

Treat reckless corporate behavior like drink-driving

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Top executives at BP, Massey, Goldman Sachs et al might have acted more responsibly if they had faced the prospect of jail time



Protesters stand behind BP CEO Tony Hayward, as he arrives on Capitol Hill to answer questions about the Deepwater Horizon oil spill.

While BP has taken some heat over its spill in the Gulf, it is remarkable how limited the anger actually is. Many defenders of the company have made the obvious point: it was an accident. BP did not intend to have a massive spill that killed 11 people, devastated the Gulf ecosystem and threatens the livelihoods of hundreds of thousands of workers.

Of course this is true, but it is also true that a drunk driver who runs into a school bus did not intend to be involved in a fatal collision. As a society, we have no problem holding the drunk driver responsible for a predictable outcome of their recklessness. Driving while drunk dramatically increases the risk of an accident. This is why it is punished severely. A person who is responsible for a fatal accident while driving drunk can expect to face many years in jail. Even someone who drives drunk without being in an accident often faces jail time because of the risk they imposed on others.

This raises the question of why the public seems to accept that the top officials at BP, who cut corners and made risky gambles in their drilling plans, should be able to "get my life back," as BP chief executive Tony Hayward put it. The people who lost their livelihood as a result of BP's spill will not get their lives back, even if BP does pay compensation. Certainly the 11 workers killed in the original explosion will not get their lives back. Why should the people responsible for this carnage be able to resume their life of luxury?

There are two separate questions. The first is a narrow legal issue concerning the extent to which Hayward and other high level executives can be held criminally liable for the accident. It may be the case that the laws are written so that even if companies commit gross negligence that results in enormous harm, including multiple deaths, top officials are not criminally liable. This is a question about the status of current law. The second question is a moral and economic one about what the laws should look like.

From either standpoint, it is very difficult to see why we would want to say that reckless behaviour that would be punished with long prison sentences if done by an individual, somehow escapes serious sanction if done as part of a corporation's pursuit of profit. Do we give a "get out of jail free" card to people when they are wearing the hat of a top corporate executive? This makes no sense.

Just to take the extreme case, suppose that Tony Hayward was racing back to the office after a three-Martini lunch in order to prepare the paperwork for a big contract that he had just negotiated. On his way, he hits a school bus, killing 11 children. Would it make sense to absolve him of blame for these deaths because it was the result of his efforts to raise BP profits? And, if that doesn't make sense, why does it make sense to absolve him of responsibility for the deaths of 11 oil rig workers that was the direct result of his decision to cut corners in order to increase profits.

We can ask the same question about the responsibility of the top executives of the Massey Energy Corporation, whose shoddy safety practices led to the explosion that cost 29 workers their lives. We should also ask why the top executives of the UtahAmerican Energy Company weren't subject to criminal prosecution when their recklessness led to the deaths of six miners and 3 rescue workers in a mine collapse in 2007. In these cases and many others the problem was not simply bad luck. In all three cases, the accidents were the direct result of reckless behavior on the part of the management of these companies. They ignored standard safety measures in order to save money.

Of course most acts of recklessness don't result in fatalities, just as the vast majority of incidents of drunk driving do not end in fatal collisions. Nonetheless, when they are caught, we still punish drunk drivers for their recklessness. This would be a good pattern to follow more generally. The executives of the major oil companies whose clean-up plans for the Gulf of Mexico involved procedures for rescuing walrus would find the matter far less humorous if it involved jail time. Is there any reason it should not?

The problem is that government has been controlled for far too long by soft-on-crime conservatives. They are willing to look the other way and give break after break to criminals, as long as they are the white-collar types who belong to the best country clubs.

This must come to an end. The country can't afford special privileges for high-class criminals. It is time to take a tough stand on criminals who inhabit the corporate suites. We have to tell the top executives at BP, Massey, Goldman Sachs and elsewhere that if you can't do the time, don't do the crime.