

Document name: Violent corporate crime, corporate social responsibility and human rights
Document date: 2011
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OpenLearn Study Unit: Corporate responsibility for industrial accidents
OpenLearn url: www.open.edu/openlearn/money-management/corporate-responsibility-industrial-accidents/content-section-0



Violent corporate crime, corporate social responsibility and human rights

By Gary Slapper

Extract from Slapper, G. (2011) 'Violent corporate crime, corporate social responsibility and human rights' in Voiculescu, A. and Yanacopulos, H. (eds) *The Business of Human Rights: an evolving agenda for corporate responsibility*, London, Zed Books Ltd/New York, Room 400/Milton Keynes, The Open University.

The UK Corporate Manslaughter and Corporate Homicide Act 2007

To examine and explore the issues related to prosecuting organisations for homicide (a general legal term for killing), this section will

focus on a relatively new law, most of which came into force in 2008 in the UK. It is the most recent type of dedicated legislation on this theme in the world.¹⁶ A corporation was prosecuted in the United States as far back as 1904,¹⁷ and France enabled corporations to be prosecuted for any crime from January 2006. The UK law, however, digests most of the issues encountered in other jurisdictions. I shall examine key elements¹⁸ of the Corporate Manslaughter and Corporate Homicide Act 2007 and evaluate its potential for being adopted or adapted in other jurisdictions. Is this law likely to improve the social responsibility of corporations?¹⁹ Before turning to the working of the Act, it is helpful to note something of the legislation's genesis. The Act resulted from a decade of governmental consultations with industry, commerce and legal reform groups.

The story might begin, though, with the case of *Glanville Evans*. On 5 July 1964, Mr Evans, a twenty-seven-year-old welder, was killed when the bridge at Boughrood that he was demolishing collapsed and he fell into the River Wye. The company that employed him had evidently been reckless in instructing him to work in a perilous way, but an attempt to convict it for manslaughter at Glamorgan Assizes at Cardiff failed on the merits of the case. Nonetheless, Mr Justice Streatfeild fully accepted the propriety of the charge of corporate manslaughter against Northern Strip Mining Construction Co. Ltd.²⁰ Notwithstanding this imaginative precedent,²¹ the offence was rarely prosecuted in subsequent decades.

At common law, it was very difficult to convict companies, even when there had been public outrage at the gross negligence involved in a disaster (Home Office 2000: 3). This was because, in order to convict a company, it was necessary to find at least one director or senior member in whom all the legally required blame could be located. The doctrine, known as the 'identification principle', required the discovery of someone whose will could be identified as that of the company's and in whom all fault lay. As companies commonly have responsibility for matters related to safety distributed across more than one directorial portfolio, getting a conviction was difficult. Everyone with apparently relevant responsibility claimed to know only a fragment of a danger that materialised and killed people. It was not permissible to incriminate the company by aggregating the fragmented faults of several directors.²²

The relatively new Corporate Manslaughter and Corporate Homicide law aims to criminalise corporate killing without the need to demonstrate that the entire guilt could be found in at least one individual. If a company can enjoy benefits by virtue of being an aggregate of people, it should be able to take the blame, in aggregate, if its corporate conduct

causes death by gross negligence. This principle is generally recognised in law, and expressed in the maxim *Qui sentit commodum debet sentire onus* (he who has obtained an advantage ought to bear the disadvantage as well).

The scale of the problem

In the UK, about 300 people (employees, self-employed people and members of the public) are killed each year in incidents²³ or through the operation of commerce.²⁴ Long-term deaths are excluded from the discussion here. These include circumstances where a company might have been responsible for recklessly causing a condition (like asbestosis or mesothelioma) that may take many years to cause death. Since the Law Reform (Year and a Day Rule) Act 1996, it has been possible to prosecute companies under the common law, even if the gap between a grossly negligent infliction of serious harm and consequential death is longer than a year and a day,²⁵ but those cases, while just as serious as those being considered here, raise some legal problems that are not appropriate for inclusion in this chapter. However, commercially caused deaths on the roads, whose number has been estimated at up to a thousand a year (Work-Related Road Safety Task Group 2001: v), will be within the ambit of this discussion. This is part of a wider social phenomenon.

In the UK, over 40,000 people were killed in commercially related circumstances between 1966 and 2008,²⁶ but only thirty-four companies were prosecuted for homicide (Slapper 1999; Home Office 2005).²⁷ Between 1992 and 2005, some 3,425 workers were killed at work in fatal accidents (HSC 2005: 15). It has been estimated that in around 70 per cent of cases where death has resulted from corporate activities, the company involved is to blame; where the level of blameworthiness reaches 'gross negligence', the company would be open to a charge of corporate manslaughter (HSE 1988: 4). In national research conducted over four years across a variety of cities and towns, a detailed examination of evidence and case materials indicated that about 20 per cent of all work-related deaths afforded a strong prima facie case of corporate manslaughter. That equates to about fifty corporate manslaughter prosecutions a year, or about one a week (Slapper 1999: chapters 3 and 4). In fact, there are annually only about three such prosecutions. The Act creates a new offence of corporate manslaughter (called 'corporate homicide' in Scotland) which applies to companies and other incorporated bodies, government departments and similar bodies, police forces and certain unincorporated associations.²⁸