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IF CORPORATIONS ARE PEOPLE, WHAT KIND OF PEOPLE ARE THEY?

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In 1886, the U.S. Supreme Court ruled, in *Santa Clara County v. Southern Pacific Railroad*, that corporations have the same legal status as persons. The legal rights of corporations gradually have been expanded in the United States since that time to include the right to free speech and to contribute unlimited amounts to political campaigns (a product of the Supreme Court's 2010 *Citizens United* ruling). A key question that emerges from U.S. corporate personhood is: If corporations are people, what kind of people are they?

One of the key characteristics of a corporation is that, by its very legal structure, it is an amoral entity. It exists for the sole purpose of making profits, and it will do whatever is necessary to increase profits, without considering ethical issues except insofar as they impinge on the bottom line. A crucial reason for this behavior is that chief executive officers (CEOs) and other executives have a legal "fiduciary duty" to act in the best financial interests of stockholders. As conservative economist Milton Friedman stated in his book *Capitalism and Freedom*, "there is one and only one social responsibility of business—to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition without deception or fraud." Thus, those who control corporations are obligated to do whatever they can within the law to make as much money as possible.

This can lead to behavior that some have called psychopathic. In the provocative 2003 film, "The Corporation," the filmmakers argue that corporations meet these diagnostic criteria used by psychiatrists to determine if a person is psychopathic:

- Callous disregard for the feelings of others;
- Reckless disregard for the safety of others;
- Incapacity to maintain enduring relationships;
- Deceitfulness: repeated lying and conniving others for profit;
- Incapacity to experience guilt; and
- Failure to conform to social norms with respect to lawful behaviors.

Although at first blush the claim that corporations are psychopaths seems incredible, if we consider the worst behaviors of corporations over the last few decades, and the disturbing frequency with which such behaviors seem to recur, it is possible to see why so many people hold corporations in such low esteem. Below, we describe briefly some of the most horrific behaviors of large corporations in recent years.

Rana Plaza Building Collapse, 2013:
An Example of Corporate Abuses of Subcontracting and Sweatshops

For decades, U.S. and European clothing manufacturers have been moving their operations overseas to countries with extremely low wages and with few safety or environmental regulations. One of their favorite destinations in recent years has been Bangladesh, where wages for clothing workers are the lowest in the world (only $0.24 per hour until the minimum wage was raised to $0.40 per hour in 2014), and where few safety standards are enforced. Bangladesh now has more than 5,000 garment factories handling orders for most of the world's top brands and retailers, and is second in garment manufacturing output behind China.

In 2013, the Rana Plaza building that housed several clothing factories collapsed, killing 1,134 people in the worst disaster in garment-industry history. It was later discovered that the building was constructed with substandard materials in violation of building codes. Even more disturbing was the fact that the owners of the factories insisted that employees return to work even after an engineer inspected the building the day before the collapse and deemed it unsafe due to cracks in the walls and clear structural deficiencies. The factories were making clothes for Walmart, Benetton, and many other large, multinational companies.

Disasters like this one, along with the torture and killing of a Bangladeshi labor activist in 2012, are a product of the subcontracting system used by large clothing manufacturers. The corporations issue specifications for the garments that they want to have manufactured, and contractors around the world bid for the right to make the garments. The lowest bidder wins. But what kind of factory is likely to have the lowest bid? Given the regular occurrence of disasters and labor abuses in garment factories, it appears that the contractors who win bids are those who are the most likely to pay workers the least under the most unsafe conditions. Huge multinational clothing companies are only too eager to participate, while at the same time claiming that they are not responsible for the deaths and abuses because they themselves were not the factory owners. The factory owners in Bangladesh were charged with murder, but there were no major consequences for the clothing companies. The callous disregard for the feelings and safety of others and incapacity to experience guilt that many clothing manufacturers display is certainly consistent with the definition of a psychopath.

BP Oil Spill in the Gulf of Mexico, 2010:
Taking Chances with People's Lives and the Environment

The 2010 BP oil spill in the Gulf of Mexico was the worst in U.S. history. The Deepwater Horizon oil rig exploded on April 20, 2010, killing 11 people and spilling 210 million gallons of oil into the Gulf. Investigations into the causes of the spill indicated significant negligence.

- Deepwater drilling procedures were adapted from shallow-water techniques, without adequate consideration of the differences of the deep-water environment.
- Federal regulators relaxed requirements for environmental reviews, tests, and safety plans at the request of BP, and encouraged but did not require key backup systems.
- BP used well casings, cement, and other equipment that violated company safety guidelines and industry best practices, despite concerns raised by BP engineers.
- Warning signs were ignored, and safety tests delayed despite the warning signs.

The human and environmental costs of the spill were devastating. In addition to the human deaths, millions of birds, turtles, dolphins, and fish were killed. The Gulf tourism industry was devastated for several years, costing businesses $23 billion in lost revenue. And the Gulf still has not recovered, with ongoing problems cropping up related to the environment and wildlife.

The primary culprit here was BP's relentless pursuit of lower costs. Poor quality materials plus skimping on safety measures created conditions for the explosion and meant that BP was unable to deal with the disaster once it happened. Although BP was found guilty of negligence and fined a record $18.7 billion, that amount was only about 8% of their annual revenue, and no BP official went to prison.

ExxonMobil and Climate Change Denial, 1981–2008: *Lying to People for Profit*

In 1981, a team of researchers at Exxon conclusively established the connection between thew burning of fossil fuels, the spewing of greenhouse gases into the air (especially carbon), and climate change. Their research was supported by dozens of other studies by climate scientists. These studies have been so convincing that over 97% of climate scientists agree that climate change is occurring and that human activity is a significant cause. As anyone who studies scientific research will know, it is rare to have near-universal agreement on something as complex as climate change, which helps us to understand that the evidence for climate change is overwhelming.

Despite this evidence, Exxon, which merged with Mobil in 1999, spent millions of dollars on a public-relations effort to deny the existence of climate change so that they could continue to sell as much of their oil as possible. As documented in the book *Merchants of Doubt* (later adapted as a film of the same name), Exxon funded foundations who paid a small group of scientists and public-relations professionals to cast doubt on the idea of climate change in order to prevent action from being taken. And their impact in the United States was dramatic. While much of the world was taking climate change seriously and enacting policies to begin reducing greenhouse gas emissions, the United States was increasing its use of fossil fuels and its emissions.

ExxonMobil now states publicly that it accepts the idea that climate change is occurring, and the company has stopped formally funding climate change denialism. However, ExxonMobil's reduction in public funding of denialism has coincided with a dramatic increase in untraceable "dark money" being used to fund climate change denialism. One cannot help but wonder who is funding such efforts.

Thanks to ExxonMobil and others who have prevented progress on climate change, we are now faced with the prospect of dramatic climate events that will cost many people their lives. We are likely to see increasing droughts, food shortages, heat waves, sea-level rise, floods, and other disasters that threaten our very existence. All so that ExxonMobil and other giant companies could sell more barrels of oil. As is so often the case, there have been no criminal prosecutions related to these incidents.

Enron's Fraudulent Use of Derivatives and Shell Companies, 1990–2002: *Financial Deregulation Plus Executive Stock Options are a Toxic Mix*

One of the arguments in favor of corporations is that, thanks to the profit motive, they tend to innovate in order to make money. But, what kind of innovations might result from the profit motive? Enron executives Kenneth Lay and Jeffrey Skilling used the deregulated environment in financial markets in the 1990s and early 2000s (the same environment that also produced the financial crisis) to create an innovative financial model build on fraud and subterfuge.

Enron was the world's largest energy trading company, with a market value of $68 billion. But its real innovation was in shady accounting practices. Enron would start by undertaking a legitimate investment, such as building a power plant. They would then immediately claim all of the expected profit from the power plant on their books, even though they had yet to make any money on the investment, making them appear to be an incredibly profitable company. If the power-plant profits ever came in below expectations, Enron would transfer the unprofitable assets to a shell company—a company that did not really exist formally, other than as a vehicle for Enron to dispose of losses—thereby hiding Enron's losses from its investors. Shell-company investors were given shares of Enron common stock to compensate them for the shell-company losses. Thus, Enron appeared to be incredibly profitable even while it was incurring losses, which caused its stock price to soar.

Much of the reason for this behavior was the incentive system created by financial markets. At the time, most CEOs and highly placed executives were paid most of their salaries in stock options. This meant that they could make more money if they could get the company's stock price to increase, which would allow them to cash in their stock options at a higher value. In theory, paying CEOs in stock options gave them an incentive to run the company in the most profitable way possible, which would then cause the stock price to go up. But stock options also gave executives an incentive to artificially prop up stock prices in order to cash in, which is what the Enron executives did. Meanwhile, the accounting auditors who were supposed to flag questionable and illegal financial transactions looked the other way in order to keep Enron's business.

As Enron's losses mounted, the executives cashed in all of their stock options and left the company bankrupt. More than 5,000 employees lost their jobs and millions of investors lost their savings. Lay, Skilling and 15 other Enron executives were found guilty of fraud. But these sordid events didn't stop an even bigger financial market manipulation from dragging down the entire global economy less than a decade later.

Goldman Sachs, CMOs, and the Financial Crisis of 2007–2008: *Betting Against Your Own Clients*

The global financial crisis of 2007–2008 was a product of a number of corporate misdeeds, fueled by greed and the deregulation of financial markets. To increase their profits in the early 2000s, banks started loaning money to extremely risky, subprime borrowers with very poor credit scores to purchase houses. The banks then bundled large groups of these subprime mortgage loans into securities called collateralized mortgage obligations (CMOs). The banks did not care about the creditworthiness of borrowers because they immediately sold these securities to investors.

As more and more subprime borrowers took out mortgage loans, the real-estate market boomed, forming a huge bubble. At the peak of the bubble in 2006-2007, default rates on mortgages started to increase rapidly. Realizing that subprime loans were likely to fail, Goldman Sachs and several other big investment banks began to do something highly unethical: they sold bundles of subprime mortgages (as CMOs) to investors, and they used financial instruments called credit default swaps to bet that the mortgages in the CMOs they sold were going to default and that the CMOs would become worthless. In other words, they sold investors CMO securities that they believed were going to fail, and they even made bets in financial markets that the CMOs they sold would fail. Goldman Sachs was not the only investment bank to do this. Deutsche Bank and Morgan Stanley also engaged in similar transactions to profit at the expense of their own investors.

As in so many other cases of corporate malfeasance, the consequences amounted to little more than a slap on the wrist. Goldman Sachs paid a $550 million fine in 2010 to settle the fraud case brought by the Securities and Exchange Commission (SEC), an amount that was just 4% of the $13.4 billion in profits Goldman Sachs made in the previous year. In 2016, Goldman Sachs agreed to an additional $5.1 billion fine for misleading investors about the quality of the CMOs they sold them. However, not a single Goldman Sachs official went to jail.

VW Programs Cars to Cheat on Emissions Tests, 2009–2015: *The Things a Company Will Do to Become #1*

Martin Winterkorn, Volkswagen's chief executive officer from 2007 to 2015, established the goal of making VW the largest car company in the world, and he embarked on an ambitious plan to achieve that goal. Much of his plan hinged on developing fuel-efficient, clean diesel cars as an alternative to hybrids. But, when VW discovered that it could not develop an inexpensive technology to remove pollution without compromising the car's gas mileage and overall performance, they turned to a fraudulent approach. VW programmed 10.5 million cars so that the cars would detect when they were being tested for emissions, and during testing the cars' engines would run in a way that they would meet emissions standards. But when the cars were driven normally, they would spew pollutants at a rate much higher than allowed by law.

A nonprofit group, the International Council on Clean Transportation, discovered the problem when they tested numerous diesel cars in 2013. They alerted the Environmental Protection Agency (EPA), which launched an investigation in 2014. As is so often the case, VW responded to the investigation aggressively, accusing regulators and testers of being incompetent. But additional testing established conclusively that VW cars had been programmed to reduce emissions when tested, and to spew large amounts of pollutants when driven normally. The EPA told VW that it would no longer allow the company to sell diesel cars in the United States in 2015, and accused them of violating the Clean Air Act. Particularly problematic was the fact that VW diesels spewed large amounts of nitrogen oxide, in amounts up to 40 times the legal limit. Nitrogen oxide is a pollutant that causes emphysema, bronchitis, and contributes to many other respiratory diseases. The EPA estimates that the additional pollution from VW diesel cars will cause as many as 34 deaths and sicken thousands of people in the United States. Other studies predicted up to 200 premature deaths.

VW did briefly become the largest car company in the world in July of 2015 when they surpassed Toyota, but since the scandal became public the company has fallen back. On June 27, 2016, VW agreed to pay $14.7 billion in fines to the government and compensation for VW diesel car owners. A criminal inquiry is also underway.

General Motors' Faulty Ignition Switches, 2005-2007:
Why Would Anyone Sell a Product That They Knew Could Kill People?

Imagine yourself as a CEO or vice president of a major corporation. An engineering report comes across your desk, noting that a part in one of your products is faulty, and that the consequences of that part failing could be the injury or even deaths of some of your customers. Would you still sell the faulty product, even knowing that it might kill people? This is what General Motors (GM) did with its faulty ignition switch.

This particular sordid story starts in 2010, when a 29-year-old nurse named Brooke Melton died in a car crash after losing control of her car. Her parents, who knew that she was a safe driver and that her car had been behaving oddly, sued GM and hired engineering experts to try to determine the cause of the crash. They discovered that the problem was the ignition switch that had been installed on over 22 million GM cars manufactured from 2001 to 2007. The ignition switch could turn from "On" to "Acc" just by being bumped lightly or if the key was on a particularly heavy keychain. The shift from "On" to "Acc" could disable the power steering, anti-lock braking, and airbags and cause the car to stall.

As the investigation progressed, the full scale of GM's deceit became apparent. In 2001, GM engineers initially detected the defective part, labelling it the "switch from hell." Problems with the switch cropped up repeatedly over the next several years. In 2005, internal documents show that GM acknowledged the problem but chose not to fix it because it would be too costly. Instead, they sent a note to GM dealerships telling them to urge customers to use lighter key chains. Each year, people died as ignition switches failed and air bags failed to deploy, but GM continued to hide the problem and refused to recall cars and repair the problem.

Finally, thanks to the Melton lawsuit and government investigations that followed, GM recalled the vehicles and repaired the faulty switch. But not before at least 124 people died in crashes related to the faulty part. GM paid a $900 million fine in 2015, and other settlements with victims brought the total cost of the debacle to $2 billion. While this put a dent in the company's 2015 profits of $9.7 billion, no individuals faced criminal charges for their actions.

Are Corporations Psychopaths?

Above, we highlighted seven examples of horrific corporate behavior. In each case, corporations exhibited many of the behaviors characteristic of psychopaths, especially a callous disregard for the feelings and safety of others, deceitfulness, avoidance of admitting guilt and taking responsibility for their actions, and failure to respect social and ethical norms and the law. But, are these behaviors typical of powerful, profit-hungry corporations, or are they exceptions?

As we all know, many corporations behave ethically, and many invent useful and innovative products that improve our lives. Yet, every year a certain number of corporations cast ethics and morality to the side and engage in unscrupulous behavior, resulting in economic harm, injury, and even deaths. There appear to be aspects of the corporate structure that encourage such behavior, including the relentless quest for maximum profits, the lack of personal responsibility for any illegal actions taken by the corporation, and the power corporations have to manipulate the legal system and government regulators.

Regarding the last point, one of the elements to every story above was the inadequate efforts of government regulators. The push for deregulation by various politicians directly facilitated many of the above corporate misdeeds. And government regulators are often overmatched by corporate legal teams with almost unlimited resources, which allows many corporations to avoid serious consequences even in cases where they have done something horrible. Even when corporations have been caught red handed in clear violation of the law, the penalties are usually little more than a slap on the wrist and are often far less than the profits from the offense in question. Corporate wealth and power appear to allow them to avoid significant checks on their behavior. Thus, instead of engaging in "open and free competition without deception or fraud," as Milton Friedman hoped that they would, some corporations use deception and fraud with near impunity in order to outdo the competition.

Such problems could be fixed. We need a regulatory system with teeth, where corporate lobbyists don't have undue influence over how they are regulated. And we need real consequences for corporate crime. When corporations find out that their actions or products may harm people, if they refuse to take action and to inform the public and regulators of the problem, the people who make those decisions should go to prison.

Finally, like real people, corporations should face real consequences when they break the law. A corporation that engages in particularly egregious behavior, especially a corporation that does so repeatedly, should face sanctions that have a real impact on executives and stockholders. For cases in which a corporation causes deaths, the corporation should face the "death penalty": having its charter revoked and its assets seized by the public. If stockholders could potentially lose all of their investment in a company that behaved illegally, they would begin checking up on companies and we would see much less illegal and unethical behavior.

Of course, all of these solutions require us to get corporate money out of politics. As long as corporations can buy off politicians, they can continue to act as psychopaths and face very little in the way of consequences. ❑

Selected Sources: Julfikar Ali Manik and Nida Najar, "Bangladesh Police Charge 41 With Murder Over Rana Plaza Collapse," *New York Times*, June 1, 2015 (nytimes.com); Julfikar Ali Manik and Jim Yardley, "Building Collapse in Bangladesh Leaves Scores Dead," *New York Times*, April 24, 2013; "One Year After Rana Plaza" (editorial), *New York Times*, April 27, 2014; Lauren McCauley, "Workers Decry Multinationals' Greed Following Disaster in Bangladesh," Common Dreams, April 25, 2013 (commondreams.org); Ian Urbina, "In Gulf, It Was Unclear Who Was in Charge of Rig," *New York Times*, June 5, 2010; Ben Bryant, "Deepwater Horizon and the Gulf Oil Spill—the Key Questions Answered," *The Guardian*, April 20, 2011 (theguardian.com); Douglas Fischer, "'Dark Money' Funds Climate Change Denial Effort," *Scientific American*, Dec. 23, 2013 (scientificamerican.com); Oliver Milman, "Oil Industry Knew of 'Serious' Climate Concerns More Than 45 Years Ago," *The Guardian*, April 13, 2016; Suzanne Goldenberg, "Exxon Knew of Climate Change in 1981, Email Says—but it Funded Deniers for 27 More Years," *The Guardian*, July 8, 2015; Bill Keller, "Enron for Dummies," *New York Times*, Jan. 26, 2002; Gretchen Morgenson and Louise Story, "Banks Bundled Bad Debt, Bet Against It and Won," *New York Times*, Dec. 23, 2009; "Senate Panel Says Goldman Misled Clients, Lawmakers on CDOs," Bloomberg News, April 13, 2011 (bloomberg.com); Guilbert Gates, Jack Ewing, Karl Russell, and Derek Watkins, "How Volkswagen's 'Defeat Devices' Worked," *New York Times*, March 16, 2017.