

Expanding the Responsible Corporate Officer Doctrine: Bridging the Gap Between Corporations and Liability for Criminal Homicide

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ABSTRACT

Federal and state law increasingly treats corporations as human beings, imparting to them the right to speak, hold religious beliefs, and participate in the political process. However, corporations' accountability for criminal conduct has not kept pace with the individual rights given to them. Other nations, such as the United Kingdom, Australia, and Canada, have enacted legislation in the last 15 years to address the public outcry against corporate criminal conduct, especially conduct causing homicide. In the United States, prosecutors are hindered in serving justice due to unclear statutes and conflicting legal precedent.

To remedy this problem and enable prosecutors to charge corporations with homicide, this article proposes that judiciaries utilize the Responsible Corporate Officer Doctrine, encompass the initiatives behind public welfare concerns, and expand these policies to the criminal realm. A collaborative implementation and sentencing regime would support deterrence for homicidal conduct within corporations. By holding both the corporation and individuals responsible—civilly and criminally—prosecutors would be able to gain justice for victims and their families.



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I. INTRODUCTION

On April 20, 2010, an explosion in the Deepwater Horizon oil rig in the Gulf of Mexico sent 11 workers to their deaths.¹ When a pipe leaking oil and gas on the ocean floor was finally covered, almost three months later, nearly 3.2 million barrels of oil polluted the Gulf.² The full extent of the explosion's damage to the Gulf Coast, the ocean ecosystem, and impacted communities is still being evaluated.³ In the aftermath, two corporate executives and supervisors were charged in connection with the deaths of the 11 workers.⁴ Prosecutors ultimately failed to hold the executives accountable, as a federal district court determined that the homicide statute being utilized did not apply to the named defendants.⁵ Today, courts and legislatures are moving towards treating corporations as individuals.⁶ However, U.S. criminal law lags far behind holding these entities culpable for conduct that causes homicide.

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1. Ocean Portal Team, *Gulf Oil Spill*, SMITHSONIAN INST. (Apr. 2018), <https://ocean.si.edu/conservation/pollution/gulf-oil-spill>.

2. *Id.*

3. *Id.*

4. Richard Thompson, *Last of Five People Charged in Connection with Deepwater Horizon Disaster Goes on Trial Tuesday*, NEW ORLEANS ADVOC. (Feb. 16, 2016, 5:23 PM), https://www.theadvocate.com/new_orleans/news/business/article_bd2778f5-b0ae-5ba6-b071-768cca448129.html.

5. Aruna Viswanatha, *U.S. Bid to Prosecute BP Staff in Gulf Oil Spill Falls Flat*, WALL STREET J. (Feb. 27, 2016, 5:58 AM), <https://www.wsj.com/articles/u-s-bid-to-prosecute-bp-staff-in-gulf-oil-spill-falls-flat-1456532116>.

6. Laurel J. Harbour & Natalya Y. Johnson, *Can a Corporation Commit Manslaughter? Recent Developments in the United Kingdom and United States*, 73 DEF. COUNS. J. 226, 226 (2006).

Different solutions addressing the gap between criminal liability for homicide and a corporation have been proposed throughout the world.⁷ For example, in 2007, the United Kingdom passed the Corporate Manslaughter and Corporate Homicide Act.⁸ In 2004, Canada proposed an amendment to their criminal code to expand corporate criminal liability with the Westray Bill.⁹ With cases being decided on case-by-case basis, Canada's Westray Bill was needed to "modernize the law to reflect the increasing complexity of corporate structures" in regards to organizations as an entity.¹⁰

This article proposes a way to bridge this gap by utilizing the concept of public welfare through the Responsible Corporate Officer Doctrine ("RCOD"). When edited to match the legislative and judiciary intent, as well as for clarification for prosecutors, the RCOD would be a useful tool in expanding liability and bridging the gap in criminal corporate homicide law.

II. HISTORY OF CORPORATE HOMICIDE PROSECUTIONS

A. Public Outcry Prompts Prosecutions for Corporate Homicide

For more than 100 years, accident cases in the United States have pushed for judiciaries to expand and prosecute corporations responsible for employee or customer-related deaths.¹¹ For example, in 1904, a steamboat was permitted to set sail out of the

7. See, e.g., Alexandra Dobson, *The Corporate Manslaughter and Corporate Homicide Act 2007: A Symbolic Response*, 17 ASIA PAC. L. REV. 185, 192 (2009).

8. Corporate Manslaughter and Corporate Homicide Act 2007, c. 19, <https://www.legislation.gov.uk/ukpga/2007/19/introduction>.

9. *Criminal Liability of Organizations: A Plain Language Guide to Bill C-45*, CANADA DEP'T OF JUST. 2 (2003), <https://www.justice.gc.ca/eng/rp-pr/other-autre/c45/c45.pdf>; *Westray Bill (Bill C-45) – Overview*, CCOHS, <https://www.ccohs.ca/oshanswers/legisl/billc45.html> (last updated Dec. 1, 2017).

10. CANADA DEP'T OF JUST., *supra* note 9, at 4.

11. Kathleen F. Brickley, *Death in the Workplace: Corporate Liability for Criminal Homicide*, 2 NOTRE DAME J. L. ETHICS & PUB. POL'Y 753, 756–57 (1986).

New York Harbor.¹² While sailing down the East River, a fire commenced and caused 900 people to drown.¹³ Corporate managers were indicted on federal manslaughter charges, sparking a *respondeat superior* approach to future prosecutions of these types of cases.¹⁴

Public outcry for reformation in the legislature to hold corporations responsible was prominent in the 1970s-80s.¹⁵ Prosecutors around the nation began to utilize amended state statutes to expand criminal liability for corporations.¹⁶ In *State v. Ford Motor Co.*, an indictment by the trial court was sustained for corporate reckless homicide, but later acquitted.¹⁷ Although this result further displays critics' view that these types of cases should be settled by civil remedies, the indictments proved a possible strategy for prosecutors to assign liability under a Public Welfare Doctrine approach.¹⁸

In 2010, a deadly explosion ripped through coal mines in West Virginia.¹⁹ During the course of the investigation in this case, it was uncovered that Performance Coal Co. had been cited by federal officials hundreds of times for safety violations, some on the very faults causing the explosion.²⁰ Therefore, the corporation *knowingly* failed to implement preventative measures that negligently caused 29 deaths and massive

12. United States v. Van Schaick, 134 F. 592, 594 (C.C. S.D.N.Y 1904).

13. *Id.*

14. *Id.*; see David J. Reilly, *Murder, Inc.: The Criminal Liability of Corporations for Homicide*, 18 SETON HALL L. REV. 378 (1988).

15. James W. Harlow, Note, *Corporate Criminal Liability for Homicide: A Statutory Framework*, 61 DUKE L. J. 123, 131 (2011).

16. *Id.* at 132.

17. Ann Gillespie Pietrick, *Punitive Damages in Mass Tort Litigation - Froud v. Celotex Corp.*, 32 DEPAUL L. REV. 457, 477 n.128 (1983) (citing *Indiana v. Ford Motor Co.*, No. 5324 (Elkhart Super. Ct. Feb. 2, 1979)).

18. *See id.* at 477-78.

19. J. DAVID MCATEER ET AL., GOVERNOR'S INDEPENDENT INVESTIGATION PANEL, UPPER BIG BRANCH: REPORT TO THE GOVERNOR 16, 23 (2011), <https://media.npr.org/documents/2011/may/giip-massey-report.pdf>.

20. *Id.* at 53-55.

environmental destruction.²¹ Although executives were convicted of safety violation offenses, no one was convicted for any homicide-related charges.²²

B. Problem Statement

With limited and conflicting precedent, prosecutors' ability to indict corporations and their executives on criminal homicide charges is highly controlled.²³ Critics who oppose assigning homicide liability to corporations mention several different arguments, including issues with proving a culpable mental state, a lack of consistent precedent, and whether or not homicide liability would have a deterrence effect at all.²⁴ On the other hand, public policy and a report by former Attorney General, Sally Yates, support holding corporations and their boards personally accountable for criminal actions.²⁵ Unfortunately, criminal liability is rarely assessed even after human life is lost as a result of a corporation's behavior. Many people see corporate officers get away with homicide by settling civil cases. In criminal cases, corporations and its officers routinely rely on: (1) cautious and conflicting legal precedence, (2) unclear statutes, and (3) underfunded prosecutors being held back from pursuing justice.²⁶ This article sets out to suggest solutions for the first and second points.²⁷

21. *Id.* at 108.

22. Derek Baxter, *Mine Safety Enforcement Provisions*, MINE SAFETY & HEALTH L. SPECIAL INST., <http://www.emlf.org/clientuploads/images/safety/Criminal%20Enforcement.pptx.pdf> (last visited Nov. 10, 2018).

23. Alana L. Helverson, *Can a Corporation Commit Murder?*, 64 WASH. U. L. REV. 967 (1986).

24. *Id.* at 968–72.

25. Sally Quillian Yates, *Individual Accountability for Corporate Wrongdoing*, U.S. DEP'T OF JUST. 1 (Sept. 9, 2015), <https://www.justice.gov/archives/dag/file/769036/download>.

26. Harlow, *supra* note 15, at 144–45.

27. Overworked and underfunded prosecutors' offices would require a separate analysis and path to a viable solution.

III. PROPOSED SOLUTIONS

A. *Use of Civil Means and OSHA to Force Corporations to Self-Regulate*

For critics who believe that prior precedents bar assigning homicide charges to a corporation, there are other ways to hold corporations liable. There are certain civil remedies, like enforcing OSHA regulations, that allow corporate entities to be regulated.²⁸ OSHA is a Congressionally entrusted agency that creates regulations for workplace safety.²⁹ OSHA establishes both civil fines and minimal criminal penalties for certain workplace violations, so some argue that giving OSHA a larger annual budget would allow OSHA to enforce more penalties.³⁰

However, the fund-OSHA argument fails because small fines and limited maximum jail sentences for “willful violation[s] causing death to [an] employee” do not encourage self-policing or engender deterrence.³¹ Corporations, if prosecuted, will simply pay fines or have negligent officers serve minimal jail time and continue business as usual.

B. *Enact a Corporate Homicide Statute*

Another proposed solution to hindrance of prosecuting corporations is a corporate homicide statute.³² Other nations like the United Kingdom have found success in

28. See John E. Stoner, *Corporate Criminal Liability for Homicide: Can the Criminal Law Control Corporate Behavior?*, 38 SW. L. J. 1275, 1292–93 (Feb. 1985); see also Carol L. Bros, *A Fresh Assault on the Hazardous Workplace: Corporate Homicide Liability for Workplace Fatalities in Minnesota*, 15 WM. MITCHELL L. REV. 287 (1989).

29. Harlow, *supra* note 15, at 131 n.52.

30. *Id.* at 139 n.98.

31. 29 U.S.C. § 666(e) (1990) (stating punishment for corporations willfully violating OSHA standards that result in an employee death has a maximum fine of only \$10,000 and/or a maximum of six months in prison; repeat violations carry a \$20,000 fine or one year in prison punishment).

32. Harlow, *supra* note 15, at 153.

assigning responsibility in corporate homicide cases through statutes.³³ In a 2011 article on corporate homicide liability, Duke University law student James Harlow proposed a U.S. corporate homicide statute to address the current barriers in criminal law.³⁴ That model statute set out to enact two different degrees of corporate homicide and establish attributed responsibility based on “a middle ground between *respondeat superior* and the [Model Penal Code § 2.07].”³⁵

Perhaps one of the greatest difficulties with a corporate homicide statute, and why Harlow’s proposed statute would be unsuccessful, is mentioned in the first line of his proposed statute: “An organization is guilty of corporate homicide when it knowingly, recklessly, or negligently causes the death of a human being.”³⁶ This requires the corporation to possess a culpable mental state. In practice, prosecutors would have an extremely difficult time proving the culpable mental state of such high-ranking employees, not to mention then convincing lay jury members to assign that mental state to a corporation.³⁷ As far as assigning homicide liability, the foundation is already within legal precedence; the foundation thus lies within the Responsible Corporate Officer Doctrine.

C. Using the RCOD to Create Corporate Homicide Liability

Although much of early history laid precedent that is contrary to charging corporations with crimes, courts today generally hold that corporations can be liable to

33. *Id.* at 151 (the U.K.’s Corporate Manslaughter and Corporate Homicide Act 2007 requires “(1) the corporation’s conduct must fall far below what is expected and that (2) senior management must play a substantial role in the breach.”).

34. *Id.* at 153–63.

35. *Id.* at 155–59 (emphasis added). Model Penal Code § 2.07 defines how corporations may be liable for an offense under a breach of duty theory. *See* MODEL PENAL CODE § 2.07 (2018).

36. Harlow, *supra* note 15, at 154.

37. George R. Skupski, *The Senior Management Mens Rea: Another Stab at a Workable Integration of Organizational Culpability into Corporate Criminal Liability*, 62 CASE W. RES. L. REV. 263, 268 (2011).

charges based on “violating statutory or common-law dut[ies].”³⁸ In 2015, former Attorney General, Sally Yates, fashioned a memorandum pushing for culpability and liability to be placed on corporate executives.³⁹ Although Yates’s arguments have only been relied on in the past to address FDA and healthcare violations,⁴⁰ its basic principles can still be applied in criminal law cases as well.

i. The Responsible Corporate Officer Doctrine

The RCO doctrine originated as a criminal doctrine as a result of *United States v. Dotterweich*.⁴¹ In *Dotterweich*, as a result of contaminated and misbranded drugs, corporate officers were prosecuted under the Federal Food, Drug, and Cosmetic Act.⁴² The Supreme Court laid foundation for a strict liability crime which “was necessary to hold a corporate officer responsible for sharing in the furtherance of the transaction”⁴³ and would serve to protect the public welfare.⁴⁴ For the next two decades, prosecutors utilized the RCO doctrine to charge corporate officers without proof of a culpable mental state.⁴⁵

The RCO doctrine expanded into civil liability in 1975 when the Supreme Court in *United States v. Park* held, “the defendant had, by reason of his position in the corporation, responsibility and authority either to prevent in the first instance, or promptly to correct, the violation complained of, and that he failed to do so.”⁴⁶ The *Park*

38. Nora A. Uehlein, *Corporation’s Criminal Liability for Homicide*, 45 A.L.R. 4TH 1021 § 2(a) (1986).

39. Yates, *supra* note 25, at 4.

40. Laura Kolesar Gura, *Yates Memo’s Influence Felt in DOJ Health Care Enforcement*, JONES DAY (Aug. 2017), <https://www.jonesday.com/Yates-Memos-Influence-Felt-in-DOJ-Health-Care-Enforcement-08-01-2017/>.

41. *United States v. Dotterweich*, 320 U.S. 277, 278 (1943).

42. *Id.*

43. Jane Kim, *Staying Responsible Within the Healthcare Industry in the Era of Responsible Corporate Officer Doctrine*, 14 IND. HEALTH L. REV. 129, 136 (2017).

44. *Dotterweich*, 320 U.S. at 284.

45. Kim, *supra* note 43, at 136.

46. *United States v. Park*, 421 U.S. 658, 673–74 (1975).

rationale continues to be followed by prosecutors today, now encompassing “any managing employee.”⁴⁷ Under today’s standards, a “managing employee”

(1) must be in a position of responsibility which allows the person to influence corporate policies or activities; (2) there must be a nexus between the individual’s position and the violation in question such that the individual could have influenced the corporate actions which constituted the violations; and (3) the individual’s actions or inactions facilitated the violations.⁴⁸

Prosecutors intend to continue pushing the scope of the RCOD to encompass more corporate wrongdoing.⁴⁹ A push towards holding more corporations liable can be seen in the Yates Memorandum.⁵⁰

ii. The Yates Memo and a Push for Corporate Prosecutions

In 2015, then “Deputy Attorney General Sally Yates issued a memorandum titled ‘Individual Accountability for Corporate Wrongdoing.’”⁵¹ In this memo, Yates emphasized one of the most efficient ways to prevent corporate wrongdoing “is to hold individuals accountable.”⁵²

47. Kim, *supra* note 43, at 138.

48. *People v. Roscoe*, 169 Cal. App. 4th 829, 839 (2008) (quoting *Matter of Dougherty*, 482 N.W.2d 485, 489 (Minn. Ct. App. 1992)).

49. Kevin LaCroix, *Supreme Court Asked to Review Responsible Corporate Officer Doctrine*, D&O DIARY (May 8, 2017), <https://www.dandodiary.com/2017/05/articles/director-and-officer-liability/supreme-court-asked-review-responsible-corporate-officer-doctrine/>.

50. Yates, *supra* note 25, at 1.

51. Gura, *supra* note 40.

52. *Id.*

Although cases stemming directly from this initiative arise mostly in the healthcare field in terms of fraud,⁵³ the idea of holding corporations criminally liable for wrongdoing displays prosecutors' willingness to criminally prosecute powerful corporations and seek justice in an expanding scope of cases. Using this initiative, the RCOD gives prosecutors the legal ammunition and guidelines necessary to bring justice to the corporate homicide gap in criminal law.

iii. Criticisms of the RCOD

The doctrines of strict liability and vicarious liability are generally ones of controversy among scholars and judiciaries.⁵⁴ *Dotterweich* and *Park*, according to critics, imposed a quasi-vicarious liability standard in which was "meant to impose liability only upon officers whose conduct was at least 'negligent.'"⁵⁵ However, negligence was only noted in the dissent.⁵⁶ Inserting a negligence standard for culpable mental state also allows for elusive corporate executives to avoid knowledge through "willful blindness."⁵⁷ In terms of homicide, courts have noted the problems with assigning strict liability to a corporation.⁵⁸

Revisions, however, will be required for the RCOD to be an effective vehicle for prosecutors seeking to assign corporate liability.⁵⁹ As Northwestern Law Student, Amiad Kushner, notes in his law review article that some updates are needed in order to

53. *Id.*

54. LaCroix, *supra* note 49.

55. Amiad Kushner, *Applying the Responsible Corporate Officer Doctrine outside the Public Welfare Context*, 93 J. CRIM. L. & CRIMINOLOGY 681, 696 (2003).

56. *United States v. Dotterweich*, 320 U.S. 277, 287 (1943) (stating, "the fact that a corporate officer is both a 'person' and an 'individual' is not indicative of an intent to place vicarious liability on the officer.") (Murphy, J., dissenting).

57. Kushner, *supra* note 55, at 697–98.

58. *See State v. Morris & E.R. Co.*, 23 N.J.L. 360, 370 (1852) (stating, "There are other crimes, as treason and murder, for which the punishment imposed by law cannot be inflicted upon a corporation. Nor can they be liable for any crime of which a corrupt intent or *malus animus* is an essential ingredient").

59. Kushner, *supra* note 55, at 681.

apply the doctrine successfully in prosecutions today.⁶⁰ His article proposes “that the RCO doctrine, although originally developed in response to misdemeanor prosecutions for public welfare violations, should be recast as a general theory of criminal liability of corporate officers.”⁶¹ For example, in order to combat the troubles of proving personal knowledge and “willful blindness” by corporate executives, Kushner proposes a “responsible share” concept utilizing different factors which “retains the flexibility to adapt to varied corporate contexts and isolates officers who have rational relevant connection to the violation.”⁶²

With proposed changes to update the doctrine to fit the initiatives of judiciaries today, like those suggested by Kushner, the RCOD would be a useful tool in finally bridging the gap between untouchable corporate entities and criminal prosecution for homicide.

IV. RECOMMENDATION

The RCOD, edited to match the legislative and judiciary intent and to clarify its application by prosecutors, would be a useful tool in expanding liability and bridging the gap in criminal corporate homicide law.

A. Rationale, Enforcement, and Punishment

The best solution involves using a combination of assigning liability for homicide to corporate officers as well as the corporation itself. One of the main theories of punishment is deterrence.⁶³ As set out in the proposed solutions under Section III of this

60. *Id.*

61. *Id.* at 683.

62. *Id.* at 698 (referencing Paul H. Robinson, *Imputed Criminal Liability*, 93 YALE L. J. 609, 618 n.27, 633–34, 670 (1984)).

63. *Five Things About Deterrence*, NAT'L INST. JUST., <https://nij.gov/five-things/pages/deterrence.aspx> (last updated June 6, 2016).

article, current OSHA measures are not providing corporate deterrence when it comes to homicide.⁶⁴ In order to deter corporations from allowing death to occur on its watch, prosecutors need to be able to utilize fines and sanctions against the organization, as well as hold officers individually accountable through imprisonment in order to prompt adherence to self-regulation.

Additionally, former Seton Hall law student, David Reilly, properly raises the question in his law review article about whether extending homicide liability to corporations would even work.⁶⁵ The short answer is no; simply fining a corporation with what seems like an endless bank account or sending one corporate officer to prison for six months will not accomplish justice.

Another criticism with punishing corporate officers is that corporations are composed of individuals making decisions.⁶⁶ Taking one individual who makes immoral decisions out of the corporation will not create a more virtuous corporation because a new person will just replace the former officer and the corporation will continue with business as usual. Again, this is why the swift hand of justice needs to be felt both on a corporation level as well as an executive board level.

64. 29 U.S.C. § 666(e) (2018) (stating punishment for corporations who willfully violated OSHA standards that result in an employee death carries a maximum fine of only \$10,000 and/or a maximum of six months in prison; subsequent violations carry a \$20,000 or year in prison punishment).

65. Reilly, *supra* note 14, at 404.

66. *How Companies Make Good Decisions: McKinsey Global Survey Results*, MCKINSEY & COMPANY (Jan. 2009), <https://www.mckinsey.com/business-functions/strategy-and-corporate-finance/our-insights/how-companies-make-good-decisions-mckinsey-global-survey-results>.

Current penalties are not equivalent to corporations being responsible for homicide.⁶⁷ A corporation needs to face criminal liability for homicides due to their actions or inactions. If standards are met under a revised RCO, corporations should be fined \$10 million⁶⁸ in accordance with each homicide that occurs as a result of their immorality. Fines will have a deterrent effect depending on the size of the corporations; however, even larger corporations will still experience the complications of explaining this lost revenue to shareholders and the public.

Second, Harlow had a plausible idea in his article of assigning probation to corporations as a result of a homicide charge.⁶⁹ Probation and business sanctions under the RCO would be most effective if punishment related directly to activities declared within the Articles of Incorporation in whichever state the document was filed.⁷⁰ One of the sections within the document, within most states, lists the “purpose” or “activities” carried out by the corporation.⁷¹ This section can be utilized by the courts to impose probation and activity sanctions according to the true activities and lifelines of the business. This would promote deterrence and moral culpability across the business itself.

67. Michael A. Silverstein, *OSHA Needs a Whole New Approach*, N.Y. TIMES, <https://www.nytimes.com/roomfordebate/2013/04/28/where-osha-falls-short-and-why/osha-needs-a-whole-new-approach> (last updated Apr. 29, 2013) (a former director of policy for OSHA comments that OSHA’s approach to compliance “is as ineffective as seasoning food with single grains of salt. It’s mostly an honor system, relying on businesses to avoid and fix hazards – or wait for OSHA to ‘catch me if you can.’”).

68. Amy Wolf, *Putting a Price Tag on a Person’s Life Could Make America Safer and Fairer*, PHYS ORG (June 26, 2018), <https://phys.org/news/2018-06-price-tag-person-life-america.html> (Vanderbilt economist W. Kip Viscusi values a “statistical life” at \$10 million.).

69. Harlow, *supra* note 15, at 154.

70. *Articles of Incorporation*, INVESTOPEDIA, <https://www.investopedia.com/terms/a/articlesofincorporation.asp> (last updated Dec. 27, 2017) (the Articles of Incorporation are a legal document that corporations file listing basic information about the business).

71. *Id.* (this section would also be an effective use of placing the corporation on notice of their safety responsibilities).

In addition to punishing the corporation itself, society needs to see a humanistic side to justice. Under a “responsible share” approach to corporate officer liability, executives deemed liable and prosecuted under the revised RCOB would face fines and imprisonment.⁷² For purposes of punishment, utilizing the OSHA regulation of \$10,000 would be sufficient to punish individual corporate executives.⁷³ Prison terms, however, would range from a maximum of six to ten years in accordance with the Sentencing Commission guidelines for manslaughter.⁷⁴

V. CONCLUSION

A gap exists in current criminal law within assigning liability to corporations. While other areas of law, such as in tax and property, want to treat corporations as individuals, the lack of criminal prosecutions for wrongdoing by corporations is unconscionable. With cases where a person dies as a result of corporate actions or inactions, the public outcry for justice is usually met with nothing more than a settlement check.⁷⁵ But, prosecutors like former Attorney General Sally Yates and other international courts have set forth an initiative to bring corporate criminals to justice.⁷⁶ In other nations’ courts, a path to prosecuting corporate liability for homicide is clearly outlined in black letter law.⁷⁷

72. Paul H. Robinson, *Imputed Criminal Liability*, 93 YALE L. J. 609, 618 n.27, 633–34, 670 (1984).

73. See 29 USC § 666(e) (2018). (a varying approach may be taken to the amount according to a “sentencing guideline” that would be developed by the courts and this amount does not include restitution that an officer may be liable for to the victim’s family.).

74. § 2A1.3 *Voluntary Manslaughter*, U.S. SENT’G COMMISSION, <https://www.ussc.gov/policymaking/meetings-hearings/%C2%A72a13-voluntary-manslaughter> (last visited Oct. 31, 2018) (the maximum sentence would fall under judicial discretion in accordance with amount of “knowledge” individual personally had.).

75. See Harlow, *supra* note 15, at 143.

76. Yates, *supra* note 25.

77. Harlow, *supra* note 15, at 152.

In the United States today, OSHA remains the primary enforcer for workplace safety, but it sends very few cases to the DOJ for prosecuting.⁷⁸ Unlike failed and unenacted prior propositions, the best solution to the problem of lack of corporate liability for homicide is already woven into the justice system. The Responsible Corporate Officer Doctrine was designed to hold corporate officers responsible and protect public welfare.⁷⁹ The evolution of the scope of the Doctrine since the 1940's has aligned with prosecutors' initiative to charge corporations with crimes. With certain updates and restyling of the Doctrine, prosecutors would have the tools to carry out justice for homicide victims.

A combination of fines and prison time for both corporations and their responsible agents would be necessary to promote deterrence and self-policing within the corporate world. Corporations simply being able to pay a small fine or executives using "willful blindness" to evade convictions has presented prosecutors with difficulty in the current law in seeing justice carried out for homicide victims.⁸⁰ However, by sanctioning corporations' vital activities and imprisoning corporate executives, corporations will not be able to just hire new employees and keep running business as usual.⁸¹ Deterrence from criminal acts and self-policing within corporations would naturally develop as a result of these prosecutions.

78. See John E. Stoner, *Corporate Criminal Liability for Homicide: Can the Criminal Law Control Corporate Behavior*, 38 SW. L. J. 1275, 1296 (1985); see also Carol L. Bros, *A Fresh Assault on the Hazardous Workplace: Corporate Homicide Liability for Workplace Fatalities in Minnesota*, 15 WM. MITCHELL L. REV. 287, 309 (1989).

79. *United States v. Dotterweich*, 320 U.S. 277, 285 (1943).

80. Kushner, *supra* note 55, at 697–98.

81. Katina Sawyer & Christian Thoroughgood, *Fixing a Toxic Culture Like Uber's Requires More Than Just a New CEO*, CONVERSATION, <https://theconversation.com/fixing-a-toxic-culture-like-ubers-requires-more-than-just-a-new-ceo-79102> (last updated June 21, 2017, 7:20 AM) (this is the idea of a "toxic culture.").

In the end, the current law does not deliver justice for corporations responsible for homicide. However, the tools for prosecutors to utilize to carry out charges and assign liability are already embedded in the law. Using initiatives by prosecutors like Sally Yates, the gap in criminal liability for corporations can finally begin to diminish. No one is above the law, and the people of the United States want to see that promise kept.