

Discussion of
Admati & Buchak
Which Corporate Victims Get Justice?

Holger Spamann

GCGC 2022

Quick summary

- Empirical paper
 - Data on
 - Harms (NYT search) → litigation?
 - Legal action (Good Jobs database) → outcome (criminal, ind'l def., prison)?
 - Results:
 - Shareholders get redress, others* don't (extensive margin)
 - Shareholders get more redress (intensive margin)
- * Others = government; other stakeholders (consumers, employees)

An old theme

- **“Why the `Haves’ Come Out Ahead”** (Mark Galanter 1974)
- **“The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread.”**
(Anatole France 1894)
- **“Laws are like cobwebs, which entangle the weak, but through which the greater break uninjured.”** (Anacharsis or Solon, around 600 BC)

2022



“Which Corporate Victims Get Justice?”

4 comments:

- 1. Conceptualization** – what does this mean?
- 2. Operationalization** – how to measure it?
- 3. Interpretation** – what’s the upshot?
- 4. Relevance** – is this the most pressing question to ask?

Comment #1: Conceptualization

- **“Victims”** = ? → **“Harm”** = ?
 - Investors in ‘08 meltdown? Prisoners in private prisons? All in climate change?
 - A&B: No, only legally recognizable harm
 - Defines away the main problem (law’s characterization of what matters)?
 - May catch non-problems (silly rule that isn’t enforced)
 - May upend interpretation of results (e.g., corporate law: mismanagement \notin harm)
- **“Get Justice”** = compensation, deterrence, and/or retribution?
 - Successful deterrence = no harm = justice? (IMHO: this is the ideal)
 - If yes: would need to consider harm that doesn’t happen (e.g., pollution solved)
- **“Corporate”**: victim of corp., or of manager? Who’s in, who’s out?

Comment #2: Operationalization

- **Victim/Harm:**

- A&B: NYT search for company in connection with keywords, then RA read
 - “death”, “died”, “killed”; “injury”, “hurt”; “money”, “dollars”, (“financial” & “loss”), “deceived”, “misled”, “lied”; “customer”, “consumers”; “employee”, “worker”, “contractor”; “shareholder”, “investor”; “government”, “agency”, “treasury”, “public”.
- convenience sample with unknown properties (e.g., newspaper attention)

- **Justice:**

- A&B: litigation filed / defendants named; prison sentence
- neither deterrence nor compensation; only (rare) prison is retribution

- **Corporate:** undifferentiated whether SH victim or beneficiaries, management knowingly involved or not

Appendix to Comment #2: Reality Check

- Existential liability: never for SH harm, sometimes for other harm
 - Tobacco; Purdue Pharma
- Massive liability, career-altering enforcement: mostly for other harm
 - BP; Volkswagen; Wells Fargo; Boeing; ...
 - These *also* trigger securities class action and perhaps derivative action, but those are (1) relatively unimportant for executives and (2) usually smaller \$

NB: liability may be too low, enforcement too little – but more for non-SH than for SH

Comment #3: Interpretation

What to make of A&B's two findings:

1. Extensive margin: "Everything is securities fraud" (Matt Levine)
 - Bad for SH?! Many think securities class actions are wasteful nuisance suits
 - Useful for other constituencies? (piling on → deterrence)
2. Intensive margin: SH harm → ind'l def., criminal, prison
 - Explained by different nature of injurious action: direct manag't involvement?
 - Some gov't suits are technically re: SH harm but motivated by other harm (?)
 - E.g., Elizabeth Holmes / Theranos

Comment #4: Relevance

- Principle: “One injustice is one too many” – why compare?
 - all harm should be remedied/internalized (except if costs>benefit)
- Evidence
 - Equal treatment is important tool to sniff out pretexts
 - However, this only works if situations are comparable – these harms aren’t