

# *Mediating punitiveness: understanding public attitudes towards work-related fatality cases*

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## **Mediating Punitiveness: Understanding Public Attitudes towards Work-Related Fatality Cases**

This paper concerns an empirical investigation into public attitudes towards work-related fatality cases, where organisational offenders cause the deaths of workers or members of the public. This issue is particularly relevant following the introduction of the Corporate Manslaughter and Corporate Homicide Act 2007 into UK law. Here, as elsewhere, the use of criminal law against companies reflects governmental concerns over public confidence in the law's ability to regulate risk. The empirical findings demonstrate that high levels of public concern over these cases do not translate into punitive attitudes. Such cases are viewed rationally and constructively, and lead to instrumental rather than purely expressive enforcement preferences.

The relationship between the substantive criminal law and public attitudes has long proved to be a controversial issue. In particular, theoretical characterisations of contemporary law and order have emphasised the ways in which political actors interpret, and respond to, trends in public opinion (Bottoms 1995; Garland 2001; Pratt 2002; Simon 2007). Public opinion on crime and justice, it is suggested, drives the adoption of harsher and more emotive criminal justice policy via a process of 'penal populism', whereby '*punishment policy [is] developed primarily for its anticipated popularity*' rather than its utility (Roberts *et al.* 2003: 65). On this reading, policymaking is driven by the interpretation of public opinions, and the willingness of politicians to respond uncritically to them. The risks associated with this dynamic give a new relevance to research into public attitudes towards crime.

This paper presents the findings of an ESRC-funded investigation into public attitudes towards work-related fatality cases (hereafter WRFs), situations where the activities of a corporation or organisation have caused the death of a worker or member of the public. This is timely given the introduction into UK law of the Corporate Manslaughter and Corporate Homicide Act 2007, which seeks to criminalise the worst WRFs, and so maintain public confidence in the law. These legislative developments mirror the redefinition of the parameters of corporate criminal liability within other European jurisdictions including Italy (Gobert and Mugnai 2002) and France (Orland and Cachera 1995), and renewed debate in Germany and elsewhere (Eser *et al.* 1999; Weigend 2008). The commencement in early 2010 of manslaughter prosecutions against Continental Airlines in France following the Paris Concorde air crash of 2000, which resulted in 113

deaths, demonstrates the ongoing significance of debates about corporate homicide liability.

Issues of corporate regulation are often regarded in rather ambivalent terms by the public (Livingstone and Lunt 2007; Walls *et al.* 2004); the assumption that there is a 'punitive' demand for retributive justice in such cases has never been empirically tested. Following an earlier study (Almond 2008), this investigation utilised a qualitative interview methodology to probe the normative attitudes expressed by the public in relation to real-life WRFs. Public attitudes in this area are not as harsh as might be expected, indicating that the new offence is only a partial reflection of wider trends towards 'populist punitiveness'. In fact, public attitudes are primarily characterised by rationality and careful thought, and do not demonstrate the emotive and retributive features associated with this concept. Although tougher sanctions are preferred, they are not excessive and so are not truly punitive (Matthews 2005). Crucially, punishment is envisaged as a way of bringing about better regulatory outcomes, not as a method of simply achieving vengeance.

### **The Legal Context: Corporate Manslaughter in the United Kingdom**

The last twenty years have seen a movement towards imposing criminal liability upon organisations which cause the deaths of workers or members of the public. The introduction of a specific corporate homicide offence in the UK, and the reform of corporate liability principles so as to facilitate corporate manslaughter convictions in other common-law jurisdictions (Sarre and Richards 2005), reflect concern over the problem of regulating WRFs. While a number of European jurisdictions have introduced general principles of corporate criminal liability (such as France, Austria, Italy, and the Netherlands), in many cases these principles do not extend to 'core' criminal offences such as manslaughter. To date the UK remains the only European jurisdiction to respond to the problem of WRFs via a specific homicide offence,<sup>1</sup> although jurisdictions such as France have explicitly mandated corporate manslaughter liability via Penal Code reforms. Current Health and Safety Executive (HSE) statistics place the WRF rate in the UK at 595 per annum (HSE 2009), although this probably underestimates the true incidence of this form of offending (Tombs and Whyte 2007). These figures accompany very significant and enduring rates of work-related injury and ill-health, which have helped to prompt legal reform. A more significant role has been played by the impact of a series of high-profile disasters resulting in major loss of life, including the sinking of the Herald of Free Enterprise (1987), and the Ladbroke Grove (1999), Hatfield (2000) and Potter's Bar (2002) rail crashes. These events galvanised pressure groups, trade unions, and others into critiquing the law's inability to convict corporate bodies of manslaughter, despite the significant organisational fault exhibited (Wells 2001). Only seven manslaughter prosecutions of corporate bodies under the old law were ever successful, and all involved small companies (Tombs and Whyte 2007).

The response to this criticism was a Law Commission report in 1996, advocating a new 'corporate manslaughter' offence, followed by a Home Office consultation in 2000, reform proposals in 2005, and the passing of the Corporate Manslaughter and Corporate Homicide Act in 2007. The first prosecution under this new offence will take place in mid-2010.<sup>2</sup> The new offence derives from the existing law of gross negligence manslaughter, and imposes liability where a corporation's activities cause a death and amount to a gross breach of a relevant duty of care. In particular, it contains a 'management failure' model for the attribution of liability to the corporate body, which relates culpability to the actions of a class of 'senior managers' responsible for the oversight of the organisation's activities (Ormerod and Taylor 2008: 593). Attempts to prosecute corporations under the old law tended to be unsuccessful because the established 'identification doctrine' required that a person of sufficient seniority who embodied the corporation's fault must be identified before that corporate body could be liable (Clarkson 2008; Ormerod and Taylor 2008). While caution is necessary when assessing the likely substantive effect of the new offence, it is clear that its intended impact is not just procedural; it also aims to recast the law's symbolic character.

The new offence is intended to facilitate more manslaughter prosecutions and promote public confidence in the law's ability to handle WRFs effectively (Law Commission 1996: 1.10; Home Office 2005: 6), reflecting the perception that health and safety law is not always suitable for handling these cases. Most enforcement action following WRFs takes place under the Health and Safety at Work Act 1974 (HSWA), the primary regulatory legislation governing occupational safety. Although convictions of corporate bodies are easier to obtain under the HSWA 1974 than the law of manslaughter, these offences do not carry the symbolic weight perceived to attach to a manslaughter charge, and typically result in relatively modest sanctions; they are regarded as quasi-criminal in nature. Both the Law Commission (1996) and the Home Office (2005) subscribed to this view, with the latter distinguishing between '*serious*' criminal law offences, and offences '*that might be characterised as regulatory*' (2005: 58). The new offence seeks to harness the denunciatory power of the criminal law in order to frame these cases in more explicitly normative terms (Wells 2001). While the new offence may not radically alter patterns of prosecution, leading some to observe that it will '*succeed...primarily in making a symbolic statement about corporate responsibility, which it will struggle to fulfil in practice*' (Ormerod and Taylor 2008: 590), it may still have a symbolic effect upon public and stakeholder consciousnesses.

The pattern underlying this account of the reform process is worryingly familiar to criminologists; a 'tough' new law, a preoccupation with reassuring a 'punitive' public, and success framed in purely expressive terms (Bottoms 1995; Garland 2001; Simon 2007). The references to public concern made by the Home Office give the new offence the appearance of a penal populist reaction to a perceived appetite for punishment (Bottoms 1995; Roberts *et al.* 2003), even though that appetite was assumed rather

than empirically proved during the reform process. While it is unclear whether the corporate manslaughter offence is a penal populist measure, there appear to be grounds on which such an argument might be made. Since WRFs, like other examples of corporate wrongdoing, are capable of constituting signal risk indicators of significant power (Almond 2007; Wells 2001), it is important to evaluate how they impact on public attitudes and whether they provoke the assumed preferences for harsh punishment. This is important not only in the British context; information about the degree to which punitive attitudes are held in relation to corporate wrongdoing can inform debates about corporate criminal liability in other jurisdictions as well. The corporate manslaughter prosecution in France following the 2000 Concorde disaster ensures that the issue remains relevant; to what extent do prosecutions of this sort reflect the normative expectations of the public?

## Corporate Crime and Public Punitiveness

The literature on public attitudes towards the issue of crime gives some support to the notion that the 'punitive public' is an empirical and not just a theoretical reality. Successive crime surveys have demonstrated public dissatisfaction with the operation of the criminal justice system, and particularly with sentencing (MORI 2008; Roberts and Hough 2005: 32; Walker *et al.* 2009). Many studies have indicated that the public in the UK and elsewhere tend to regard sentencing practices as unduly lenient and express preferences for more severe punishments than those they perceive to apply (Hough 1996; Hough and Roberts 1999; Kury 2008; MORI 2008; Roberts and Hough 2005; Roberts *et al.* 2003). This research has also shown that there is much closer concordance between actual and preferred sentences when real cases are discussed (Hough 1996; Hough and Roberts 1999; Hutton 2005), and preferred sentences are, in any case, often comparable to actual sentencing practices (Hough 1996: 197). It appears that expressions of punitiveness are the product of a lack of knowledge about the criminal justice system; the concept of 'punitiveness' is difficult to define accurately (Matthews 2005) but is generally taken to connote a preference for excessive, disproportionate, and severe forms of punishment (Bottoms 1995; Pratt 2000). While excess and proportionality are necessarily relative terms, and so elastic, the core component of punitiveness seems to be the valuing of the repressive and painful effects of punishment as of value in their own right rather than as means to another end (such as deterrence).

While a significant amount is known about the dynamics of public attitudes towards crime in general, relatively little is known about whether these dynamics also apply to corporate offending, an area about which the public tends to be relatively uninformed. In part, this reflects the limited media profile of the issue, as well as the more abstract harms and complexity generally associated with corporate offending. It also reflects the ambiguity of status and ideological tensions associated with systems of legal control over corporate conduct (Livingstone and Lunt 2007; Wells 2001). The law governing health and safety is a good example of these trends, as it provokes ambivalent and sometimes hostile public attitudes, and is little-understood (Almond 2008; Walls *et al.* 2004). Crucially, as Braithwaite has argued (2003), there is little evidence that the 'punitive public' and the contemporary 'penal turn' in criminal justice policy are relevant to corporate offending. The political contexts behind corporate offending (governance of privatized markets rather than the moral disciplining of the poor; 2003: 10) do not promote the 'othering' of offenders found elsewhere in the criminal justice system. The criminal law preoccupation with denouncing offenders via punishment is not reflected in the negotiated and compliance-centred methods of regulators, or in prevailing public discourses about corporate crime. So while punitiveness may characterise public attitudes in some circumstances, it is far from clear that the same dynamic underpins the corporate manslaughter reforms in the UK, or the shift towards corporate criminal liability elsewhere in Europe.

The most relevant empirical findings on public attitudes towards corporate crime are provided by studies investigating perceived crime seriousness (see Almond 2009 for a summary). In particular, harmful corporate offences are regarded as extremely serious by the public, and equivalent to mainstream offending; for instance, Cullen et al. found that causing an employee's death by neglecting machinery was rated as comparable in seriousness to forcible rape or armed robbery (1982: 88; also Rosenmerkel 2001). The defendant's awareness of the harm involved significantly increases the perceived seriousness of an offence, and offences are rated as more negligent and serious when the defendant is a corporate body (Hans and Ermann 1989). That said, while white-collar criminality is capable of provoking the same reactions as 'ordinary' street crime, the desire for legal accountability does not necessarily translate into support for punitive policies (Schoepfer *et al.* 2007; Holtfreter *et al.* 2008). As a previous study has indicated (Almond 2008), WRFs have the potential to be regarded as serious crimes, although we may question the degree to which 'punitive' attitudes might emerge, especially in relation to offences which involve complex social risks. How punitive is public opinion in this sphere, and how do attitudes depart from those held generally in relation to crime?

## **Methodology**

The qualitative investigation undertaken consisted of 60 one-hour interviews with members of the public selected by a market research company who accounted for demographic differences in the population in terms of gender, age, ethnicity, and occupational background. The sample was recruited from 8 geographical locations in England and Wales. The interviews were structured around discussion of three exemplar case vignettes, allocated at random from a selection of six. The vignettes were approximately 300 words long and provided a summary of the key events leading up to a real WRF, as well as any contributory, aggravating, or mitigating factors present in that case. Respondents were given these vignettes to familiarise themselves with as a basis for the subsequent discussion; in this way, they were engaged in deliberating over the issues involved in a manner similar to trial jurors. The vignettes were more detailed than those used in comparable attitudinal research (Hough 1996; Mitchell 1998) in order to avoid the methodological pitfall of engaging with 'mere opinion' rather than deliberative public judgments (Green 2006); opinions delivered in the abstract are of little meaning, while a methodology that bases discussion upon concrete exemplars allows for engagement with underlying decision-making processes (Hutton 2005).

The six vignettes were constructed to reflect, as accurately as possible, real WRFs from England and Wales which had given rise to some form of legal proceeding and conviction; some of these cases were dealt with as manslaughter offences, and some as breaches of the HSWA 1974 (often because manslaughter charges had failed). Information from case transcripts and investigative reports was used to ensure that the vignettes provided a balanced and accurate account of the cases involved. The six cases



which were used were: (1) the 1999 Ladbroke Grove rail crash<sup>3</sup>; (2) the 2001 explosion at Port Talbot steel works<sup>4</sup>; (3) the 1994 Lyme Bay canoeing tragedy<sup>5</sup>; (4) the death of a temporary worker at Shoreham docks in 1998<sup>6</sup>; (5) the death of a worker at New House farm in 1999<sup>7</sup>; and (6) the death of a worker at Jackson Transport haulage firm in 1994.<sup>8</sup> These cases varied in terms of their salient features, including the identity and number of victims, the type of company and legal proceeding involved, and the public profile of the incident (table 1, below). Real cases were used in order to allow assessment of the relationship between actual and preferred legal outcomes, and to facilitate investigation of the ways in which these cases, as social facts, impacted upon the consciousnesses of the respondents.

The questions asked in relation to each case addressed; the impact and effect the incident had on the interviewee (both at the actual time of the incident and in response to the vignette); how serious the incident was on its own and in relation to two fictitious 'regular' crime scenarios<sup>1</sup>, preferred legal outcomes, and reactions to the actual legal outcome. Aside from the 3 case vignettes, the interviews also covered questions on the extent of knowledge of the corporate manslaughter offence and wider perceptions of the law. The interviews sought to investigate whether perceptions of these events suggest differences between official and public categorisations and evaluations of WRFs. Consequently, the methodology used here differs from previous attitude surveys in that it does not aim to measure responses to cases in a vacuum, unaffected by external factors; rather, the responses sought are those directly shaped by the events discussed. All interviews were carried out in the respondents' own homes or preferred locations in order to provide a familiar and secure setting and encourage open discussion.

**Table 1: Case features and seriousness ratings**

Cases	No. of fatalities	Affected victims	Type of conviction?	Company size	Public case profile	Seriousness rating (avg./11)
1. Ladbroke Grove	Multiple	Public	HSWA 1974	Large	High	9.77
2. Port Talbot	Multiple	Worker	HSWA 1974	Large	Low	9.37
3. Lyme Bay	Multiple	Public	Manslaughter	Small	High	9.87
4. Shoreham docks	Single	Worker	HSWA 1974	Large	High	9.95
5. New House farm	Single	Public	Manslaughter	Small	Low	8.21
6. Ossett	Single	Worker	Manslaughter	Small	Low	8.84

## Findings

The respondents regarded all six of the WRFs discussed as highly serious incidents, and provoked a range of responses which included strong emotions and concern. When asked to rate each case for perceived seriousness (on a 1-11 scale), respondents

<sup>1</sup> Causing death by careless driving while under the influence of drink, Road Traffic Act 1988 s.3A; and Unlawful Act Manslaughter.

awarded each of the cases an average score between 8 and 10, indicating the existence of a general consensus about the importance of WRFs (see table 1, above). The cases perceived to be most serious were those with a higher public profile because they were large-scale public disasters or involved vulnerable victims. The two least serious cases were those involving the deaths of individual workers in contexts unfamiliar to respondents, illustrating the role played by salience in determining seriousness (Almond 2008; 2009). Respondents did sometimes express a degree of familiarity with some of the more high-profile cases but their knowledge was not sufficient to act as a defining basis for the views subsequently expressed (except insofar as increased awareness rendered the case more salient). The respondents were not made aware of the legal status of the case (as successful, unsuccessful, or not manslaughter prosecutions) or the outcome until these were discussed later in the interview, and did not tend to possess any relevant knowledge until then; all WRFs were referred to as 'incidents' until preferred or prospective legal responses had been expressed. In any case, the impact that any prior awareness might have had (and the evaluation of real case outcomes) was a core component of what the interviews aimed to achieve, namely, the assessment of normative attitudes in relation to WRFs as a real social phenomenon.

The highest seriousness ratings, and the most emotively-charged responses, were expressed in relation to case 3, which involved the deaths of four children on a school trip, and case 4, which involved the death of a young worker in particularly horrifying circumstances; these assessments reflected the emotive impact of the cases given the identity of the victims. In particular, the victim's reliance on others for protection (Almond 2008: 461), was instrumental in determining perceived seriousness:

*'You can't mess with kids...an adult can make their own decisions...it's as serious as it gets.'* (case 3; R57: 32)

*'This is very serious...somebody has lost their loved one and it's just dreadful. And that poor man has been put into a very hazardous situation without being protected.'* (case 4; R14: 271)

It was clear that respondents used the physical harmfulness of each case as a basis of evaluation of its seriousness. Multiple victims and diffuse harms tended to be cited as reasons for regarding an incident as serious, and the potential of the case to have resulted in much more harmful consequences also affected its perceived seriousness, along with the degree to which that risk of harm was avoidable:

*'30 people [were killed] but it could have just as easily been 300 people because...with a train, you don't know what's going to happen, when you get on and that door shuts until the next station you can't get off. There's no escape.'* (R5: 375)

While the degree of harm was important in determining seriousness perceptions, it did not exert the same degree of influence as the qualitative character of the incidents, underlining the degree of deliberation that underpinned these public judgements.

Physical harms acted as indicators of underlying blameworthiness rather than reasons for blame *per se*:

*'They knew they had that responsibility and they completely neglected it...five crashes that didn't kill anyone and it took a sixth time that did take lives for them to twig that something was wrong...'* (R2: 410)

The two cases which received the lowest seriousness ratings were cases 5 and 6, both of which involved circumstances that suggested a degree of personal risk-taking; in case 5, the worker was driving a vehicle in an unsafe manner, and in case 6, the worker was not wearing protective equipment. The notion of contributory victim responsibility was influential in reducing seriousness ratings:

*'I think he has some responsibility for that which makes it less of a shock to the system than the others, [where] the poor people had no say.'* (case 5; R39: 191)

*'I don't want to sound horrible but I'd put it at about an 8 [seriousness scale] because I put more blame on the victim for not protecting himself enough.'* (case 6; R59: 223)

The seriousness ratings given for the cases discussed also point to the effect that the relative ambiguity and complexity of WRFs have upon public evaluations. The cases receiving the highest and lowest seriousness ratings were, in many ways, the most straightforward to comprehend, involved the least causal complexity, and were easiest to relate to the actions of a specific individual. This was mirrored in a marked preference for direct criminal sanctioning (including manslaughter liability) against individual directors perceived to be responsible in the most serious cases, and for less support for sanctioning in the cases where some contributory negligence on the victim's part was perceived. The cases involving systemic failures (cases 1 and 2, which occurred within large corporations) fell between the two in terms of perceived seriousness, and resulted in muted support for the imposition of criminal sanctions.

The sanctioning preferences most commonly expressed by respondents were for the prosecution and fining of the corporate bodies involved under health and safety law. This was particularly true in relation to the systemic failures of cases 1 and 2, where this was seen as the sole appropriate outcome, perhaps given the diffuse and embedded causes of those incidents. The preferences expressed in relation to the other cases were for this corporate sanctioning to be accompanied by manslaughter charges against specified managers or directors who were seen as bearing a high degree of personal responsibility. The only exception to this was case 5, where the individual defendant and the corporate body were indistinguishable. Terms of imprisonment were generally seen as appropriate in these cases, although there was relatively little consensus or certainty expressed over how long these should be. This data is not easily reducible to scores on a single scale, such as *'number of months imprisonment'*, because all the vignettes featured more than one potential defendant (individual and organisational offenders). In addition, there are multiple charging (manslaughter or HSWA 1974) and sentencing options available (imprisonment, fines, probation, publicity sanctions) within this

sphere, and so the data is much more open-ended than other studies of sentencing practice might allow. The question of who was perceived to be culpable, and how that culpability was understood, was more central to the investigation undertaken, and provides the main focus of this paper.

*i) Punitiveness as a Desire for Change*

The predominant factor informing the extent to which respondents supported the imposition of 'punitive' liability following WRFs was the perceived degree to which that response might prevent future fatalities. Additionally, support for the use of criminal sanctioning was motivated by a desire to alter future behaviour through deterrence or a change in the future behaviour of the offender or company as a whole:

*'I would be more concerned about making sure that the other employees were safe and that it didn't occur again, rather than punishing him.'* (R38: 212)

This statement summarises many of the most prominent themes to emerge in relation to attitudes to punishment; public attitudes are much more future-oriented than accounts of the punitive public might suggest, and tend to be motivated by an instrumental desire to bring about positive change, rather than for retribution. Attitudes were also deliberative, resulting from a process of serious reflection and a genuine concern over determining the best and most beneficial course of action. This was a common narrative which weighed on respondents' minds:

*'It's weighing it all up...the other people in the community, other jobs.'* (R7: 373)

The respondents' statements clearly evidence the type of deliberative judgments and processes discussed by Hough (1996) and others (Green 2006; Hutton 2005). It is clear that many had considered their approaches and had weighed up their instrumental goals against the intuitive appeal of a harsher or more emotive approach, before determining the most appropriate course of action:

*'The law does it job, but...I think everyone likes to see harsher sentences for people who've done stuff, but that's not for people to decide, is it?'* (R39: 282)

The goal-driven nature of preferred approaches to punishment and blameworthiness mean that it is hard to characterise the attitudes of respondents as genuinely 'punitive' in nature. By placing the emphasis upon the future effects of punishment, respondents demonstrated that an '*emotive and ostentatious*' public punitiveness (Pratt 2002), in the sense of viewing the process of punishment as valuable in itself, does not underpin the support expressed for criminal sanctioning, underlining Matthews' point that preferences for more severe punishment are not necessarily punitive (2005: 179). Respondents regarded punishment as providing an opportunity for individuals to reflect on their actions, learn lessons about their failings, and become reformed as a result. Imprisonment in particular was seen as a rehabilitative experience that respondents thought could have a significant impact on offenders while also acting as a deterrent:

*'I think if you go to prison you need to learn why you're in prison, you need to learn by your mistakes. And equally others within this type of institution also need to know you can't run a business slapdash.'* (R14: 187)

Yet the act of imprisonment or punishment was not given support in and of itself; the positive opportunity that punishment gives for an offender to be *"sat in his cell thinking about what he's done and...come out with a different frame of mind"* (R2: 395) is undercut by the negative outcomes that are also associated with criminal sanctioning, such as the detrimental effects upon the offender and the modest rehabilitative potential of imprisonment. Respondents often struggled when weighing up these factors:

*'I think maybe a stint in prison. A shock to others, to show other companies that you cannot run a business like this...but I don't really know because...what happens after he gets out of prison...he's got family as well. It's very, very difficult.'* (R14: 183)

Punishment is viewed as a means to an end, rather than an end in itself, and as such, it is engaged in reluctantly and with reservation, rather than enthusiastically or uncritically.

## *ii) Understanding the Criminality of a Corporate body*

A key theme which framed respondents' narratives about punishment was the corporate nature of the cases. This impacted on their ability to conceptualise a WRF as a crime and apply a criminal sentence (in much the same way as the criminal law struggles to do). As mentioned previously, the cases where culpability could be most directly associated with the actions of an individual were most likely to lead to a definitive judgement about seriousness and punishment:

*'This feels more serious because it's person to person, it's not a faceless corporation that's at fault.'* (R4: 325)

Many respondents struggled with the notion of a corporate body being described as 'criminal' in its own right, and found it difficult to detach corporate liability from the actions of specific individuals. While a smaller number of respondents were willing to attach liability to the corporate body;

*'It's going to be very difficult to pinpoint an individual with anything like this because most of them work within areas. You have different men who do different things – no, it's the corporation.'* (R5: 127)

For the majority the liability of the corporate body arose solely as an adjunct to the liability of an individual employee or director, and could only be conceptualised in terms of the individuals who represented it or acted on its behalf:

*'I would see him as the company. Because...he needs to get a job done and he's going to get it done however he needs to.'* (R4: 341)

This difficulty reflects the inherently problematic notion of corporate personhood, and suggests that the maxim *'societas delinquere non potest'*,<sup>2</sup> which underpins the traditional

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<sup>2</sup> "A legal entity (society) cannot be blameworthy."

European civil-law approach to corporate liability (Weigend 2008), may have some instinctive basis in public perceptions, in that ordinary criminal law categorisations do not apply straightforwardly to corporations. That said, respondents were clear that they felt it appropriate for the corporate actor to be the focus of sanctioning where blameworthiness was established, but grounded corporate blameworthiness via individual action.

The struggle to determine the criminal status of the corporate bodies involved led to the perception, widely expressed, that a two-tier system of legal responsibility existed in order to differentiate individual and corporate criminal liability:

*'My idea of a crime is somebody who is breaking the law. I know this is breaking the law, but it's a different kind of law. I always think of crime as breaking the law against the police and stuff.'* (R26: 277)

Purely corporate actions which breached the law were often explicitly differentiated in terms of their quality and nature from 'regular' crimes. This reflected, firstly, the idea that a corporate body could not commit a crime in the same way as an individual person, and secondly, that the law which regulated corporate activity was different, and of lesser status, than that applying to individuals:

*'It's...an accident because it isn't actually against the law. There isn't a law that says you've got to check these bolts, there's only a Health and Safety thing.'* (R12: 204)

The relatively ambivalent attitudes expressed by respondents in relation to corporate liability were reflective of a lack of an appropriate conceptual framework to apply in making sense of corporate actions, reflecting a 'crippled epistemology' of unfamiliarity with the law and health and safety issues. It is important to note that the perception that a lesser status existed was not necessarily an endorsement of that status (Holtfreter *et al.* 2008); many respondents expressed dissatisfaction with the ability of corporations to avoid criminal liability.

### *iii) The Role of Motive in Framing Liability*

The perceived lack of intentionality involved in a WRF was often used by respondents as a primary conceptual frame for the interpretation and evaluation of the cases discussed, and this often reduced perceived corporate blameworthiness. Respondents often maintained that for an act to be a crime it must have been intentional, and the lack of individual motive was cited as a reason for not regarding a WRF as a crime:

*'I don't think it can be a criminal offence; they didn't do anything maliciously and I doubt there was any intent.'* (R4: 246)

The inherent difficulty respondents encountered with 'motiveless' WRFs are illustrated by the frequency with which respondents compared these cases to acts which they did view as crimes. These alternative scenarios invariably involved pre-meditated violent acts where intentionality was more easily attributed and where liability could be understood, in contrast to WRFs:

*'It wasn't like he picked up a knife and stabbed somebody; he killed them through his own negligence and greed. So he still had blood on his hands...'* (R31: 180)

This is despite the fact that there are many offences in the English criminal law which do not require proof of motive or advertence (such as strict liability and negligence-based offences). Indeed, when asked to compare WRFs with a better-known offence of inadvertent liability (Causing death by careless driving while under the influence of drink), respondents were more comfortable identifying the driver's wrongdoing in the absence of motive than they were in relation to WRFs:

*'There's an issue of rules being broken; drink driving, that's a law being broken.'* (R51: 40)

Rather than constituting a prerequisite for culpability that precludes liability in cases of inadvertent fault, motive seems to be used as a heuristic or frame that is used to make sense of a defendant's actions. While this heuristic is not required where the actions and context are understood, such as drink-driving cases, it is utilised in the less familiar sphere of corporate liability. This suggests the existence of information deficits here; levels of knowledge about health and safety regulation and the new offence were relatively low. The failure of the legal system to contribute to a meaningful public dialogue about corporate wrongdoing underpins the difficulties encountered when individuals interpret WRFs.

#### *iv) The Difficulty of Categorising Offences*

As well as reflecting uncertainty about whether WRFs constitute crimes, and whether inadvertent conduct should be liable, respondents' attitudes and evaluations of the cases discussed suggest a process of self-reflection and internal debate. For some respondents, particularly those who expressed more punitive attitudes, this issue was related to their broader experiences and worldview:

*'He's killed somebody and the law are trying to protect him...they should never see the light of day again. That's my personal opinion, I know...my wife sees it everyday in Court.'* (R34: 258)

These are what Judd and Krosnick (1989) call 'personally important attitudes', relating specific cases to an underlying schema of information. Some respondents coupled this with the recognition that their attitudes were not necessarily representative:

*'Not six months in prison and you're free to do it again...maybe I'm a bit harder than some people are on this sort of thing.'* (R44: 163)

For others, however, having some knowledge of the area meant setting aside their own views and placing themselves in the judge's position, limiting their answer to what they thought the verdict *would* have been, rather than what it *should* have been:

*'I would love them to go to prison, but I know if I was the Judge or the Magistrate...I don't think you would be able to send them to prison.'* (R60: 229)

While those who held more positive views of punishment in general saw the absence of

motive and the shortcomings of the law as factors that ran contrary to their general outlook, those who did not see harsher punishment as appropriate in relation to WRFs struggled to reconcile this with their desire for a stronger legal response:

*'You know, I'm not all in favour of prisons all the time for things like this, but sometimes you have to send a message out.'* (R26: 293)

For many respondents, the reliance on a coercive approach to the cases discussed prompted a good deal of discomfort and hesitancy, even though this was in relation to ostensibly constructive aspirations:

*'Yes a punishment I suppose, but also for them to realise how something like that shouldn't happen and they should be more careful in the future...just punishment...it's such an awful word isn't it – punishment?'* (R9: 221)

In addition, individuals who expressed sceptical attitudes in relation to health and safety regulation also had to reconcile these views with their desire for effective accountability following WRFs. Some of the respondents seemed to surprise themselves in this:

*'As much as I hate saying that because it's this whole wrapping up in cotton wool again...I just think we're slightly behind on a lot of things.'* (R14: 327)

These acts of deliberative engagement demonstrate the non-punitive desire for accountability that characterise public attitudes towards WRFs, and show that the processes of forming these attitudes involve significant thought and are less superficial than might be suggested. It is also clear that deliberation and the expression of non-punitive views are closely related; the difficulty in evaluating corporate criminal liability is not compatible with the provision of easy answers.



## Conclusions

This investigation has found that public attitudes in relation to WRFs are primarily non-punitive in nature. The notion of criminalisation is regarded as problematic, and punishment is endorsed reluctantly. The relationship between corporate criminality and individual modes of fault attribution highlights the knowledge gap in this area, suggesting that the emphasis on motive constitutes a 'sense-making' exercise and an effort to deal with corporate liability in familiar terms. The framing of WRFs in this way reflects deficiencies in the law as well as respondents' knowledge; references to morally expressive concepts such as 'motive' perhaps demonstrate the inability of regulatory frameworks to accommodate these concerns. A recurrent criticism of health and safety law is that it lacks a clear moral basis, treating offences as technical transgressions rather than matters of criminal wrongfulness (Clarkson 2008: 85; Tombs and Whyte 2007: 81; Wells 2001: 8). Although not punitive in outlook, respondents did regard offenders in moral terms, and so references to motive and individual liability perhaps signal a wider dissatisfaction with the law's inability to censure corporate wrongdoing. Punishment is viewed as a way of validating the 'wrongfulness' involved in serious cases, as well as securing improvements in future conduct. What is expressed is a desire for moral accountability, rather than for punishment.

The implications of these findings extend beyond the immediate context of the corporate manslaughter reforms in the UK. Notions of corporate criminal liability have been the subject of discussion in other European jurisdictions, and the findings described here can inform the ways in which processes of legal reform are approached. Particularly, the notion that the criminal law is valued for its function as a route to securing *moral* accountability, rather than because of its 'punitive' effects and character, suggests that the introduction of explicitly criminal offences such as corporate manslaughter may constitute an attempt to plug a gap in the ability of systems of regulatory law to fulfil this role. It may be that in some jurisdictions an orthodox regulatory response that embodies the messages and values that the public are seeking will provide a more suitable mechanism for dealing with such cases. There is a need to consider the degree to which social attitudes towards regulation in different societies make 'criminalisation' necessary or not, and to identify why some jurisdictions manage to survive without corporate criminal liability. If regulation is viewed as more than '*only a Health and Safety thing*', it may provide an alternative way to fulfil public expectations, without the associated appearance of 'penal populism'. Stronger and more meaningful regulation, rather than criminalisation, seems to be what the public prefers.

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<sup>1</sup> A specific offence was introduced in the Australian Capital Territory in 2004 (Sarre and Richards 2005).

<sup>2</sup> Involving Cotswold Geotechnical Holdings, a geological surveyors; *The Times*, 23/04/2009, at <http://business.timesonline.co.uk/tol/business/law/article6155777.ece>.

<sup>3</sup> Based on *R v. Thames Trains Ltd*. (2004), Unreported, Central Criminal Court, 05/04/2004.

<sup>4</sup> HSE (2001), *The explosion of No 5 Blast Furnace, Corus UK Ltd, Port Talbot*, Ref no: WEB34.

<sup>5</sup> *OLL v. Secretary of State for Transport* [1997] 3 All E.R. 897.

<sup>6</sup> *R v. DPP and others ex parte Jones* (2000), Q.B.D. 23/03/2000, Ref: CO/3008/99.

<sup>7</sup> *R v. Alistair Henry Crow* (2001) Court of Appeal 21/12/01.

<sup>8</sup> *R v. Jackson Transport (Ossett) Ltd*. (1996), Unreported, *Health and Safety at Work* (1996) 18/11/1996: 4.