

Getting away with corporate murder

Blood in the Bank: Social and Legal Aspects of Death at Work by Gary Slapper

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Introduction by Noam Chomsky, published by Ashgate Publishing in 1999 as part of the Advances in Criminology series, ISBN 1-84014-079-8, £50.00, 284 pp.

The following review was submitted by WSWs reader Ian Martin.

This newly published work by the director of the law programme at the Open University is an important contribution to the discussion of how society treats the problem of work-related fatalities. It places these “accidents”, as they are often misleadingly called, in a social and historical context. Most attention is given to the English legal system, but similar issues arise throughout the world.

We are far more likely to be killed in the course of our work, or as a hapless customer of a commercial venture, than at the hands of criminals in society at large. Using the 1989 figures for Criminal Statistics from the Home Office, we can see 576 “personal homicides” compared to 514 killed at work. These latter figures are the Health and Safety Executive's (HSE) and do not include those who die on the roads in the course of their work, or are the victims of exposure to harmful substances such as asbestos, which take their toll over many years.

The HSE acknowledges that a high proportion of these fatalities could have been prevented by fairly basic precautions. Dr. Slapper argues that many deaths warranted investigation as *prima facie* cases of manslaughter. In practice, this does not happen and much suffering goes without public acknowledgement, while for the company responsible it is back to “business as usual”.

There have been only a few successful convictions of companies for manslaughter in Britain. The best known is probably that of OLL Ltd. of Lyme Regis. The company and its Managing Director were convicted in 1994 in connection with the deaths of four children on a canoeing course. The tragedy was highly publicised and the case soon went to court. The evidence of gross negligence over a long period was compelling. The site manager most closely involved was not convicted. The significance of the case is, first, that the company, as well as an individual, was prosecuted for manslaughter, and second, that attention was paid to management structures and policies and the failure to respond to warnings from junior staff.

Another case of a company successfully prosecuted for manslaughter hinged on there being an owner or senior manager who was also directly operationally responsible for the incident. In one case a worker crumbing plastic at the end of a 12-hour shift was pulled into a mincing machine. The machine was guarded by a lid, with a switch to prevent operation of the mincer when the lid was raised to feed in plastic. This had been deliberately wired out (Holt Bros., 1990).

In 1996, the firm of Jackson Transport (Osset) was convicted of manslaughter, as was one director who was imprisoned for 12 months. A worker died after being sprayed in the face with toxic chemicals while cleaning a tanker. The Crown Prosecution Service handled the case, with the HSE taking on the breaches of Health and Safety regulations involved.

The modest progress of recent years is overshadowed by the spectacular collapse in 1990 of the prosecution of P&O European Ferries after the *Herald of Free Enterprise* sailed from Zeebrugge with its bow-doors open and sank, with the loss of 192 lives. The case cost an estimated £10 million and failed because no single director could be identified as sufficiently culpable to be convicted in their own right. Moreover, it was ruled that a series of faults by different individuals could not be aggregated to establish a case of manslaughter against the company.

Crime is what society, through the courts or parliament, defines as such. Usually it involves both a wrongful act or omission (*actus rea*) and a guilty mind (*mens rea*). In modern times a company is treated as a person for legal reasons, but it was not always so, as Slapper explains. This is not a problem when dealing with its financial liabilities, including fines for infringing the safety laws, but beyond that the concept of punishment becomes elusive. The company, as was once said, has “no soul to damn, no body to kick”. There is nowhere other than in individual people to look for the “guilty mind”, and only if a guilty individual is a “controlling mind” can the company be considered guilty. Since it is unlikely ever to be acceptable to imprison a group of people for the crime of one, any penalties are likely to be financial or symbolic.

Even the definition of manslaughter in British law is problematic, and in a state of flux, as Slapper explains. This is due mainly to judges reinterpreting the law, and a Law Commission review could, in time, produce a change in the law. One possible development could be a new offence of “corporate killing” based on “management failure”. This would be independent of the culpability of individuals and would rely more on how a system of management contributed to a fatality. This could cover many of the cases described by Slapper.

The general duties of the Health and Safety at Work Act require “safe working systems”, but make no distinction between cases leading to death and those with lesser consequences. At present, the main charge to consider is involuntary manslaughter (i.e., without malice) by gross negligence. This involves knowingly exposing the victim to a real risk of death which a normally prudent person could be expected to recognise.

It is clear from this book that the agencies charged with enforcing

the law are slow to recognise the possibility that such charges might be relevant, and that in general the legal system has failed to protect workers.

Very often it is difficult for the public, including work-mates of the victims or those with a professional interest in safety, to know what actually happened in an incident, or why. Reports on accident investigations do not usually enter the public domain, and the only way to gather information is to attend court hearings or follow press coverage. The author has taken a step towards remedying this problem by conducting interviews with enforcement officers, coroners and their officers, pathologists, lawyers and police involved in 40 cases. The survey gives a valuable insight into the investigative process, and supports the general thrust of the book.

A fairly typical outline would be as follows. Following a death at work, the police attend as representatives of the Coroner in order to ascertain whether foul play was involved. They rarely look beyond this narrow brief to collect evidence of negligent conduct by the company and, since there is no sign of malice or premeditation, there is no apparent crime to justify searching company records. They do not have training to operate in this situation and work on the assumption that everything is in the hands of the HSE. However, the HSE do not always attend and then rarely have time to conduct a full investigation or search for witnesses who may no longer be on site or who fear for their jobs. They have the power to prosecute for breaches of regulations or the general duties of the Health and Safety at Work Act, but as resources are limited only those cases most likely to succeed will be brought. The costs of prosecution are high and must be met from within the HSE's resources. In contrast, fines are often low and frequently regarded as insulting by relatives of the victim.

The Coroner will conduct an inquest to establish the basic details relating to the death and it is possible for a jury to bring a verdict of unlawful killing, covering manslaughter. Usually, the Coroner will discourage this or refuse to allow the jury to consider it; even where there is evidence of negligence. Lawyers acting for relatives rarely press for an unlawful killing verdict, as this could complicate efforts to obtain compensation through a civil action. Many lawyers do not understand the procedures at a Coroner's Inquest. The verdict is mainly symbolic, but it is some solace to the victim's family to feel that an injustice has been recognised, and could provide a cue for further investigation by the police.

The all-pervading assumption is that people who run companies are pursuing a legitimate activity for the public good. If they make mistakes it is not through malice and it does no good to treat them as criminals. Slapper traces this attitude through the generations. From the early Factory Inspectors to the Robens Report, which gave rise to the HSE, the emphasis in enforcement has been on working *with* industry to secure improvements—negotiated compliance—rather than using the available powers to compel compliance. Business folk, moreover, do not generally fit the legal authorities' profile of criminals. An Inspector who visits business premises and sees well-appointed offices and managers in suits is unlikely to see them as people whose reckless pursuit of profit has caused death and suffering.

The establishment sees crimes as being committed mainly by the lower classes and the criminal process is about social control as much as it is about justice. This has a long antecedence, and the book reviews some of the historical and theoretical literature on the nature of law, including some Marxist sources. Marx and Engels are quoted to good effect. These ideas need to be developed in the modern context, but there is a danger of merely using them eclectically to

illustrate a particular point rather than exposing fully the underlying nature of the society that creates laws.

At the heart of the matter examined by the book is the question of how to advance workers' interests. The author acknowledges the existence of non-market alternatives to capitalism, but does not elaborate. We all know that capitalism kills, and *Blood in the Bank* goes a long way to explaining how. Much of the evidence presented cries out for reforms. Even relatively modest measures would probably make a big difference to enforcement—revised instructions for police officers, inspectors and coroners, and more resources for the HSE.

Throughout the book the obvious conclusion to be drawn is that resources need to be increased and procedures improved so that there will be more convictions. In his closing pages the author takes a different approach, notes some of the limitations of the legal proposals, and points to the inadequacy of piecemeal reform. He criticises W.G. Carson (*The Other Price of Britain's Oil*, Martin Robertson, Edinburgh, 1982), who saw the root of the problem in the political economy of capitalism. Carson had despaired of “counselling changes which stop short of basic alterations to the entire social and economic system in which we live,” only to add that it would be morally and intellectually irresponsible not to have a policy for running capitalism in the meantime. Slapper points out that if every opponent of capital adopted that approach there would be no end to it.

It seems to me that the problem is not so much whether to advocate reforms, so much as how to do so. Law is the product of social relations, so the meaningful changes require the conscious intervention of workers to challenge these relations. Demanding the raising of safety standards and effective enforcement of them must be seen as part of a struggle to rekindle an independent spirit amongst working people. It must involve challenging the partnership between unions and management and the assumption that sacrifices are needed in order to make your employer competitive against its rivals.

After a century of formal mass democracy and notional legal equality, the working class is still the disadvantaged majority. It is not just that the legal system is painfully slow to adjust to changes in society, or that wealth just stubbornly refuses to redistribute itself. The commodity status of labour power and the incessant demands of the process of capital accumulation call for ever-more dramatic risk-taking and themselves generate new hazards.

The real world of political economy sets the limits to democracy and equality. Debate on Health and Safety needs to take place in such a setting. The issues raised by this book are rarely aired among those with a professional interest in safety, whose main concern is advising managers on compliance, or assisting those involved in compensation cases. The more the professionals are immersed in the details, the more workers are induced to rely on the experts. A more critical view of the whole safety industry ought to be fostered among workers.



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