

Can a corporation, an artificial legal entity, be a criminal?

In an op ed. in this morning's [NY Times](#), [David Uhlmann](#) argues that BP deserves criminal sanctions:

Prosecutors must examine all witness statements, internal documents and any physical evidence that remains after the explosion. But if the news articles are accurate, the Justice Department should bring criminal charges against BP, and possibly Transocean and Halliburton, for violations of the Clean Water Act, the Migratory Bird Treaty Act and the Refuse Act — the same charges brought in the Exxon Valdez case. Exxon ultimately paid a criminal fine of \$125 million, the largest ever for an environmental crime.

No doubt we'll be learning much more about the technical issues involved in such a criminal prosecution, but there's also a larger question: should corporations be subject to criminal prosecution?

Many will immediately say "yes, of course a corporation should be criminal," but the answer is not so clear. As Andrew Jackson is reputed to have said, a corporation has "no soul to damn and no body to kick." After all, corporations aren't people. That's why it was so controversial when the Supreme Court held in [Citizens United](#) that that corporations have a First Amendment right to participate in political campaigns. Notable legal scholars have questioned the idea of corporate criminal liability on similar grounds. In the end, isn't a corporation merely a collection of shareholders and employees, most of whom are completely innocent of any wrongdoing?

Based on what we know so far — which of course may need to be revised as more facts emerged — the BP case seems to be a good illustration of why corporation criminal liability *does* make sense. It appears that BP has had a culture of disregard for safety and environmental harm that permeated its operations. Corporations aren't just collections of people; they have their own cultures, norms, and institutional practices. A relatively small group of people may have been responsible for the immediate actions that caused the disaster, but the corporation as a whole may have been responsible for the incentives and practices that led to those actions.

Criminal law provides a way for society to condemn the larger corporate culture and to pressure corporations to become better institutions. In the short run, the burden may fall

on shareholders to pay the resulting fines — but those same shareholders benefited from the profits BP garnered by cutting corners. *If* the facts are as we now believe, criminal liability would be quite appropriate.