

The persistent issue of corporate punishment has been the proverbial thorn in the side of many people throughout history. Corporations have caused many people huge amounts of both physical and emotional pain due to instances of improper mechanical maintenance, ignorance towards the environment, and the manufacture of life threatening products. The main problem that lies as an obstacle in front of prosecutors of these corporations is, who do they punish? The Lord Chancellor of England questioned, "Did you ever expect a corporation to have a conscience, when it has no soul to be damned, and no body to be kicked?" Countless victims throughout history have been perplexed to come up with a solution to answer the Chancellor's question. How can people throw a corporation in jail, or have them compensate for their immeasurable losses? In his work *The Hester Prynne Sanction*, Peter French analyses ways in which the courts can change how they punish corporations more effectively. This essay will take a critical look at French's solution, examining if it is an effective and morally justified fashion of punishing corporations.

In our society, retributive ideals have been implanted in us, as the famous biblical "eye for an eye" concept seems to be society's manner with which we punish criminals. This is an interesting case though, because corporations don't simply have one individual they can place the blame upon. Rather, they are comprised of hundreds or even thousands of people, and therefore there is no extensive punishment prosecutors can place upon everybody who is employed by a corporation. In a famous case in Indiana involving Ford Pinto whose "cost benefit analysis regarding the redesign of the gas tank on the Pinto" cost a person his life. The firm ended up paying \$200,000, but how can you place a price on human life? And furthermore, who can you go after for retribution? The engineer who drew up the plans? The CEO who approved the change? Or even the Factory worker who placed the new tank in the car? None of them, according to the current laws, writes French. "The idea that a corporation can pay a court fine or a set sum to the relatives of its' victim in a homicide case, and therefore expiate its guilt is, however, regarded by many people as a shocking affront to justice." Very few of these cases can be directly linked to individual negligence or intentional recklessness, and the fines can easily be written off as business expenses. The corporations usually recover fines quickly by means of higher prices. This poses a major problem for society, because the fines imposed on corporations are not even regarded, "in the corporate world as punishment comparable to human incarceration." Therefore people want to gain control of the "most powerful institutions in our community" and more importantly gain the justice that they rightly deserve. This justice comes in the form of Peter French's *Hester Prynne Sanction*.

French's *Hester Prynne Sanction* is an "alternative type of punishment", and is a well thought out and researched proposal. The solution takes a psychological approach to the problem. French notes that our legal system is "guilt based, and guilt is an economic notion", and that guilt has been looked at as a debt to a victim or to a society in general. The way to repay this debt is by punishment, which consequently acts as a means to repay and restore society's equilibrium. Therefore, if a corporation is guilty of pollution they simply repay society by donating money to a group who will "clean up" the astronomical mess they made, and in turn, the damage they caused will be repaid. French believes we, as a society, should abandon this outlook and switch to a shame based attitude when it comes to justice involved in the corporate law system, because the feeling of shame makes one feel inadequate or inferior. With this system, if a corporation was involved in a situation that was discordant with the law and trust had been shattered, the courts could induce shame as a means of punishment.. This shame would enlighten the media to the wrongdoing, who would in turn enlighten both the corporation of their

mistakes, as well as the public of this "shameful behavior". The advantage to this new system is that shame cannot be eliminated by a payment. "Paying a fine cannot restore the status quo disrupted by shameful actions. It cannot reestablish worth or trust. Regaining worth, reclaiming identity is not a question of purchase." This forces the shameful party to act in a positive, courageous, and valiant way to try and recreate themselves as worthy. People look at the party involved with disgust which relays, " a signal to them that identity must be rebuilt."

The Hester Prynne Sanction is a very effective method of deterring and punishing corporate offenders by inducing shame on an offender. The shame "threatens prestige, image, and social standing" , a mark that is carried with a person for the rest of his life, and this is particularly damaging in the corporate world where image, prestige and reputation are everything. For corporations to survive they must strive to maintain a good image, and a corporation with a tarnished image will suffer tremendous set backs, as they should. The imposition of The Hester Prynne Sanction on a corporation displays the corporations action which in turn arouses, " 1) appropriate social contempt, 2) a recognition of a failure to measure up and 3) the kind of adjustment to operating procedures, policies, and practices that are required for the corporate offender to regain moral worth in both its own eyes and those of the community. Rehabilitation is thereby served by retribution." This definitely proves that the sanction is a very important and effective method which our democratic society should adopt in hopes of finding a certain justice within the corporate law. The courts have the power and social credibility to make this justice reality, and force the corrupt corporations to face their mistakes. Court ordered "adverse publicity" would provide the vehicle with which society could punish these institutions. These would force the corporation to face the community it has hurt, and deal with the anger they brought upon themselves. The main problem facing this, is that the courts would have to find a clever writer who could penalize the corporation with its' literary prowess. The focus of money and training would be crucial, if the Sanction is to be a success. The courts should also use their power to order the corporation not to engage in rebutting or advertising anything about the sentence. If the corporation did try and advertise or promote itself after it had been ordered not to, then serious ramifications would ensue. This would be effective if the program was set up and run with stern order, financial stability, and a utilitarian outlook for the people. The assistance of fines to correct the problem would also aid the victims and the people that these corporations hurt. It can be noted as well that this program has been implemented recently. In a recent study seventeen corporations who have been found guilty were penalized through adverse publicity reported a loss of corporate prestige within the company, and this in turn is regarded as a major corporate concern. The loss of prestige within a company was noted, as being far more serious than the payment of a fine. This simply proves the effectiveness of the Sanction, through the process of shame a company endures many more detrimental setbacks, compared to a fine which if donated to the right company can almost create a better and cleaner persona for the corporation, no to mention a tax deductible situation.

If a company is allowed to create a product that is detrimental to the environment or does not meet commonly accepted standards then it to should be subject to any punishment be it negative publicity or a public boycott of the product. Such measure would fall into the rules of the capitalistic game, a game in which you are only as good as your last product. If companies are allowed to peddle products in whatever form they choose, then victims as well should be able to seek retribution in any form they see fit. Adverse publicity seems to be the most effective tool for achieving this retribution.

In summary, it is obvious that the Hester Prynne Sanction is the only effective method to punish these faceless corporations, who have oppressed the community for years. The Sanction has already proven to be an effective, and also morally acceptable way, to serve and protect the needs of todays demnading society.

