Corpus Delicti

How the state can be an injured party

By reference to so-called “victimless crimes” (like speeding through a school zone driving an unregistered vehicle, while unlicenced, sipping rum, and smoking a fat joint) OPCA theorists often use the Latin term “*corpus delicti*” (“body of the crime”) referring to the principle that a crime must be proved to have occurred before a person can be convicted of committing that crime.

In ***Kuipers-Lloyd v Police [2013] SASC 137*** the defendant was convicted of a speeding offence via a speed camera and appealed against the conviction. The defendant’s notice of appeal advanced several contentions, including compliance with the *National Measurements Act 1960 (Cth).*

> *"The defendant first contended that the Magistrate erred in failing to recognise the proceeding as a civil proceeding. It was submitted that the elements said to be necessary to constitute a criminal proceeding, including the identification of a relevant mens rea and corpus delicti, were absent.*
>
> *This submission is wholly without merit. The proceeding was a criminal proceeding and involved the hearing of a charge that the defendant had committed a summary offence against section 79B of the Road Traffic Act 1961 (SA)."*

Remembering of course, that according to OPCA theory, the only three ways you can “break the law”, and that is harm to others, harm to their property, or fraud or mischief in contracts. Since there is no victim or “injured party” relating to the charge, OPCA theorists frequently raise the question: “Where is the *corpus delicti*?”

The answer is very simple really, the charge is not lacking in *corpus delicti*, it is actually the basis for the complaint. As the State is obliged to act on behalf of the collective, the state can also be an injured or aggrieved party.

In democratic countries like Australia, the parliament is considered the voice of the people, as the people elect representatives to govern according to the constitution. For example: often a political party will promise the introduction of certain laws, or the repeal of others, as part of their election campaign platform. When elected, these laws are then created in accordance with legislative powers and parliamentary procedures established by the constitution.

When someone breaches laws created by representatives that were duly elected by the people, the cases are called “The Crown v Smith” or “R v Smith" etc. R stands for *regina,* although the “Crown” or “The people” have the same meaning in constitutional theory. See *“the meaning of the Crown in constitutional theory"* as held in ***Sue v Hill [1999] HCA 30***. In the US, it is often "The People v Smith” which is the literal meaning.

In Vattel’s "***Law of Nations***" (1760), which became the basis of international law, regarding the sovereignty of a nation state, §1, and in §2 is regarding the authority of the body politic over the members, and that by association each citizen subjects himself to the authority of the entire body, and that the authority of all over each member, therefore, essentially belongs to the body politic, or

state. Vattel also describes the substance of the entity which is the State. It is the public authority, which was created and established by THE COLLECTIVE ACTING IN CONCERT. Similarly, corporate structures such as governments are, in legal terms, an entity considered to be a single legal creature. It has a 'body' consisting of the people or citizens making up the group, and a 'head' consisting of the public authority or parliament.

So ultimately, it is THE PEOPLE AS A COLLECTIVE that are the "injured party" in these matters. And in this situation, this public authority is acting on behalf of the collective, as in every democratic nation.

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