsch*[8], just to quote some.

3. The fourth level is, of course, very important and highly considered in the criminal law discussion. In fact, the main argument pro criminal collective responsibility is situated in this level: Many authors support the idea that organizations should be punished because that would be the only or better way to prevent organizational criminality, the better way to give a solution to the well known idea of "organized responsibility". However, there is not enough room to deal with it in detail here. Anyway, at this moment, I think we don't have any evidences of a better effectiveness of criminal punishment in comparison to other civil or administrative sanctions; but we do have, instead, reasons to think that criminal process is expensive and slow, and therefore criminal punishment might be exactly what corporations prefer and, thus, would be a bad choice in terms of prevention.[9]

4. The objective of this article is to point out the significance of the second level, the question of what is an organization, because of two reasons: on the first hand, because what we say in that level conditions in a very significant sense the crucial question of the third level (Should we blame organizations? Should we just address a security measure? Should we build a new type of responsibility?); on the second hand, because in the last decade the question of the nature of organizations has been hidden or marginalized in the discussion – what I see as a conceptual mistake with important dogmatic consequences.[10]

II. The Identity of Organizations and the "inter-action dimension"

1. As I said, the second and the third level are highly connected: depending on what we say about what an organization is, we will say one thing or another about the responsibility it has to bear. But that is a very problematic question since it touches philosophical problems and theoretical tensions which are difficult to deal with; it touches, in particular, the eternal and unsolved debate between collectivism and individualism.[11] In this regard, the two main positions in penal doctrine about the nature of organizations would be the following: On the one hand, in a tradition which begins with *Gierke* and arrives at *Luhmann*[12], we have those who consider corporations as true agents, equivalent to individuals (at least from a functionalistic or juridical point of view)[13]. These proponents usually answer the third question by accepting the possibility of collective guilt, or less bravely, collective responsibility, or even more euphemistic, corporative responsibility.[14] On the other hand, and following *Savigny's* well-known ideas, we have those who consider corporations as mere objects, as instrumental realities serving the interests of its members or shareholders. The supporters of this concept usually respond to the third question by accepting no more than security measures for corporations, depending on their dangerousness. Of course, in-between these options there are multiple choices, all of them with different refinements.[15] Since this is a quite well known discussion, I will argue only the two extremes.

2. In my opinion, both models misunderstand the nature of organizations: collective guilt models are wrong to consider organizations as more than they are, as moral and unitary subjects; security measures models are wrong to consider

[6] *Arendt* (fn. 4), p. 364 ff.; *ibid.*, Eichmann in Jerusalem, 2006; *Bauman* (fn. 4), p. 151 ff.

[7] *Milgram*, Obedience to Authority, 1974; see also *Schumacher*, NJW 1980, 1880; *Nagel*, in: Kempf/Lüderssen/Volk (eds.), Unternehmensstrafrecht, 2012, p. 153.

[8] *Jäger*, Individuellen Zurechnung Kollektiven Verhaltens, Zur strafrechtlich-kriminologischen Bedeutung der Gruppendynamik, 1985, p. 24 ff.; *ders*, Makrokriminalität, 1989; *Schünemann*, Unternehmenskriminalität und Strafrecht, Eine Untersuchung der Haftung der Wirtschaftsunternehmen und ihrer Führungskräfte nach geltendem und geplantem Straf- und Ordnungswidrigkeitenrecht, 1979; *Rotsch*, Individuelle Haftung in Großunternehmen, Plädoyer für den Rückzug des Umweltstrafrechts, 1998; *ibid.*, wistra 1999, 370.

[9] In this regard, *Schünemann*, ZIS 2014, 1, has described corporate criminal responsibility as a "criminal-politics zombie" ("Kriminalpolistischer Zombie").

[10] The way I see it, this process is due to the influence of constructivism – in its functionalist variant – in the debate, which introduces a tendency to ignore "logical-objective structures" – as, for example, those connected to personal identity – by considering law as a social system which deals only with "fictions" and not with "realities". In this scheme, the substantial or material questions are reduced to political questions, to what is functional to certain social or political ends. From a critical perspective: *Sacher*, ZStW 118 (2006), 579; *Schünemann*, in: Sieber et al. (eds.), Strafrecht und Wirtschaftsstrafrecht : Dogmatik, Rechtsvergleich, Rechtstatsachen, Festschrift für Klaus Tiedemann zum 70. Geburtstag, 2008, p. 429 (437); *v. Freier* (fn. 2), p. 114; *Cigüela Sola* (fn. 1), p. 100 ff.

[11] *Dan-Cohen*, Journal of Law and Public Policy 19 (2010), 15 (18 ff.).

[12] About the relation between those authors and the details of their concepts of "organism" and "autopoiesis": *Cigüela Sola* (fn. 1), p. 105 ff.

[13] *Bottke*, wistra 1997, 251; *ibid.*, Assoziationsprävention, Zur heutigen Diskussion der Strafzwecke, 1995, p. 49; *Bacigalupo*, La responsabilidad penal de las personas jurídicas, 1998, p. 104; *Gómez-Jara*, ZStW 119 (2007), 290; *Heine*, Die strafrechtliche Verantwortlichkeit von Unternehmen, 1995, p. 79 ff.; *Kohlhoff* (fn. 1), p. 289 ff. From a sociological perspective: *Luhmann*, Organisation und Entscheidung, 2011; *Teubner*, American Journal of Comparative Law 36 (1988), 130. For a compilation of the critics to the equivalence thesis see *Cigüela Sola* (fn. 1), p. 96 ff.

[14] It's meaningful how most of the authors defending the introduction of collective entities in criminal law try to avoid the terms of "guilt" and "collective" in order to separate the idea of corporate responsibility from the unpopular notions of "collective guilt" or "collective responsibility". About these conceptual distinctions: *Cigüela Sola* (fn. 1), p. 130 ff.

[15] For example, *Schünemann* (fn. 8), p. 263 ff.

organizations as less than they really are, as mere objects or instruments unable to offer a significant meaning to social life.

The way I see it, organizations are a tertium genus between humans and mere things, identified as meta-subjects, which means: subjects constituted by multiple subjects (its members), as well as by communicative, normative and technological processes, whose complexity distances them from mere objects as well as from individual agents.[16] Developing some ideas of the philosophy of action of thinkers as *Arendt* and *Ricoeur*[17], it is possible to say that certain collectives, with enough complexity, are able to develop a social way of being and a context of inter-action. This context is offered to the members of the collectivity, it is where they act, bounding the possibilities of individual behavior. Following these ideas, we can say that when we deal with crimes in organizations, we see two levels of things: We see individuals acting, for example a member of a political party accepting illegally money from private corporations (here the power of individual action plays a role), but we also see the level of the social context, an specific way of corporative structure where the individual actions take place, in a different dimension which we can call inter-action level, where crimes are incentivized or prevented.

The inter-action level generates itself progressively and spontaneously in a complex process which connects accumulated human actions with the set of multiple resources of the organization itself, such as formal and informal rules, communicational processes, technical and informational sources, policies and so on.[18] Following *Arendt* again, the context of inter-action has its own power, so we usually say that an organization of men is capable of carrying out projects which would be impossible for isolated individuals. The increasing role of computational advanced technologies in organizations, such as big data and other complex technologies[19], reinforces this power day to day. And here is where organizations differ from pure objects, because objects are no projects: An object stays as it is, but you never know what an organization of men will become.

3. So, here I share one of the basic ideas of the collective guilt models: organizations are more than the pure aggregation of its members.[20] What organizations add to the individual level is precisely this context of interaction, the structural conditions, given by rules, dynamics, cultural habits and so on, where they act and pursue social objectives. The coincidence with these models terminates when they try to explain the structural defects or the criminal culture as something that the organization did by its own. The reason is that all of the facts or events which we would have to attribute as "unlawful" to the organization are actually phenomena which emerge from individual accumulated actions. And even though these multiple actions, over time and in connection with other resources (rules, habits, discourses, etc.), become "structural" and integrate the way of being of the organization – what "makes it what it is"–, we can't say that the result was created voluntarily and spontaneously by the organization itself. In sum, what the organization "does" – the structural defects – and what the organization "is" – the corporative culture or philosophy – depends on its members, and therefore we can't talk about organizations as true autonomous agents.[21]

Also, the latter ideas would mean that the very often supported notion of "corporations self-regulation"[22] can't be more than a metaphor for criminal law, used because of "economy of language" purposes. From a sociological or economical point of view we can say that those entities regulate and decide by themselves, but, when it comes to understanding law requirements and committing crimes, corporations are clearly hetero-regulated entities, since they can't decide to comply or break the law against their directors will.

4. The conclusion is that organizations are not true agents since they are not capable of choosing themselves what they become: they have an identity, but this identity depends on a complex process which emerges from the inter-action of its members. But they are neither mere things nor instruments, since they have the power of inter-action, and are able to develop projects beyond individual capacities. Saying it in a "classical" language: Organizations are not free subjects, but they benefit from freedom (the freedom of its members), while objects are subject to necessity, and they can't be anything different from what they actually are.

III. From collective guilt to structural responsibility: some conceptual distinctions

1. So, in the precedent part I distinguished three different levels of what we could call "social ontology": the level of humans and actions, the level of mere things or instruments, and a third level, in-between, where we can put complex organizations with regard to the dimension of inter-action. I also defined corporations as meta-subjects. That means: As subjects composed by multiple subjects which can develop a project, lawful or unlawful depending on its characteristics, as something that emerges from the accumulated actions of the successive members, in connection to the organizational recourses.

[16] See *Cigüela Sola* (fn. 1), p. 105 ff., 127 ff., 134 ff., 297 ff. Also, *Artaza Varela* (fn. 1), p. 228.

[17] *Arendt*, The Human Condition, 1998, p. 188 ff.; *Ricoeur*, Das Selbst als ein Anderer, 1996, p. 131 ff.

[18] About this process: *Mintzberg*, The Structuring of Organizations, 1979; *Crozier/Friedberg*, L'acteur et le système, Les contraintes de l'action collective, 1977.

[19] See *Chen*/*Chiang*/*Storey*, MIS Quarterly 36, 1165.

[20] For example: *Lampe*, ZStW 106 (1994), 693; *Hirsch*, ZStW 107 (1995), 293; *Eidam*, Straftäter Unternehmen, 1997, p. 117. Even in collective guilt critics: *Jakobs*, in: Prittwitz et al. (eds.), Festschrift für Klaus Lüderssen zum 70. Geburtstag am 2. Mai 2002, 2002, p. 559 (571); *van Weezel*, Política Criminal 5 (2010), 118. This idea is traceable to: *Aristoteles*, Metaphysik, 1989, § 1023b.

[21] With multiple references: *Cigüela Sola* (fn. 1), p. 166 ff.

[22] About the idea of "self-regulation": *Lüderssen*, in: Kempf/Lüderssen/Volk (eds.), Die Handlungsfreiheit des Unternehmers, 2012, p. 241.

2. Now, we go directly to the third level, where we argue the type of responsibility according to this specific identity. In this regard, if corporations are incapable of generating the facts or events which could be considered blameworthy by themselves, they can't be held guilty, as long as by guilt we mean personal responsibility.[23] Here, the problem of considering collective subjects as capable of guilt is nor ontological neither natural; the problem is strictly conceptual, and in particular, it has to do with the possible relation between a concept – guil t–, a phenomenon – organized criminality – and a subject – collective organizations –. Given this scheme, and using the words of *Deleuze* and *Guattari*, we can say that every concept has an "endo-consistency", which means the internal, distinct, heterogeneous and nonetheless inseparable components which make the concept what it is, giving it its own consistency.[24] So, the sub-concepts or elements which gravitate around – and give consistency to – guilt concept are ideas such as "autonomy", "unity", "personality", "individualization" or "knowledge". That means that we can modify some of the descriptions or the way of thinking or calling those elements, but we won't be able to make them disappear unless we want to talk about another thing when we discuss criminal guilt. And the problem of using "guilt" – or its equivalents – for collective subjects is precisely this one: When we try to build a variant of guilt according to organizations' identity we have to empty the concept of its own meaning, we have to erase its "endo-consistency", since it has to be attributed to a subject where there is no "knowledge", "autonomy" or "unity"; a subject which, precisely because other subjects compose it, depends on them in its relation to the social world and to criminal law.[25]

Of course, this can't mean that a concept stays the same over time. For example, "criminal guilt" has been changing permanently among the history of criminal thinking, as for example with the transition from a psychological to a normative form.[26] Here, the problem is that connecting the ideas of guilt to collective identities goes further than a partial or linguistic change, it means the end of the concept itself. In other words: We force the "guilt" concept to say something different from what it can say, something that another concept could say better.

3. This other concept, more suitable for collective subjects, is well known and well developed in legal theory, is no other than the "responsibility" concept. In particular, the type of responsibility attributable to an organization could be identified as a structural responsibility, attributable to those organizations (with a minimum of complexity) within which an individual committed a crime that can be co-explained because of the influence of structural defects located in the organization itself, generating with it an "objective/structural unjust" that would remain if we only prosecute individual responsibilities. This responsibility has nothing to do with "blame semantics"; on contrary, it's related to the open concept of responsibility ("Verantwortung"), as developed by contemporary philosophy[27]. Responsibility is flexible enough to adjust to the specific identity of collective entities. Using again *Deleuze* and *Guattari*'s words: The "endo-consistency" of the concept of responsibility is different from guilt's one, less moralized and less individualized, and therefore more suitable for organizations. In this regard, it's not possible to declare someone guilty (in this case a collective entity) for events or facts that resulted from other individuals' actions (in this case its successive members); but it may be possible to argue a certain responsibility of the organization for those actions, as long as we give no moral meaning to it, that is, as long as we put no blame or reproach on the organization itself.[28] For example, it is problematic to affirm, in political terms, that the citizens are guilty for their governor's choices, or, in criminal law terms, that a political party is guilty for the corruption acts of its administrator, but it makes more sense to argue that those collectives are, to some extent, responsible for those events – when certain requirements are fulfilled, of course.

In second place, this kind of responsibility would be structural, as opposed to personal (guilt), which means that the relation of the organization with criminality doesn't fulfill the form of a "subject committing a crime", but instead of a "context providing the structural conditions for a crime to be committed (by someone capable of doing so)". The concept or the topoi of the structural, as analog but not coincident to "systemic" or "collective", is well known in moral theology, philosophy or sociology, and it refers to the social conditions that bound the possibilities of human behavior, as I have explained before with the notion of "inter-action context".[29]

4. On the other hand, the structural responsibility requirements can't be the same as the personal responsibility requirements: The nature of organizations is so different from

[23] See largely: *Cigüela Sola* (fn. 1), p. 166 ff.

[24] *Deleuze/Guattari*, What is Philosophy, 1994, p. 16 ff.

[25] *Cigüela Sola* (fn. 1), p. 166 ff.

[26] *Deleuze/Guattari* (fn. 24), p. 18, call these changes the "historical becoming" of a concept.

[27] *Jaspers*, Die Schuldfrage, 1946, p. 56: *Arendt*, in: Heinrich-Böll (eds.), Politik und Moderne, 2002, p. 4; *Jonas*, Prinzip der Verantwortung, 1987.

[28] Similar: *Jakobs* (fn. 20), p. 574; *Neckel*, in: Kempf/Lüderssen/Volk (fn. 7), p. 73 (76); *Schmitz*, in: Kempf/Lüderssen/Volk (ibid.), p. 311 (313); *Prittwitz/Günther*, in: Neumann/Herzog (eds.), Festschrift für Winfried Hassemer, 2010, p. 331. For other multiple references, see *Cigüela Sola* (fn. 1), p. 43 ff., 295 ff.

[29] About the "structural conditions" of crime: *Baratta*, Kriminologisches Journal 1993, 243; *Silva Sánchez*, InDret 3/2011, 1; *Schmitt-Leonardy* (fn. 1), p. 462; *Lampe*, ZStW 106 (1994), 693 (728); *Nieto Martín* (fn. 1), p. 38 ff.; *Simpson*, in: Nollkaemper/van der Wilt (eds.), System Criminality in International Law, 2009, p. 69 (94). These ideas are developed in moral theology, see *Nebel*, La catégorie morale de péché structurel, Essai de systématique, 2006; also in political philosophy, in the context of *Marx* and *Arendt* studies, see Deneulin/Nebel/Sagovsky (eds.), Transforming unjust structures, The capability approach, 2006, p. 1; and in sociology: *Giddens*, Die Konstitution der Gesellschaft, Grundzüge einer Theorie der Strukturbildung, 1998.

individuals, that transferring classical criminal responsibility requirements to organizations – especially those related to knowledge – would make no sense. In this regard, to be able to declare the structural responsibility of a legal person, we would need another type of categories. In synthesis, we would need to prove, on a first level, two objective requirements: On the one hand, the corporation should have exceeded the permitted risks in its activity; on the other hand, a "structural connection" must be proven to exist between the organizational deficiency and the individual criminal action. On a second level of the attribution, the responsibility should be graduated, taking into account the seriousness of the structural defect (a defect that affects life or physical integrity rights is more serious than another defect that affect property rights) as well as the degree of influence of these defects on the crime itself (incentive and favor are more serious than a lack of control).

In this process, as argued before, there is no blame attributed to the organization itself as it's not considered a moral agent. What the organization "offers" as a basis for its responsibility is an "objective/structural unjust" ("objektives/ strukturelles Unrecht"), defined as the set of organizational factors which incentivized or favored crime, in cases where those defects can't be traceable to individual wrongdoings.[30] Thus, criminal law judges the structural deficiencies of the organization as an "objectively wrongful" state which should give rise to a negative consequence (sanction) which is orientated to motivate the managers to adjust their organizations to legal requirements (prevention and compliance). This "unjust" is objective, as opposed to personal, because it is real and it exists located in the context of interaction, but it wasn't generated personally by the corporation but rather by its members progressively and altogether. It is also accessory and incomplete because it's only prosecutable in case this structural unjust manifests itself in the crime of the individual; therefore, the "wrongful state" of the organization is not enough to impose a sanction to the organization itself.[31]

For example, if a member of a political party illegally accepts money from private corporations following the generalized habit in the organization or taking advantage of the lack of control, the crime shows two levels of unfairness: the individual/personal injustice, corresponding to the individual who committed the crime; but also the structural/objective injustice, corresponding to the criminogenic context offered by the organization to its members, a situation which would remain if we took only the individual level into account.

On the other hand, if structural responsibility of organizations is targeted, as argued, at general and special prevention, its legitimation lies on distributive justice criteria: in the distribution of responsibility for the conflict, it is reasonable that the legal person is charged with the part that corresponds to its influence.[32] In other words, if crime has a co-explanation in the criminogenic organization which favored it, then it becomes reasonable to deploy responsibility on the following two levels: the personal/individual and the structural/objective unjust.

5. Of course, from a pure theoretical perspective, this type of responsibility is more comprehensible considering civil or administrative law principles than criminal ones since, in this matter, we are not dealing with a moral agent but with a guilty crime. However, nowadays, criminal law, in a wide sense, is no more exclusively connected to "guilty behavior" since it also intervenes with security measures where there is no guilt, or in conflicts with incapable individuals. In my opinion, that's the only way to integrate organizations' responsibility into criminal law, as an intervention, different from "punishment" and separated from individual responsibility, with a set of rules specific enough to solve the problem of criminogenic structures. That is what I have tried to undertake by developing the structural responsibility paradigm.[33]

IV. Conclusions

1. Given the four different levels of argumentation which we can find in the collective guilt discussion, in this article I have argued the conceptual connection between two of them: The second one, in which we deal with the identity of organizations, and the third one, in which we ask about what its responsibility could be. On the second level, organizations could be described as "meta-subjects", subjects which are composed by multiple subjects (its members), which can develop a sort of dependent and weak identity, suitable in-between moral agents and mere things: They differ from moral agents in their lack of certain capacities, basically in their incapacity to originate an act or a social event by themselves, and to control what they become by themselves; but they also differ from mere objects and instrumental realities, since organizations are able to develop a way of being with social significance, and they constitute undertakings which can be objectively valued as lawful or unlawful.

2. Being so, organizations can't be considered guilty because that would necessarily mean emptying the criminal guilt concept from its own consistency and meaning, but they could bear something else than a simple security measure

[30] In a similar way, talking about non-personal "unjust" of legal persons: *Silva Sanchez*, Fundamentos del Derecho penal de la empresa, 2013, p. 283; *Frisch*, in: Zöller/Hilger/Küper/ Roxin (eds.), Gesamte Strafrechtswissenschaft in internationaler Dimension, Festschrift für Jürgen Wolter zum 70. Geburtstag am 7. September 2013, 2013, p. 349 (356); *Robles Planas*, ZIS 2012, 347 (353 f.); *Klesczewski*, in: Schneider/Kahlo/ Klesczewski (eds.), Festschrift für Manfred Seebode zum 70. Geburtstag am 15. September 2008, 2008, p. 179 (190); *Gracia Martín*, Actualidad Penal 39 (1993), 603.

[31] *Lampe*, ZStW 106 (1994), 693 (716).

[32] About the justification of shareholder's co-responsibility: *Cigüela Sola* (fn. 1), p. 370 ff. Also supporting "distributive justice" as the basis to sanction corporations: *Gracia Martín*, Actualidad Penal 39 (1993), 603; *Robles Planas*, ZIS 2012, 347 (353); *Fisse*, Southern California Law Review 56 (1982), 1141 (1175).

[33] For deeper developments: *Cigüela Sola* (fn. 1), p. 291 ff.; *ibid.*, InDret 1/2015, 5 ff.

since they are something more than a dangerous object. This other type of responsibility according to the organization's identity has been described as a structural responsibility, attributed to those organizations which favored or incentivized a crime in their inside, generating a "structural/objective injustice" which would remain by only prosecuting individual offenders. The legitimation of this type of responsibility would lie in distributive justice criteria since it is reasonable to make the organization co-responsible for the conflict when the organization itself offered the criminogenic context which favored or incentivized the individual crime. This type of responsibility, whose principles differ from criminal law, can be integrated into the criminal system only in a separate subsystem, clearly dissociated from the conceptual frame of individual guilt.

3. The central idea would be that we have the conceptual and philosophical background, given by complex and rich distinctions – guilt/responsibility; structural/personal; subject/meta-subject; action/inter-action –, to avoid the fiction of treating as if it was the same what in fact is very different, that means, to avoid forcing collective identities into concepts which are too weak for their complexity.