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An international analysis of corporate "personhood:" Rights vs. responsibilities

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An international analysis of corporate "personhood:" Rights vs. responsibilities

Abstract

Corporate person hood is not a term known or used amongst the majority of the populace. Citizens are often unaware that corporations can commit physical harms that are frequently reported as "accidents" and not as the result of human decision-making. In this study, we will analyze two nations: The United States and the United Kingdom. We will assess these nations relative to the existence of corporate homicide and corporate manslaughter laws, and each nation's response to such laws. Moreover, this research analyzes the ethical implications of each nation in relation to its corporate laws by measuring the balance between corporate rights and corporate liabilities. This analysis will seek to showcase how in both nations there is a great imbalance between the rights corporations hold and their accountability under criminal law. By explicating the history and enforcement of corporate person hood as well as providing examples of corporate harms, this study creates a clearer picture in determining the balance between corporate rights and corporate responsibilities.

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An International Analysis of Corporate "Personhood:" Rights vs. Responsibilities

By:

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An International Analysis of Corporate “Personhood” Rights vs. Responsibilities

Vanessa Bishop

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An analysis of two nation-states:

The United Kingdom and the United States

Abstract: Corporate personhood is not a term known or used amongst the majority of the populace. Citizens are often unaware that corporations can commit physical harms that are frequently reported as “accidents” and not as the result of human decision-making. In this study, we will analyze two nations: The United States and the United Kingdom. We will assess these nations relative to the existence of corporate homicide and corporate manslaughter laws, and each nation’s response to such laws. Moreover, this research analyzes the ethical implications of each nation in relation to its corporate laws by measuring the balance between corporate rights and corporate liabilities. This analysis will seek to showcase how in both nations there is a great imbalance between the rights corporations hold and their accountability under criminal law. By explicating the history and enforcement of corporate personhood as well as providing examples of corporate harms, this study creates a clearer picture in determining the balance between corporate rights and corporate responsibilities.

Problem Statement:

Every year, thousands of individuals fall victim to corporate negligence; in the year 2010 alone, it is estimated that 55,324 people lost their lives due to occupational hazards or diseases which could have otherwise been prevented by a corporation (Reiman and Leighton 2013, 95). This estimate includes only projected cases within the United States. To expand on this notion, multinational corporations operate outside the bounds of the borders of the United States; they take their facilities to regions not regulated by regulatory agencies such as the Occupational Safety and Health Administration (OSHA), the Food and Drug Administration (FDA), or the Environmental Protection Agency (EPA). Thus, if you were to take into consideration every country that houses facilities run by corporations all over the world and factor them in as well, you would get an estimate far surpassing the number of deaths due to crimes within the United States for one year. If one were to take into account that the United States not only has regulatory agencies that have some power of prevention, as well as a well-established healthcare system to assist the injured, it is safe to make the assumption that our estimate would be quite conservative when considering that there are under-developed nations with corporations operating inside their borders.

One may ask what the repercussions are for corporations knowingly neglecting safety hazards and, to an even greater extent, what the repercussions are when this neglect results in the death of an employee. The answer is: fines (Reiman and Leighton 2013). Here, within the United States, corporations cannot be charged with murder, whether it is in the second degree or the first. There is not a law explicating provisions or procedure for charging corporations with corporate manslaughter or homicide. Yet, under the Supreme Court case *Santa Clara County v. Southern Pacific Railroad*, corporations were granted nearly the same rights under the Fourteenth Amendment as a natural person. This case expanded corporations' rights and became known as corporate personhood. Within the United States as well as a multitude of other countries such as the United Kingdom (under court precedents) and Canada (under Bill C-45), corporations are granted nearly all the same rights as citizens. Corporate power has developed into an intense prowess making corporate liability a concern for nations including Australia, Canada, and the United Kingdom (etcetera).

Theoretical Perspective and Level of Analysis:

This research will seek to evaluate whether or not the decision to grant corporations personhood was good public policy oriented around balancing the interests of the public. The standard of ethics presented in this research will be taken under a utilitarian viewpoint. According to this viewpoint, what is ethically sound is that which serves the greatest good for the greatest number. In addition, this research will analyze the approach of the United States' form of corporate accountability in comparison with the United Kingdom's. Furthermore, it will attempt to evaluate discrepancies between the rights given to corporations within each nation relative to the responsibilities they are held accountable for under criminal law. On the basis of utilitarian ethical notions, we will determine whether or not it is morally palpable for the United States or any other

nation to grant corporations the rights of personhood without the full liability of personhood. In order to achieve this goal, we will explore the harms caused to those affected by corporations' actions and weigh these harms against the benefits received from corporate rights. This research will attempt to prepare people to answer the following two questions:

1. If a man/woman can be charged with murder, should a corporation be liable as well?
2. Should a corporation be allowed the rights of a person; and if so, should they be held responsible to the same criminal laws as an individual?

In accordance with the laws of the United Kingdom, these answers have already been granted. In 2007, the United Kingdom passed the Corporate Manslaughter and Corporate Homicide Act, according to which corporations could be charged with homicide or even manslaughter. In the United Kingdom, similar to the United States, a corporation is a juristic person. Thus, this research will conduct a state-level comparative analysis of the histories of corporate laws specifically pertaining to criminal law in the United Kingdom and the United States.

Methodology:

This paper will work from the present-day position on corporate liability within these two nations and trace their legislation back in order to assess likely causes for variations in their legislation. Once found, we will analyze justifications made by court judges and legislatures behind accountability laws of the United States and the United Kingdom in order to assess the degree to which each is ethical from a utilitarian ethics' viewpoint. The lesson of this study will be found in the folds of history.

As aforementioned, corporations within the United States as well as in the United Kingdom share a multitude of rights equivalent to those of individuals. Thus, this research will seek to explore the reasoning behind these rights in order to evaluate whether or not establishing

personhood rights was an ethical resolve. In order to achieve this goal, this research will conduct an in-depth analysis of any relevant legislation, research, literature, or case involving corporate rights versus corporate responsibilities. This analysis can be viewed as a combination of comparative approaches as are discussed by Collier (1993) as well as by George and Bennett (2005). In accordance with these approaches, this research will take on a focused approach to corporate rights and corporate criminal liabilities within these nation-states. As is stated by George and Bennett:

The method is "*structured*" in that the researcher writes general questions that reflect the research objective and that these questions are asked of each case...thereby making systematic comparison and cumulation of the findings of the cases possible. The method is "*focused*" in that it deals only with certain aspects of the historical [in this context the state] cases examined." (George and Bennett 2005, 67, my italics).

This research will focus upon corporate harms as evidence to demonstrate corporate liability or lack thereof in each nation. More specifically, we will focus upon harms that may be classified under the United Kingdom's Corporate Manslaughter and Corporate Homicide Act of 2007.

We will conduct this analysis via 4 stages:

Stage One: To begin this research, readers will be given insight into the physical and financial harms presented by corporations through examples of past incidences found during this assessment. Many harms presented by corporations are framed as "accidents" to the public; citizens fail to notice that lack of maintenance or infrastructure malfunctions are often due to deliberate decisions made by corporate executives.

Stage Two: We will examine each nation and their decision to award corporations personhood rights or not. We will search for the answers to: Did the nation choose to grant personhood rights? If so, why did the nation grant these rights? Does it appear that this nation's choice was made with the interests of the majority in mind? Was this nation's choice ethical in its justifications? Again,

our ethical “calculation” will be to assess which decision reflects the greatest good for the majority. Who will benefit from corporate personhood, and do these benefits outweigh the possible detriments this decision may have?

Stage Three: The answers to our questions in stage two will bring readers into our assessments at stage three. We will search for resolutions to: If a corporation did grant personhood rights, did they create a balance to those rights for corporations equal to the balance established for natural persons, via the law? We will ask: In what ways was a balance or imbalance created within the nation? It is at this stage of our analysis that we will fully begin to incorporate Utilitarian ethics. Were the decisions made by each nation for the greatest good and for the greatest number? It is at stage three that we will examine a difference in perspectives between the United States and the United Kingdom. The two nations follow similar decision-making trends up until the United Kingdom establishes the Corporate Manslaughter and Corporate Homicide Act of 2007. Thus, our comparative study of these two cases is appropriate due to the similar pre-existing conditions within each nation.

Stage Four: Our last stage takes a look at the overall effectiveness or willingness to balance corporate power with liabilities. If, at stage three, the nation did not create laws to balance the rights granted, there will not be laws in place to implement; however, if the nation did create laws it is at this stage that we will understand how serious the nation has taken corporate accountability. If a nation has laws on the books for corporate criminal conduct, how effectively do they implement or attempt to implement such laws? How often are corporations charged under such laws and how often are they indicted? The overall “ethical” position of a nation will thus be determined based on the relative balance each nation has for its corporate power in culmination with the greatest aggregation of happiness. Essentially, which nation more closely ties to the belief

that the moral good is “the maximization of happiness for all people or for all creatures capable of experiencing pleasure or pain” (Leighton and Reiman 2001, 6)?

In sum this research will be guided by exploration of legislation, court precedents and previous research pertaining to corporate rights and criminal liabilities, that will be used as the keys to answering our questions from above.

Harms Presented By Corporations:

This section of analysis is to present some examples of recent corporate harms. We will begin with the United Kingdom and then transition to the United States via a chronological order of assessment.

In 1987, off of the Belgian coast, a ferry car capsized resulting in the loss of 193 passenger and crew members’ lives. The bow doors to the ferry failed to close due to lack of maintenance, thus flooding the deck. When the case was brought to trial, the corporation was acquitted due to the failure to pinpoint one individual who could be the “controlling mind” of the corporation. At this time, under common law legislation, a case must prove the guilt of one individual for an indictment. Just one year passed before another transgression occurred in the United Kingdom: the “Clapham Rail Disaster.” Three trains owned by the British Rail Road Company collided on the tracks killing 35 people. The company admitted liability and was charged £1 million, but was not prosecuted for manslaughter. Fast-forwarding to the year 1993, what is now referred to as the “Lyme Bay Tragedy” resulted in the deaths of 4 teenagers during a canoeing incident. Their canoes had capsized not long after their 10 a.m. sail time and the centre, where they were expected to arrive at noon, failed to contact the coastguard until around 2:45 p.m. after recovering one of their canoes along shore. They then failed to notify the rescue coordinating center until nearly 4 p.m. There were several warning signs the center or resort could have responded to, but they failed to

notify officials until well after the conditions of hypothermia in the near freezing temperatures of the water set in to the bodies of the canoers (Plymouth Herald 2013). If one is adding, that is a total of 232 lives lost within a 6-year time period, and these are only a few of the instances found during this research. These cases, however, had a lasting effect as they were key motivational factors behind later legislation in the United Kingdom.

In the year 2000, four people were killed and 102 injured in the Hatfield Rail Crash; although Network Rail was charged £3.5 million, and their maintenance company Balfour Beatty was charged £7.5 million, for negligence, they were both acquitted of manslaughter. Lastly, in 2008, 27-year old Alex Wright was collecting soil samples when a development plot collapsed on him, rendering him trapped. The safety standards of the plot were not to par, and he died of asphyxiation. Alex Wright was an employee of Cotswold Geotechnical Holdings, and his case was the first to be indicted under the United Kingdom's Corporate Manslaughter and Corporate Homicide Act of 2007. The result of this indictment was a £385,000 fine (Chan 2011).

In the United States, one may find a similar trend of harm and relative punishment. The United States does not have a corporate homicide or corporate manslaughter law; hence, our examples come largely from estimates and major incidents subjected to research by interested professionals. We will begin with perhaps the most controversial example: the tobacco industry. In the year 1963, the Brown and Williamson Tobacco Corporation had conducted research regarding the risks of nicotine, and, in their private documents, they revealed that "there is increasing evidence that nicotine is the key factor in controlling through the central nervous system, a number of beneficial effects of tobacco smoke, including its action in the presence of stress situations. In addition, the alkaloid [nicotine] appears to be intimately connected with the phenomena of tobacco habituation (tolerance) and/or addiction" (Leighton and Reiman 2001, 74,

Box 3.5). Yet, in 1964, their reports to the Surgeon General stated tobacco was not addictive but habit forming. This began a trend of non-disclosure within the tobacco industry and vast lobbying to limit liability. "The use of tobacco has been described as the leading cause of preventable death in the United States, with some 440,000 premature deaths a year" (Leighton and Reiman 2001, 74, Box 3.5). The tobacco industry has since undergone stricter regulatory practices, but they are excluded under many liability provisions. This remains an ongoing concern.

Moving forward 40 years from the first known tobacco industry indiscretion, after the Savings and Loans Financial Crisis resulting in a government bailout, a trend of deregulation occurred and, in 2000, the largest corporate bankruptcy in the United States to date was brought upon by Enron destabilizing our financial system. Enron had engaged in a plethora of frauds that culminated in a crash in stock prices and shares. Enron had falsified their books to make it appear as though they were making profit meanwhile funneling tens of millions into the pockets of management that should have never been in the hands of Enron officials to begin with; Enron engaged in price gouging, tax evasion, and manipulation of California's energy crisis for profit, and it negotiated deals for fraudulent audits with the notorious Arthur Anderson company. Enron's collapse and declaration of bankruptcy resulted in the "loss of 4,200 jobs and \$60 million in market value lost to its shareholders" (Reiman and Leighton 2013, 149-150). Yet, the trend of deregulation continued; "the George W. Bush administration was quite open about its hostility to aggressive regulation" (Friedrichs 2010, 285). Corporations have committed crimes that not only have destabilized our economy but that also have been detrimental to the lives of many.

In 2005, a Texas refinery owned by British Petroleum (BP) exploded due to mechanical integrity issues, and large hydrocarbon releases that were uncovered in a 2002 audit, but were never repaired. The explosion killed 15 people and hospitalized 130; 4 more victims perished later

due to their injuries. BP was fined \$87 million by OSHA, but this fine has proven ineffective as one may see in its failure to prevent another incident from occurring again in 2010 (Knutson 2010). After having been fined for the 2005 incident, BP was fined another \$4.5 billion in 2010 when an oil rig off of the Gulf of Mexico exploded, killing 11, injuring 16, and contaminating the Gulf of Mexico with a large surface of oil consequently endangering wildlife (Krauss and Schwartz 2012). BP pled guilty to 11 counts of felony manslaughter, a count of felony obstruction of Congress, and to violating the Clean Water and Migratory Bird Treaty Acts. Yet in their plea statement, BP pinned the manslaughter offense on their "Well Site Leaders." BP admitted that 2 high ranking supervisors onboard the Deep Water Horizon rig's negligent actions caused the death of 11 individuals. "BP admitted that as a result of the Well Site Leaders' conduct, control of the Macondo well was lost, resulting in catastrophe" (Agency n.d.). While BP pled guilty to the felony charges, appropriate penalty actions were not taken due to lack of a formal law indicating punishment guidelines for incidences of this nature. The cases surrounding this explosion have not all fully resolved, and many of those that have, did not resolve until approximately 3 years after the explosion occurred.

An understanding of incidences such as these is necessary in order for one to be able to assess the relevance of corporate criminal law, as many of these harms are presented as accidents and not crimes in popular media outlets. "According to various sources, work-related accidents and diseases have been the single greatest cause of disability and premature death in the United States today" (Friedrichs 2010, 73). "Corporate crime kills and maims. Each year corporations are responsible for causing thousands of deaths and injuries around the world" (Kramer 1984, 2).

The Principle of Corporate Personhood:

The idea of some form of corporate personhood first began in 1862 with the Companies Act in the United Kingdom. In accordance with this act, corporations had corporate "personalities"

(i.e. a corporation was separate from its shareholders), thus limiting the liability of shareholders under its provisions while simultaneously paving the way for corporate rights. This decision was later affirmed in the United Kingdom under the court case *Salomon v. Salomon Co. Ltd. (1896)* and again in 1991 under *Tate Access Floors Inc. v. Boswell*: "If people choose to conduct their affairs through the medium of corporations, they are taking advantage of the fact that in law those corporations are separate legal entities" (Davies 2008). Corporations within the United Kingdom under the Companies Act of 2006 limited the liability capacities for corporations as we will detail later. It is a culmination of decisions such as these that have surmounted in extensive rights for corporations as juristic persons within the United Kingdom.

In the United States, corporate personhood began with the court case *Santa Clara County v. Southern Pacific Railroad*, in which a precedent was set in the head note of Mr. Chief Justice Waite. The note stated: "The court does not wish to hear argument on the question whether the provision in the Fourteenth Amendment to the Constitution, which forbids the state to deny to any person within its jurisdiction the equal protection of the laws applies to these corporations. We are all of the opinion that it does" (6 S.Ct. 1132). This case extended the rights of the Fourteenth Amendment and the Bill of Rights to corporations. These rights were reaffirmed by the Supreme Court in their 2010 ruling in the case *Citizens United v. Federal Election Commission (FEC)* (130 S.Ct. 876). This case uplifted the previously established ban on political speech that first began with the Tillman Act of 1907 and was consistently reinforced, until this ruling. *Citizens United v. FEC* concurrently supported the principle of corporate personhood through extension of the First Amendment to encompass corporations in all realms regarding free speech. *Citizens United* also lifted the ban on the regulatory spending of independent expenditures for corporations that had set a limit on the amount allowed for political donations. It granted

corporations the ability to use these funds as they wished. Thus, in the eyes of both the United States and the United Kingdom, corporations are separate entities, with the rights of persons and the guaranteed protections of persons.

Rights v. Responsibilities (Liability):

In this section, we will explore the rights granted to corporations in each country relative to the liability they hold corporations to. We will begin with our analysis of the United Kingdom as was the format in the last two sections.

In the United Kingdom, rights granted to corporations are ambiguous; however, it is worth mentioning that the Companies Act of 1862, the *Solomon v. Salomon & Co. Ltd.* ruling, and the *Tate Access Floors Inc. v. Boswell* case, presenting corporations as separate entities make it clear corporations share the same rights as that of citizens of the United Kingdom. Additionally, various Limited Liability Acts (e.g. the Companies Act 2006 and the string of Limited Liability Acts beginning in 1855) brought out within the past century have allowed corporations to limit the responsibility their investors and shareholders have in cases where indiscretions have been made. Furthermore, the United Kingdom's insolvency laws (starting with the Insolvency Act of 1986) mandate that corporate administrators attempt to rescue a company when it is put into risk margins (The National Archives n.d.). This is outlined under the duties of a corporation to its shareholders and increases leniency for corporate executives. Moreover, due to the United Kingdom's Companies Act of 2006, corporations may have an unlimited capacity, can change their asset currency whenever they would like, and auditors have limited liability for claims of negligence as long as they receive approval from shareholders and courts perceive the claims as fair and reasonable. As many reading this may note, the question in deciding negligence will be what does "fair and reasonable" truly mean? These words may be seen as relative in the eyes of

citizens and allow for a great deal of court exercised discretion. Moreover, individuals are not protected under the many limited liability provisions extended to corporations and do not have the convenience of a “corporate veil” when making deliberate and harmful decisions. Thus, corporations appear to have rights extended beyond that of the individual in the United Kingdom.

Similarly, in the United States, it is safe to argue corporations have many rights beyond those of the individual, more so than in the United Kingdom. In accordance with *Santa Clara County v. Southern Pacific Railroad* and *Citizens United v. Federal Election Commission*, corporations are granted the rights of individuals inclusive of the Bill of Rights and the Fourteenth Amendment. There was ongoing debate regarding anti-discriminatory laws relative to the right to religion for corporations, but as the *Burwell v. Hobby Lobby* (134 S.Ct. 2751) case has unfolded, it appears consistent with the majority of legislation this research has analyzed that the first ten Amendments and the Fourteenth Amendment are applied to corporations. As the *Hobby Lobby* case was still ongoing summer 2014, a Reuters’ reporter expressed the belief that the debate surrounding corporate rights to religion appeared to be leaning in favor of corporations (Hurley 2014). This report was correct in its analysis as the Supreme Court’s 5-4 ruling was in favor of corporations having a right to religious freedom. The case was brought out in response to the Affordable Care Act and its provision mandating that employee-based healthcare plans must provide preventative care including FDA-approved contraceptive options. The mandate allowed for exclusion for religious organizations and non-profit organizations but as the family owned Hobby Lobby Inc. is a for-profit entity, they were not excluded from complying with the mandate.

The Green family (Hobby Lobby) and the Hahn family (Conestoga Wood Specialists) identifying as Christian and Mennonite, respectively, challenged this mandate and according to Justice Alito, “the court ruled only that a federal religious-freedom law applied to “closely held”

for-profit corporations run on religious principles” (Liptak 2014).¹ Therefore, by the end of this dispute, corporate claims to personhood rights were even more intensely affirmed in this recent case. Adding to corporate rights, corporations have the ability to form super PACs to influence election campaigns via donations and just as a person is granted the ability to file bankruptcy, a corporation may do so too, thus striking their record of reparations and/or fines accrued upon convictions. Similarly, hidden within various pieces of legislation (many of which we have already analyzed), the United States has allowed limited shareholder liability on a case-by case basis for corporations, which is similar to what has been allowed in the United Kingdom.

The question is: Are rights granted to corporations subject to the same balance of responsibility as an ordinary citizen’s rights? The answer is: no. An ordinary citizen may be subjected to many laws that could result in imprisonment, more specifically manslaughter or homicide laws with mandatory sentencing at the federal level resulting in life imprisonment. In both the United Kingdom and the United States, this is not the case for corporations.

Although companies can bring other companies or individuals to court and be taken to court themselves when they contravene the laws of the land, not necessarily all the laws that would govern the conduct of a natural person can be applied to a company. For instance, it is extremely difficult to make a company liable for a criminal offence requiring intent such as murder, since the courts generally uphold the principle that a company cannot have a *state of mind* in the same way as a natural person. (Whittingham 2008, 30)

Currently, there is not specified legislation to deal with the process of finding a corporation criminally liable of homicide in the U.S. There have been a rare few instances in which corporate “minds” have been charged under criminal law, but not for physical harms so much as for administrative malpractices (e.g. frauds). However, in the instance a civil suit is brought about,

¹ What is interesting to note about this case that may be means for further research is the split of 5-4 among the Supreme Court here. The present day court is made up of 6 male justices and 3 female justices. The 5 majority was all male with all 3 female justices dissenting. Justice Ginsberg in her dissent noted “judicial precedent states that religious beliefs or observances must not impinge on the rights of third parties, as the sought-after exemptions would do to women seeking contraception in this case” (The Oyez Project at IIT Chicago-Kent College of Law n.d.).

corporations can be charged for regulatory negligence and fraudulent claims and/or faulty products and be subjected to a fine on an individual basis, but what about physical harm? What about the lives lost? On the basis of present legislation, it appears the trend of the United States' concern with corporations is finance based and not integrity based, as priority is not on harm and/or pain inflicted on the victim(s) but rather on the economic consequences a corporation's actions caused.

The United States is a bit unique in that it charges many frauds as felonies, and thus many participants within corporations can be charged for criminal conduct, but there are no written contexts explicitly outlining corporations as subjects of criminal law regarding bodily harm of victims (e.g. explicitly defined corporate manslaughter). Likewise, in the United Kingdom, although there is legislation mandated for corporate manslaughter and corporate homicide, you will find that the notion of imprisonment is rarely mentioned, even though common law punishment for such crimes committed by individuals is 15 years imprisonment. Trends in both the United States and the United Kingdom lean toward limited corporate liability and emphasis on deregulation. It is worth noting, however, that the United Kingdom's Corporate Manslaughter and Corporate Homicide Act of 2007 has increased provisions for corporate punishment through inclusion of a publicity clause in which a court may require a corporation to publicize their wrongdoing in addition to providing reparations where the court sees necessary.

In sum, this research has found that there is a trend in both the United States and the United Kingdom regarding corporations, and that trend is: limited liability. Although in these nations there are well-established regulatory systems, they are often times under-funded, and many corporations have special exemptions from certain regulations. For example the FDA does not regulate vitamin supplements and the tobacco industry has lobbied their way into hidden

exemptions and loopholes keeping them only slightly burdened by regulations regarding appropriate labeling of their products. Moreover, you will find that both nations have a similar trend of deregulation even though public pressures have requested the opposite.

One may ask why the United Kingdom created the Corporate Manslaughter and Corporate Homicide Act in 2007 when the majority of cases at trial classified under this legislation have not been granted an indictment for manslaughter. Additionally, those cases that have resulted in an indictment for manslaughter have amounted to fines as punishment, and not prison time on behalf of members of a corporation.

Ethical Analysis:

One may find that the relative balance between the rights granted to corporations and the liabilities they hold is quite uneven. Corporations cannot technically be imprisoned. A corporation is not a living, breathing being that can be indicted and sentenced to time in prison. You cannot take every shareholder and imprison them in the name of the corporation because many have no idea when an indiscretion has occurred. So then what may you ask is the solution? Ethically speaking, a utilitarian will say that what benefits the majority to the greatest degree is the best solution. Thus, we will take a look at two examples of one of the incidences detailed in our section on harms and assess it from a few different angles. We will examine the level of morality behind each perspective in order to decide which route creates the greatest aggregation of benefits.

Our first example will be regarding British Petroleum (BP). British Petroleum's management had been notified multiple times of site maintenance issues. It was made clear to BP, from OSHA that the site maintenance issues could result in a catastrophic physical malfunction of the site. The company wanting to maximize profit in the interests of both its management and shareholders, decided to: "Cut inspectors and maintenance workers by the dozens to save just over \$1 million.

Eliminate safety calendars: \$40,000 in savings. Reduce purchases of safety shoes for employees: \$50,000 in savings. [and] Eliminate safety awards: \$75,000 in savings," among many more budget reductions (Knutson 2010). Alongside maintenance reductions, often comes increased workplace hazards for employees, who are already working in an environment deemed relatively risky.

The result in this maintenance reduction: an explosion killing 15 people and later hospitalizing 130. Moreover, this explosion released large amounts of pollutants into Texas, many of which were known carcinogens. In addition, two years later, BP was fined by OSHA \$87 million for failure to comply with safety regulations. This decision surmounted in a net loss in 2007 of \$85,835,000 for the corporation and in 2005 a net loss of 15 lives and 130 injuries. Two years prior to the fine from OSHA, the company gained \$2,330,000 from budget reductions. Therefore, the company's overall loss was approximately \$83,505,000 in direct losses, not including the cost to repair the now devastated refinery. From a utilitarian perspective, this would be viewed as a loss all around, the equivalent to a highly unethical decision. Now let us imagine BP had chosen to comply with safety regulations. It would have cost the company within two years the \$2,330,000, but they would have continued to use the refinery to produce oil for profit and would have spared 15 lives and 130 injuries. Moreover, that decision would have kept the company from the burden of a loss in stock value that came with the negative public relations surrounding the blast, and their company would not have had to pay the \$87,000,000 fine implemented by OSHA.

These were only the rudimentary costs that could have assisted in disaster prevention however. OSHA had recommended repairs amounting to \$235 million due to far overdue necessary upgrades to the refinery. Additionally, the idea to place a flare atop the blowdown drum in order to burn off excess gas was debated, but was deemed not cost-effective as it would have cost \$150,000 to implement. Now, if BP were to have complied with all of OSHA's requests, they

would have spent \$235,150,000 on upgrades and safety amounting to complete alleviation of the problems in 2005. Now, taking this into account, one must assess the aftermath of what occurred in 2010 off of the Gulf of Mexico when BP's oil rig exploded. This explosion resulted in 11 deaths, 16 injuries, and the largest known chemical and toxin spill in that region. Thus, in 5 years, BP's decisions injured 146 and killed 26, not accounting for harms to wildlife or the possible long-term effects of the chemical and toxin spill. Meanwhile, BP's net annual profits were upwards of \$100,000,000 annually. Now, a cost-benefit-analysis would assess whether or not the investment of \$235,150,000 would have been within the company's best interest. Ethically, the greatest good for the greatest number would have been to comply with regulatory standards and reduce the death toll count to 0. Essentially, BP lost 2 major facilities necessary for operation, had to pay court fees and fines for their malpractices, lost shareholders approximately \$85 million, their explosion endangered wildlife, devastated the environment of that region, injured 146, killed 26, and BP suffered a drop in share value as bad public relations pushed consumers away from their product. Ultimately, paying the recommended \$235,150,000 would have benefited everyone the most. Lives would not have been lost and shareholders would have profited in the long-term. Ethically, BP's decision was morally inept and created an aggregation of net pain and not net benefit.

Our next example is taken from the Hatfield Rail Crash in 2000. Balfour Beatty was hired under a maintenance contract by Network Rail for 7-year duration. Approximately 21 months prior to the Hatfield Rail Crash, a faulty rail had been identified by Balfour Beatty's staff in the Hatfield area. When asked at trial about the issues of the track, the five bosses who were put up for charges for manslaughter, but were acquitted, stated that they realized there "were a large number of defects which were over-due for repair" (The Telegraph 2005). Yet, in the months

preceding the crash, Balfour Beatty cut staffing making it so that staff could no longer perform visual inspections of the tracks (McKenna 2005). Thus, while it was identified that there was fracturing in the rail, there was not regular visual inspections of the rail to monitor its progressive fracturing and it wasn't until 6 months prior to the Hatfield Rail Crash that a new rail was placed alongside of the defected rail awaiting maintenance staff to install it. Therefore, for 15 months the rail was left without any monitoring, meanwhile train cars ran the tracks daily carrying passengers. Where perhaps the neglect is associated is in Balfour's decision not to notify Network Rail of their maintenance lag and to allow train cars to continually use the tracks in the Hatfield area. Balfour had identified an issue, but did not take the necessary precautions to monitor the escalation of the issue or to fix the issue. Thus, for 21 months, up until the day of the Hatfield Rail Crash, there was no speed restrictions placed after the faulty rail was identified (The Telegraph 2005). Therefore, Balfour Beatty endangered the lives of both passengers and railroad crew members who travelled the rails daily at speeds of 115-117 miles per hour. According to Justice Mackay, who oversaw the trials following the crash, "750,000 people had been put at risk by passing through the poorly maintained Hatfield area" (The Guardian 2006). In this regard, it was not that Balfour's choice was not to worry about the economic costs associated with the materials necessary for rail replacement so much as the consequences of shutting down Kings Cross station for repairs and the staffing expenses to increase the number of staff needed to fix the fracturing rail. "The derailment of the train at Hatfield [sic] was caused by a cracked section of the track which shattered when the 12.10 from King's Cross ran over it at 180km/hr. on 17 October 2000" (McKenna 2005).

Yet, when the case was taken to trial and both Balfour Beatty and Network Rail were found guilty of negligence, the results were a £7.5 million fine for Balfour (after being pleaded down from £10 million) and a £3.5 million fine for Network Rail for failure to ensure their maintenance

company was maintaining their facilities. Now, let us review the cost-benefit analysis of Balfour's decision. While it is unclear how much Balfour saved in staffing during the 21 month maintenance lag for the rail, it is clear that they continued gaining profits during this stretch. "The reduced fine represents around 2% of the £368m that Balfour Beatty made from its seven-year rail contract" (The Guardian 2006). Thus, presuming Balfour made around the same per year, Balfour would have made around £52.6m in the year preceding the crash. Now the rail was identified 21 months prior to the crash which is a year and nine months so to account for those nine months, Balfour Beatty would have made £92m in profit over the course of exposing 750,000 people to hazardous rails in the Hatfield area.

Now, the result was the loss of 4 lives whose contributions to society and economic worth to their families cannot be calculated, and the injuries of 102 people. Moreover, for Balfour, Network Rail and King's Cross station "performance on long-distance routes plummeted 20% in the wake of the crash, causing hours of delays and millions of pounds-worth of economic costs" (The Guardian 2006). In addition to the costs of loss of performance in the rails, Balfour accrued poor publicity and Network Rail choice to take over their own maintenance calendars instead of hiring an independent contractor. Thus, while Balfour made £92m over the course of those 21 months, they lost a renewal of a contract which would have been a £368m contract over the course of the seven years and were charged £7.5m in fines for negligence associated with the crash. Therefore it can be viewed as Balfour Beatty being in "red" for £283.5m, not incorporating the costs immediately after the crash. Thus, Balfour Beatty's decision to poorly maintain the rails by cutting down staff can be viewed as not benefiting the company in any manner, or the public, especially including the families of the 4 people who lost their lives and the 102 people who were injured during a traumatic train crash. According to Justice Mackay the failings of Balfour Beatty

were “the worst example of sustained negligence in a high risk industry I [Justice Mackay] have ever seen” (McKenna 2005).

Shifting from Balfour Beatty’s decision to decisions of the United Kingdom and the United States’ regarding corporate personhood and the imbalance of rights and responsibilities, we can see that both nations have the same degree of ethical standard. Neither nation has an appropriate balance between the rights corporations are allowed to have and the responsibilities that corporations are subjected to. Granting corporations the rights of personhood without full responsibilities of personhood creates an imbalance of power benefiting only the elite ownership of corporations, and, one could argue based on our example of British Petroleum, it does not even always benefit them. One may ask why our nations would be willing to allow this imbalance. The apparent “answer” is: money and authority speak. Corporations lobby in order to increase profit to better the lives of management and shareholders; our politicians respond favorably to the will of lobbying because it helps them get re-elected and increases the chances of higher donations to their party. Moreover, there tends to be a great deal of conflict of interest between the corporate sector and the government sector, as many government officials are either shareholders, investors, or owners of corporations, thus intertwining the interests of politics with the interests of business. Ethically, this weighs the top 10% of the population in the socioeconomic standing against the bottom 90% of the population who are workers subjected to poor working conditions, citizens subjected to polluted airways and waterways, and consumers subjected to faulty products. According to a utilitarian’s view, the greatest good for the greatest number would be to either revoke corporate personhood or to create a balance of power by regulating corporations more in a manner in which a government regulates its citizens. If we can be stopped for failure to

comply with traffic laws, why can't a corporation get stopped when they fail to comply with regulatory laws?

Conclusion:

In sum, corporate harm is a major issue that must be addressed in a more comprehensive manner. Corporations have been granted the rights of persons in both the United States and the United Kingdom, yet they are not held to the same liabilities of that of a natural person. In both the United States and the United Kingdom, there has been pressure by the general population to balance the rights extended to these corporations; and while at first glance it may appear the United Kingdom has responded, the enforcement of its Corporate Manslaughter and Corporate Homicide Act of 2007 proves otherwise. In both nation-states there is a grave imbalance between the rights they are allowed and the responsibilities they hold, whether it is due to the lack of a specified law (as is the case in the United States) or due to lack of enforcement of legislation (as is the case in the United Kingdom). This research has provided clear examples of corporate harms and malpractice, which showcase a clear need for corporate liability, especially in regards to criminal offenses such as manslaughter. The current imbalance of rights in favor of corporations is assuredly inequitable and unethical from the view of a Utilitarian. Corporations make up only a small fragment of our society, and although these provisions may appear to benefit them, many of the shareholders are also consumers of the products and services that these corporations provide. Thus, it could be argued that what is best for the general populace may also be best for the corporation, as was showcased in our cost-benefit analysis of British Petroleum. In order to rectify the imbalance between corporate rights and corporate responsibilities it is necessary to form and implement more comprehensive laws that are more reflective and similar to the laws applicable to natural persons.

Given all of the findings and analysis of this research, if we are going to keep corporate personhood rights, my recommendations for each nation-state regarding possible solutions to the imbalance of corporations' rights v. responsibilities are:

1. In regards to the United Kingdom: Follow through with and amend the Corporate Manslaughter and Corporate Homicide Act of 2007 and set new standards of punishments (e.g. prison time, reparations, publication of wrongdoing, victim-offender relationship meetings, probationary periods etc.). Additionally, the act should eliminate some of its exclusions to encompass a greater array of corporate entities (e.g. the tobacco industry).
In regards to the United States: Form and implement a corporate homicide/manslaughter law with the provisions mentioned above.
2. Apply the 3-strikes rule to corporations. After 3 indictments, a corporation should fall under the ownership of the government and broken down into segments of its former self so as to limit the power of the corporation and its ability of recidivism. After solidifying these segments, the government will sell them to various investors in order to disperse the profit as reparations to families of victims or innocent bystander shareholders.²
3. Subject all transgressors within a corporation to common law legislation regarding manslaughter and homicide (i.e. those who partake in the wrongdoing would have to suffer the same consequences as an individual committing this crime would have).
4. Create a safety net for employees of corporations in the instance of full corporate closure and/or bankruptcy. The government creates tax breaks and bailouts for corporations, why not for employees of corporations that are suffering from the downfall of corporate malpractice? You can set this up by mandating that corporations set aside reserves for their employees in the instance of company failure.
5. Create mandatory reporting stations, like C-Span, for regulatory agencies. Regulatory agencies will report their recommendations for facilities and their findings in audits. This will make issues more open to the public and subject to scrutiny.
6. Increase funding for regulatory agencies, and increase corporate liabilities. For example, it is an auditor's job to audit; they should be liable for signing off on faulty audits. If regulatory agencies had more funding they could hire more staff and develop better systems for oversight. Citizens are subjected to a great deal of oversight via patrolling officers within both neighborhoods and roadways. Agents of regulatory

² The present day legislation applying to citizens is that the "3 strikes rule" is necessary for repeat offenders. This assumption works off of the notion that these offenders are incapable of rehabilitation and thus should remain incarcerated and isolated from the rest of society. Repeat offenders are deemed as "dangerous" to the public. Therefore, if the "3 strikes rule" is acceptable for citizens, then it must also be acceptable for corporations, assuming we believe in the balance of rights, logically speaking.

agencies will play the role of “officers” patrolling the corporate sector, and “keeping the peace.”

Corporations do not operate in a bubble, they are housed within countries all over the world. These countries all have their own systems of governance, which could account for variations in legislation regarding corporate liabilities. As was seen in this comparison of the United States and the United Kingdom, there is an imbalance between corporate rights and corporate responsibilities within each nation, but for different reasons. What made the United Kingdom enact the Corporate Manslaughter and Homicide Act of 2007? Both nations had public pressures for corporate liability prior to the enactment of the U.K.’s Act, yet the United States did not develop its own similar legislation. One could argue that public pressure on the parliamentary body of the U.K. after the various tragedies we noted earlier in this research may have caused this piece of legislation to be formulated as a means of appeasement, but without further research this argument will remain unsupported. Further research is necessary to understand the root causes of the variations in legislation between these two nations, perhaps in regards to the foundations they have for establishing legal precedent.

Moreover, as corporations are operating transnationally, corporate regulation and oversight in an era of globalization is a matter of further concern that should be examined. Corporations commit harms not only in regions that should be of even greater concern as they operate without stable governance or regulatory systems. How should the international community handle these inequities between rights and responsibilities? Where would a corporation be tried or held liable? Does mankind want to allow corporations to make the same sort of cost-benefit analysis regarding human lives that militaries must make when assessing “collateral damage?” We have all heard of sweat shops, “blood diamonds,” etcetera, but how should these issues be handled in an ethical and equitable way? These are matters that should be

subject for further analysis beyond the scope of this research; these are matters that could help get to the root of the issue and rectify the wrongs being committed by corporations globally.

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Bibliography

Agency, Environmental Protection. *Summary of Criminal Prosecutions*. n.d.

http://cfpub.epa.gov/compliance/criminal_prosecution/index.cfm?action=3&prosecution_summary_id=2468 (accessed August 7, 2014).

Chan, Szu Ping. *History of corporate manslaughter: five key cases*. February 18, 2011.

<http://www.telegraph.co.uk/finance/yourbusiness/8330905/History-of-corporate-manslaughter-five-key-cases.html> (accessed March 21, 2014).

Collier, David. "The Comparative Method." *Political Science: The State of the Discipline II*, no. In Ada W. Finifter ed. (1993).

Davies, Paul L. *Gower and Davies: The Principles of Modern Company Law*. London: Sweet and Maxwell, 2008.

Friedrichs, David O. *Trusted Criminals: White Collar Crime in Contemporary Society*. Belmont: Wadsworth Cengage Learning, 2010.

George, Alexander, and Andrew Bennett. *Case Studies and Theory Development in the Social Sciences*. Cambridge: Cambridge Press, 2005.

Hurley, Lawrence. *Supreme Court signals support for corporate religious claims*. March 25th, 2014.

<http://www.reuters.com/article/2014/03/25/us-usa-court-contraception-idUSBREA2011W20140325> (accessed April 12, 2014).

Knutson, Ryan. *Blast at BP Texas Refinery in '05 Foreshadowed Gulf Disaster*. July 2nd, 2010.

<http://www.propublica.org/article/blast-at-bp-texas-refinery-in-05-foreshadowed-gulf-disaster> (accessed February 7th, 2014).

Kramer, Robert C. "Is Corporate Crime Serious? Criminal Justice and Corporate Crime Control." *Journal of Contemporary Criminal Justice*, 1984: 7-10.

Krauss, Clifford, and John Schwartz. *BP Will Plead Guilty and Pay Over \$4 Billion*. November 15, 2012.

http://www.nytimes.com/2012/11/16/business/global/16iht-bp16.html?_r=1& (accessed March 21, 2014).

Leighton, Paul, and Jeffrey Reiman. *Criminal Justice Ethics*. Upper Saddle River: Prentice Hall Inc., 2001.

Liptak, Adam. *Supreme Court Rejects Contraceptives Mandate for Some Corporations: Justices Rule in Favor*

of Hobby Lobby. June 30, 2014. http://www.nytimes.com/2014/07/01/us/hobby-lobby-case-supreme-court-contraception.html?_r=0 (accessed September 9, 2014).

McKenna, John. *Hatfield: 'worst example of sustained negligence' - judge*. October 13, 2005.

<http://www.nce.co.uk/hatfield-worst-example-of-sustained-negligence-judge/530291.article> (accessed April 15, 2015).

Plymouth Herald. *Plymouth parents of the victims of the Lyme Bay tragedy recall their agony on the 20th*

anniversary of the disaster. March 22, 2013. <http://www.plymouthherald.co.uk/Plymouth-parents-victims-Lyme-Bay-tragedy-recall/story-18490602-detail/story.html> (accessed February 16, 2015).

Reiman, Jeffrey, and Paul Leighton. *The Rich Get Richer and the Poor Get Prison: Ideology, Class, and Criminal Justice*. 10th. New Jersey: Pearson, 2013.

Supreme.Justia. *Justia US Supreme Court Center*. 2014.

<http://supreme.justia.com/cases/federal/us/118/394/case.html> (accessed February 23, 2014).

The Guardian. *£2.5m cut from Hatfield crash fine*. July 5, 2006.

<http://www.theguardian.com/uk/2006/jul/05/hatfield.transport> (accessed April 14, 2015).

The National Archives. *Insolvency Act 1986*. n.d. <http://www.legislation.gov.uk/ukpga/1986/45/contents> (accessed April 18, 2014).

The Oyez Project at IIT Chicago-Kent College of Law. *BURWELL V. HOBBY LOBBY STORES*. n.d.

http://www.oyez.org/cases/2010-2019/2013/2013_13_354#chicago (accessed September 9, 2014).

The Telegraph. *Hatfield crash - counting the cost of a tragedy*. September 6, 2005.

<http://www.telegraph.co.uk/news/1497739/Hatfield-crash-counting-the-cost-of-a-tragedy.html>

(accessed April 13, 2015).

Westlaw Database. *Westlaw*. n.d. (accessed 2015).

Whittingham, R.B. *Preventing Corporate Accidents: An Ethical Approach*. Oxford: Elsevier Ltd., 2008.