The BP Gulf Oil Spill: Public and Corporate Governance Failures

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Abstract
Purpose: To critically examine public and corporate governance failures that we argue predisposed the BP oil spill in the Gulf of Mexico, the worst environmental disaster in United States (US) history.
Design/methodology/approach: A critical examination of publicly available documentation to identify systemic governance flaws of a marketized government agency and BP's self-regulated corporate governance.
Findings: The spill was overseen by the US Federal Government agency, Minerals Management Service (MMS). Restructured by the Reagan Administration to mimic business, the MMS regulated and collected revenue from offshore oil leases, a conflict of interest that compromised this public agency's integrity. Neo-classical economics and its political ally neo-liberalism were instrumental in marketizing the public sector, which became the agency for the 'business of business regulation' supporting regulatory capitalism's ideal of the market as the only way to organize society. Evidence also reveals weaknesses in BP's corporate governance as oversight of safety, health and the natural environment by various sub-committees was conducted by a few directors with little transparency or public scrutiny.
Social implications: Instead of the State protecting society from the pernicious aspects of capitalism, the State protected the markets from society. BPs' corporate governance also rewarded senior managers for chasing super profits and growth by exploiting workers and the natural environment, while greenwashing BP reports to assuage numerous scandals.
Originality/value: The application of a theoretical framework linking neo-managerialism of the public service and regulatory capitalism of corporate regulation to a critical examination of the systemic governance failures that failed to protect the public commons for the public good.

Key words: BP, marketized public service, self-regulation, corporate governance
Paper type: Conceptual

An Examination of Public and Corporate Governance Failures: The BP Gulf Oil Spill

1. Introduction

On 20 April 2010, an explosion and fire sank the Deepwater Horizon oil rig in the Gulf of Mexico (GOM) Outer Continental Shelf (OCS), killing 11 workers and setting off one of the worst offshore oil spills in United States (US) history (King 2010). The oil well was owned by BP, while Transocean owned the rig and Halliburton had cemented the well. The companies blamed each other for the catastrophe while efforts to plug the leak continued for several weeks and then months. Estimates for the oil spill ranged from 35,000 to 60,000 barrels of oil per day[1] gushing into the Gulf (King, 2010). This disaster has put the safety of deep-water oil drilling under review in the US, despite President Obama's continued public commitment to offshore oil drilling (Sutherland, 2010). Estimates suggest about 5 million barrels of oil (or 210 million gallons) gushed into the Gulf waters and 500,000 tons of gas were released over the 86 days of leakage (Guarino, 2010; Juhasz, 2011), destroying hundreds of kilometers of fragile coastlines and threatening the livelihoods of the local population. The well responsible for the Gulf oil spill was finally sealed on 19 September 2010 (Guarino, 2010). Some observers have questioned whether oil can be extracted safely under water, while others blamed BP's woes on a culture of cost-cutting and outsourcing citing previous problems in the Gulf, Azerbaijan, Alaska, and Texas City (see for example Bower, 2009; Mufson, 2010; Webb, 2010).

To pacify the US public, President Obama announced plans to hold BP accountable while likening the catastrophe to the September 11, 2001 terror attacks for its potential to profoundly affect US domestic policy (Mann, 2010). Estimates suggest that BP could face up

[1] Estimates varied widely as BP provided conservative estimates in an effort to minimise their liability, as opposed to more accurate estimates from independent scientists (see Jahasz, 2011 for a full discussion).

to $80 billion (updated to $100 billion) in costs, including penalties, damages and clean-up costs. Beyond the financial costs the company could also face tougher scrutiny from regulators and reduced opportunities to drill wells (Mouawad & Krauss, 2010). While the US public watched the face-off between BP and the US government, Brooks (2010) argued that essentially these two parties were on the same side. Indeed as articulated by Tony Hayward, the then BP Group Chief Executive (GCE):

> "We continue to show our ability to take on and manage risk, doing the difficult things that others either can't do or choose not to do. This is why we are able to form such strong relationships with governments" (BP Annual Report, 2009, p.7).

Prior to the GOM oil spill, BP was **one of the parties** infamously connected to the Exxon Valdez spill in Prince William Sound in March 1989 that resulted in more than 11 million gallons of crude oil being discharged into the waters of Alaska's gulf coast (Patten, 1992). As a consequence of the Exxon Valdez spill approximately 200 lawsuits were filed in state and federal courts in Alaska seeking compensatory and punitive damages. Most of the lawsuits named Exxon, Alyeska Pipeline Service Company (Alyeska)which operated the oil terminal at Valdez, and the other companies that owned Alyeska as being responsible for the oil spill that required more than $2 billion to be spent on the cleanup effort (Patten, 1992). At the time BP owned a 50% interest in Alyeska through a subsidiary of BP America Inc. and briefly indirectly owned a further 20% interest in Alyeska following BP's combination with Atlantic Richfield (BP Annual Report, 2007). While the grounding of the Exxon Valdez in 1989 led to considerable public pressure on US oil companies concerning the natural environmental, Patten (1998) found that the Alaskan oil spill also triggered substantial increases in both wholesale and retail gasoline prices that appeared to be interpreted as good news for the intra-industry firms, despite increased legislation. More importantly;

> The Exxon Valdez oil spill led to the development of The Oil Pollution Act of 1990 (OPA90) in the US, with its innovative protection of coastal waters from oil pollution, enforcement mechanisms, including contingency planning to prevent spills, and

> insistence upon the principle that "the polluter pays", not only for the actual costs of a clean-up, but also for damage to the public's natural resources (Ornitz & Champ, 2002, p. 89).

Increased public outcry about the safety of US waters and insistence upon the protection of the world's marine environments, particularly coastal ecosystems has helped to shape the legislative, judicial and regulatory climate of the US today, but to what effect? As articulated by Hopwood (2009), much can be done to lessen some of the major environmental concerns if there is a will to act.

> "But that will is only weakly developed in most countries of the world and in most spheres of life. It certainly has been largely absent at the political and the corporate levels. … All too often the desire to act has only found a verbal expression, action itself being more influenced by political infighting and corporate lobbying and influence. Even now, as the findings of environmentalists and scientists get ever more certain and disturbing, the vast majority of politicians still have difficulty in responding, continuing to put what they see as their short-term economic and political imperatives above the longer term interests of the human race" (Hopwood, 2009, p. 433).

The purpose of this paper therefore, is to critically examine systemic governance flaws of a marketized government agency and BP's self-regulated corporate governance that we argue predisposed the BP oil spill in the GOM, OCS. Specifically, we investigate the compromised and at times corrupted State regulation of the US oil and gas industry, exacerbated by a marketized public service restructured by the neoliberal Reagan administration during the early 1980's. We contend that this restructure ideologically supplanted, and then undermined, the public interest with regulatory capitalism - a market oriented system that supports the business interests above the public interest and commons. The study then examines the role of BP's governance in a history of accidents that implicates the role of accounting as senior managers chased super profits and growth for their 'glorified self-interest'. We conclude that the marketized public governance protected the markets from society, rather than protecting society from the pernicious aspects of the markets. Evidence also indicates that private

governance failed, that is BP's board and its various sub-committees charged with monitoring the safety, health and the natural environment failed in their responsibilities.

2. Marketized public governance and regulatory capitalism

In this section we **develop a theoretical framework linking neo-managerialism of the public service and regulatory capitalism of corporate regulation to a critical examination of the systemic governance failures to protect the public commons for the public good.** The moral reasons for the regulation of business by democratic government are social justice, the protection of society and the commons from pernicious aspects of capitalism and the markets (Terry, 2005). Abraham Lincoln's ideal of representative democracy as "… government of the people, by the people, for the people …" (Wills, 1992) invoke deontological universal values of equality, liberty, and respect for people, human rights and the public good. In recent decades, governments have been co-opted by powerful corporate and business interests that actively aim to transform the public good and commons into a free market, privately owned utopia (Friedman, 1962), where fundamentalist individualism is fostered by an ethic of 'rational' but egoistic self-interest - 'man is an end in himself' (The Ayn Rand Institute[2], www.aynrand.org).

Economist Milton Friedman receiving the Nobel Prize in 1976 heralded the shrinking of the post-war Keynesian welfare state and the growth of neo-classical economics and its political ally, neo-liberalism. The Keynesian welfare state is epitomised by U.S. President F.D. Roosevelt's New Deal (1932-36) that strengthened and protected the wider public good by institutionalizing social justice, affirming human rights, social solidarity and the ethic of care. The New Deal of State intervention and control met basic human needs after the collapse of

[2] One of America's most powerful public officials, Alan Greenspan Chairman of the Federal Reserve Bank of the United States (1986-2006), is not only a devotee but was also a close confident of Ayn Rand.

laissez-faire capitalism no longer assured economic and social stability following the 1929 Wall Street Crash (Abramovitz, 2011). The Crash brought misery to millions of people who lost their savings, their jobs and their dignity. The social and economic instability wrought by the Crash had lasting detrimental social, economic and psychological effects felt worldwide culminating in the death and destruction inflicted by World War II. A reflection of the post-war Keynesian welfare state, The Universal Declaration of Human Rights was adopted and proclaimed by the United Nations' (UN) General Assembly in 1948 as a response to the calamitous Great Depression (1930-1938) and World War II (1939-1945). The preamble of The Universal Declaration of Human Rights states:

> "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,
>
> Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,
>
> Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,"

From 1950 to the early 1970's government spending supported a period of unprecedented egalitarian economic growth in an era of State capitalism (Chomsky & Dosanni, 2009). After nearly three decades of hard won peace and prosperity amidst cold war tensions, the Keynesian welfare state[3] was blamed for not dealing with economic crises ostensibly from two oil shocks and the huge cost of U.S. military intervention and defeat in Vietnam during the 1960's and 1970's. In addition, the collapse of the Breton Woods arrangements[4] (1945 - 1971) gave market fundamentalists and their political allies the opportunity to implement

[3] Radical monetary policies advocated by neo-classical economists such as Milton Friedman (1968), were introduced to energize the stagflating U.S. economy under monetary expansion pressure (MacFarlane, 2006).
[4] U.S. President Nixon (1969-1974) floated the U.S. dollar in a bid to reduce inflation by eliminating the gold standard in 1971, but resulted in the Breton Woods breakdown.

reforms that lifted restrictions on finance, allowing speculative booms (Chomsky & Dosanni, 2009). Boin and ′t Hart‘s (2003, p. 549) analysis of public leadership in times of crises found that political leaders use, and in some instances create momentum for, governmental reform efforts, as“an exercise in creative destruction” as “old structures must be destroyed before new ones can be implemented”.

Governments led by market fundamentalists gained political power in the 1970’s and 1980’s. These market fundamentalists forcefully and skilfully argued that democratic socialism and the Keynesian welfare state had failed; thus justifying their determination to change the values of the State from protecting society from the market, to protecting the market from society (Terry, 2005). Prime Minister Margaret Thatcher (1979-1990) stated that society does not exist and that only competitive, wealth-seeking individuals matter. This statement began the large scale social and public disinvestment through privatization and deregulation, followed by the emasculation of the public service now viewed as a deficit. “Ideas of transformation, revolution, reinvention and cultural change have become a sustained theme and political rhetoric ever since Thatcherism displaced the political left by the political right as an agency of radicalism” (Clark & Newman, 1997, p. 34). Thatcher’s ally US President Ronald Reagan (1981-1989) came to power supported by neo-liberal proponents who valorized the primacy of the private over the public (Clarke, 2004; Quiggan, 2005) by advocating the welfare state as an impediment to free markets (Jilberto & Mommen, 2002). As President Reagan quipped, “Government is like a baby, an alimentary canal with a big appetite at one end and no responsibility at the other.” Further, “Welfare’s purpose should be to eliminate, as far as possible, the need for its own existence” (Das, 2011).

Reagan was also supported by the 'Family' or the 'Fellowship', a powerful and shadowy organisation founded in the United States in the 1930s to promote a gospel of theocratic capitalist power and American empire. Like a Protestant version of Opus Dei, the Fellowship is best known for founding the National Prayer Breakfast in Washington DC. The Fellowship is basically theocratic in impulse and deeply hostile to democracy, believing democratic government and secularism generally to be a manifestation of ungodly pride. Over decades it has managed to penetrate to the very centre of American political power by preaching a gospel of American power. Its invisible network has not only penetrated the highest levels of political power in the United States, but wherever in the world America has political or economic interests. This opaque network of fundamentalist Christian business groups, mainly in the oil and aerospace/defence industries see God's interests as those of absolute free markets evident in "macho, muscular Christianity" that tends to serve the interests of the network. Further this network is vehemently opposed to what they see as socialism i.e. public, social and environmental investment, unionism and feminism (Sharlet, 2008).

Regardless of the wishes of domestic electorates and public resistance to privatization worldwide (Hall, Lobina & De La Motte, 2005) governments initiated policies that transformed economic and social institutions. Often this was at the insistence of, or governments were persuaded by, powerful pro neo-liberal technocrats in the World Bank[5], the World Trade Organization (WTO) and the International Monetary Fund (IMF) (Clarke, 2004; Quiggan, 2005). Underlying neo-liberalism is the dominant ideology of the political

[5] Robert B. Zoellick is a Bush presidential appointee to the World Bank, following the scandalous resignation of another Bush appointee and architect of the Iraq war, Paul Wolfowitz. From 1993 to 1997, Mr. Zoellick served as an Executive Vice President at Fannie Mae, the largest housing finance investor in the U.S. and was instrumental in its privatisation. Fannie Mae, a victim of the sub-prime collapse lost billions of dollars and had to be re-nationalized.

and economic power[6]-holding technocracy with "a market intention to fundamentally reshape society and to transform its most profound relations" Szalai's diary (as cited in Jilberto & Mommen, 2002). As the public sphere became emaciated (Neimark, 1995), private investors awash with funds, scoured the globe for investment opportunities artificially pushing up the asset values and at the same time reinforcing the financialization[7] of society dominated by capital and commodity markets.

Using the competiveness rhetoric, government decree dismantled public institutions built up over several generations through privatizations, deregulation or corporatization (Clarke, 2004). The public service became the focus of reform, as market fundamentalist politicians implemented management technologies compatible with the 'new so-called Schumpeterian workfare state' (Cohn, 1997; Jessop, 1993; Terry, 2005). Traditional public administration practices of the Keynesian welfare state that had protected the public interest were replaced with management technologies euphemistically centred on financial management control, called New Public Management (NPM) (Terry, 2005).

> "*New Public Management* philosophy and practices have contributed to a phenomenon described as the thinning of administrative institutions. Thin institutions are weak; they lack the capacity for good administration—a requirement for maintaining the American people's confidence in government" (p. 426).

'The public service' was replaced by the 'public sector' as a provider of public services often tendered from the private or public sectors, but funded by the taxpayer through government (Broadbent & Guthrie, 2008). As the provision of public services was outsourced to the

[6] "Neoclassical theorists are unable to account for power, because they assume a perfectly ergodic *(certain)* world. When neoclassical economists do deal with power - albeit superficially - it is usually tied to the existence of an imperfection, which leads to suboptimal results" (Monvoison & Rochon, 2007 p.8).

[7] "Changes in capitalism over the last three decades have been commonly characterized using a trio of terms: neo-liberalism, globalization, and financialization ... less attention is given to the third. ... The financialization of capitalism - the shift in gravity of economic activity from production (and even from much of the growing service sector) to finance - is thus one of the key issues of our time (Foster, 2007, p.1). ... The great agglomerations of wealth seem to be increasingly related to finance rather than production, and finance more and more sets the pace and the rules for the management of the cash flow of nonfinancial firms ..." (Foster, 2007, p 7.).

private sector, regulatory oversight became paramount rather than traditional public governance.

> "The regulatory framework is intended to manage the nature of the various services and ensure that the suppliers of these services do not abuse their power to provide services that citizens have little option but to use" (Broadbent & Guthrie 2008, p. 136).

The public service transitioned to a market orientation diminishing its publicness and blurring "the boundaries between the private-public distinction, shrinking socioeconomic role narrowing service recipients, worsening condition of accountability and a declining level of public trust" (Haque, 2001, p.65). Although scholarly debate is far from over about the origins of NPM, Terry (2005, p.430) states that

> "there is at least general agreement on the theoretical foundation of NPM. Scholars agree that managerialism (Enteman, 1993; Pollitt, 1990), public choice theory (Buchanan & Tullock, 1962), transaction-cost economics (Williamson, 1995), and principal-agent theory (Jensen & Meckling, 1976; Mitnick, 1975; T. Moe, 1984; Wood, 1989) are important influences. The complex mixture of these theoretical perspectives has produced what I describe elsewhere as the neo-managerialist ideology or neo-managerialism (Terry, 1998a).
>
> Neo-managerialism provides the philosophical foundation for two different approaches associated with the NPM. The first of these, liberation management, is based on the idea that public managers are competent and highly skilled individuals familiar with good management practices. Consequently, managerial malfeasance is not a plausible explanation for the supposed poor performance of public agencies. If managerial incompetence does not explain the shortcomings of administrative institutions, what does? Critics of liberation management offer a host of answers, but its proponents give a clear, unambiguous response: The bureaucratic system, with its burdensome rules, controls, and procedures, is largely responsible for poor government performance."

Mimicking their private sector counterparts, new public managers eliminated many rules and regulations in their zeal to achieve efficiencies and competitive performance; thereby failing to recognize the importance of rules and regulations to strengthen the integrity of public administrative institutions (Terry, 2005). Accounting was central to legitimising public services into a market or quasi-market services needing contracts and employee performance

incentives, which are explicitly managed top down with the emphasis on quantifying efficiency and performance gains in the name of accountability (Lapsley, 1999). The expansion of managerial freedom in newly created autonomous public agencies based on business principles, diminished public accountability that lacked democratic scrutiny of public debate, legislative committees and administrative tribunals (Haque, 2001).

An emasculated and marketized public 'sector' became the agency for the 'business of business regulation' in support of regulatory capitalism's ideal of a free market uninhibited by regulation and the State. Regulatory capitalism is a sociological theory that views the market as the best and only way to organise society, thus blurring the boundaries between the state, markets and society (Levi-Faur, 2005). As a the spawn of neo-liberalism, regulatory capitalism is based on the ideology of reduced reliance on state regulation for expected efficiencies through fundamentalist 'free-market' capitalist mechanisms, such as competition, unfettered markets, minimal taxes and little government intervention (Friedman, 1962; Hayek, 1986/2002). Thus, the US oil and gas industry is overseen by a flawed regulatory structure introduced by the Reagan Administration during the early 1980's (for a full history of US oil and gas regulation see the Report to the President, National Commission on the BP Deepwater Horizon, January, 2011).

> "In January 1982, President Reagan's Interior Secretary, James Watt, created the Minerals Management Service (MMS) in support of his goal to open unprecedented reaches of U.S. territorial waters to oil and gas exploration. MMS had a conflicting and ultimately disastrous mandate: to both regulate offshore energy leases and collect the revenue they generated" (Oil Spill Commission, 2011, p.66).

Rather than regulation being administered by a publicly funded independent public service guided by a democratically elected government, politicians were instrumental in partly or wholly self-regulating industries ridden with conflicts of interest. Regulatory capitalism manifests in regulatory agencies often controlled by political appointees or outsourced to

non-elected ‘experts’, from the very industry being regulated thus serving business. Kennedy (2007) points out several questionable Bush administration appointees:

> “Most insidiously, the president *(Bush)* has put representatives of polluting industries or environmental skeptics in charge of virtually all the agencies responsible for protecting America from pollution. Some egregious officials are now gone, often returning to the private sector whose interests they served. But the administrators who remain in place continue to carry the torch—people such as Mark Rey, a timber-industry lobbyist appointed to oversee the U.S. Forest Service; Rejane “Johnnie” Burton, at Interior, a former oil-and-gas-company executive in Wyoming, who has failed to collect billions on leases from oil companies active in the Gulf of Mexico; and Elizabeth Stolpe, a former lobbyist for one of the nation’s worst polluters, Koch Industries, who is an associate director (for toxics and environmental protection) at the White House Council on Environmental Quality. …
>
> Reports in *The New York Times* and on *60 Minutes* have highlighted the case of Phillip Cooney, who was the chief of staff for the White House Council on Environmental Quality. His job was to advise the president on the environmental implications of decisions that he makes. Cooney’s previous job had been as the chief lobbyist for the American Petroleum Institute. His preoccupation during his four-year White House stint, according to news accounts, was combing scientific documents issued by the various federal agencies in order to remove damaging statements about the oil industry and the coal industry. He suppressed or altered several major studies on global warming in order to protect the interests of his former clients. After the *Times* revealed the alterations, in 2005, Cooney left his job and went to work for ExxonMobil.”

Regulatory agencies are funded mainly by the very industry they are overseeing in a tacit client relationship, thus compromising their independence and introducing conflicts of interest. In addition, the regulated are able to control the regulator through economic power “he who pays the piper calls the tune”; that subverts and corrupts the regulation to suit the business objectives of profit, rather than the public good. The oil industry has a long history of influencing the US government regarding regulatory oversight (Priest, 2007) and environmental disclosures (Cho, Chen & Roberts, 2008). For example, Mayer (2010) describes the embodiment of the US oil industry, billionaire Koch brothers with Christian right leanings as:

> “… longtime libertarians who believe in drastically lower personal and corporate taxes, minimal social services for the needy, and much less oversight of industry—especially environmental regulation. These views dovetail with the brothers’ corporate interests. In a study released this spring, the University of Massachusetts at Amherst’s

> Political Economy Research Institute named Koch Industries one of the top ten air polluters in the United States. And Greenpeace issued a report identifying the company as a "kingpin of climate science denial." The report showed that, from 2005 to 2008, the Kochs vastly outdid ExxonMobil in giving money to organizations fighting legislation related to climate change, underwriting a huge network of foundations, think tanks, and political front groups."

However, the Koch Brothers like many other oil companies build reputations for upstanding corporate citizenship by donating to charities and supporting various community causes, while at the same time destroying swathes of the environment by polluting the air, land and water (Chen, 2010; Mayer, 2010). Hence, the US Federal regulators' oversight of the oil and gas industry was essentially self-regulated overseen by an ethically comprised MMS, an agency of the Department of the Interior (DOI). As Lehner, Director of the Natural Resource Defence Council argued:

> "We shouldn't be surprised that corporations are trying to increase their profits. That is what they do. But what is surprising is how free BP was to do as it pleased.
>
> We know BP will act in its own interest, but where were representatives of the American people's interests in the Gulf—our health, fisheries, natural heritage? Where were the forces that hold polluters and bad actors in check? Where were the regulators?
>
> … In the world of offshore oil drilling, those conditions didn't exist. Dedicated regulators were grossly underfunded and stripped of effective enforcement tools, while the rest were too cosy with the industry they were charged with overseeing." (Lehner & Deans, 2010).

2.1 US public policy, oil, money, power and greed

On December 20, 2006, President George Bush signed into law The Gulf of Mexico Energy Security Act (GOMESA) of 2006 (Pub. Law 109-432), which overrode The Oil Pollution Act of 1990. Following this legislation the President lifted US bans on offshore drilling that were enacted in 1990 after the catastrophic Exxon Valdez oil spill in Alaska. President Bush argued that the main reason for allowing deep water oil drilling in the GOM OCS was to lower the oil price for American citizens. Energy security was also put forward as a reason, as the US requires oil to wage wars in Iraq and Afghanistan, and to also defend US oil interests

in the Persian Gulf – deemed the 'hidden cost' of oil (Delucci & Murphy, 2008). BP has benefited from the Iraq war as highlighted in their 2009 BP sustainability review (p. 2).

> **"How significant is BP's deal in Iraq?** Our deal to increase production from the Rumaila field is significant in several ways. It gives us a great opportunity to work with the people of Iraq and our partner China National Petroleum Company to develop one of the world's great oilfields. We see this as the beginning of a long-term relationship that will be instrumental in helping Iraq to rebuild its economy after years of war and sanctions. The investment in Rumaila will support Iraq in achieving its ambition of becoming a major player in global oil markets once again and will catalyse training and development opportunities for the many thousands of Iraqis working in Rumaila."

A backroom deal that has changed the original contract with Iraq's Ministry of Oil has given BP a stranglehold on the Iraq's economy (95% of Iraq's foreign earnings) as reported in the Observer (Macalister, 31 July, 2011).

> "Section 12.5 of this revised technical service contract shows that BP and its Chinese partner CNPC can obtain payments for "government imposed curtailment" – which could cover quota demands made on Iraq by Opec. This also applies to disruption to the transport of oil – "curtailments of transporter to receive net production at the transfer point through no fault of the contractor or operator".
>
> The section goes on to say that in the event of such disruptions "the parties shall agree in good faith a mechanism to fully compensate [the] contractor as soon as practicable, which may include, among other things, a revised field production schedule or an extension to the term or payment of lost income in respect of the estimated volumes not produced during the period".
>
> The changes are likely to anger internal critics of the Baghdad regime, many of whom were suspicious of the original deal. It will also increase the prejudice of those who saw the UK's involvement in toppling Saddam as part of a "war for oil".

BP was also the largest oil producer and leading resource holder in the deepwater GOM as reported by then CEO Tony Haywood (BP Annual Report, 2009). He stated that BP's "priorities have remained absolutely consistent – safety, people and performance" yet also reports that BP is "now the largest producer in deepwater fields globally. In the Gulf of Mexico we ramped up production at Thunder Horse to more than 300,000 barrels of oil equivalent per day. Production started from Atlantis Phase 2, Dorado and King South. And in September we announced the Tiber discovery, the deepest oil and gas discovery well ever

drilled" (p.6).

Meanwhile US policy makers appear to have little intention of moving away from fossil fuel to carbon-reducing alternatives, indicating that oil and gas will provide the 'lion's share' of the nation's energy for the foreseeable future.

> "Domestic petroleum production is continuing to decline and imports are continuing to increase. The forecasts by the National Petroleum Council and others project that domestic consumption over the next 5 years and beyond will increase substantially. While alternative sources are expected to contribute a growing portion of the Nation's domestic energy production, no new technology is forecast to make a paradigm-shifting contribution to domestic energy production in the next 15 years. Crude oil and natural gas are expected to provide the lion's share of the Nation's energy for the foreseeable future. The OCS is one of the largest suppliers of crude oil for the United States, and is the third largest supplier of natural gas, after Texas and Alaska. Without the huge increase in deepwater oil and gas production from the GOM OCS since 1995, the recent decline in domestic production would have been twice as severe. The Nation's current and projected energy situation will require continued leasing, exploration, and development of OCS lands in an environmentally sound manner." (Minerals Management Service, 2007, p. 80).

The US imports 65% of its oil, even though it is the third largest oil producer in the world after Saudi Arabia and Russia (Grove, Burgelman & Schifrin, 2008). Grove et al. (2008) point out that many community groups and conservationists were against the opening up of the GOM due to its close proximity to the fragile Louisiana wetlands, the habitat for the fish and shrimp spawning grounds that support the largest fishing industry in the US, as well as several endangered flora and fauna (Nixon et al., 2009). For example

> "Restore or Retreat (Louisiana) comments that without adequate mitigation and a significant, steady funding mechanism in place to address development that is on the brink of economic and environmental disaster, this non-profit coastal advocacy group is opposed to the MMS plan. The hurricanes were evidence of inadequate planning and mitigation techniques.
>
> Sierra Club et al comments on behalf of millions of members, and raises eight points of concern, in opposing the MMS program. (1.) New Administrative Boundaries are inequitable, illegal, not subject to proper notice and comment and unacceptable. (2.) The 5-year plan should not include any areas protected by moratoria or executive withdrawal. (3.) Such areas should be granted permanent protection. (4.) No permits for "air gun" inventories should be issued for protected areas. (5.) "Gas-Only-Leasing"

> proposals are inappropriate and deceptive because they open the door for oil drilling. (6.) Retroactive application of a pre-existing EIS for a prior Lease Sale #181 proposal would fail to address many important concerns, namely the well-known "Loop 125 Currents" in the GOM. (7.) Alaska OCS Leasing proposals would endanger a wide range of resources of national significance. (8.) Lack of Attention to Protecting Living Resources and the "Royalty relief" provisions enacted in the EP Act of 2005 fail to meet the test of ensuring fair return for the U.S. taxpayer. (9.) No acknowledgement of the Carbon-Constrained Future. (10.) Growing scandals over MMS giveaway of taxpayer-owned U.S. resources to the oil industry. This comment opposes most aspects of the MMS proposal" (Minerals Management Service, 2007, p. 124).

The MMS was responsible for implementing the requirements of the Act. Section 18 of the Act called for the preparation of the oil and gas leasing program indicating a 5-year schedule of lease sales (2007-2012), designed to meet the Nation's energy needs in the newly opened deep water GOM. The MMS in fact had several conflicting responsibilities as stated in its 2009 report:

> "The Minerals Management Service is a responsible steward of U.S. offshore resources by ensuring the receipt of fair market value for the sale of leases, encouraging conservation, evaluating and approving new technology, and regulating drilling and production" (Nixon et al., 2009 p. xi).

The US government received significant income from the auctioning of GOM oil leases to the tune of $67 billion dollars in 2008, with 50% allocated to the US Treasury General Fund, 37.5% to the four Gulf oil and gas producing States of Alabama, Louisiana, Mississippi and Texas, and 12.5% to the land and water conservation fund (see Bureau of Ocean Energy Management, Regulation and Enforcement: http://www.boemre.gov/offshore). The auction of oil and gas leases in now accessible deep water GOM produced a bonanza for the US government. The net benefits from the Central GOM oil and gas program for 2007-2012 was expected to be $US99.52 billion, and from the Western GOM to be $US44.44 billion. However, environmental costs were calculated at a meagre $US0.34 billion in 2007 as reported in DOI, Minerals Management Service (MMS), April 2007 Report (Table 6 p. 84). Hence, on the one hand the US government received monies for the auction of leases from

the oil and gas companies, but with the other hand gave the oil and gas companies major royalty relief for the GOM OCS. Intense lobbying by the oil and gas companies successfully persuaded the Clinton administration to give major royalty relief under the Outer Shelf Deep Water Royalty Relief Act 1995 to promote deep water (1000 feet or more) oil and gas production. The New York Times (26 December, 2006) highlighted a report commissioned by the MMS that stated:

> "projects that over a 40-year period beginning in 2003, the incentive program would lead to the discovery of only 1.1 percent more oil reserves than would be found with no incentives at all. This is a tiny impact that is far exceeded by swings in market prices, which have much more to do with whether a company is willing to risk millions of dollars on what could turn out to be dry holes."

The MMS is responsible for collecting oil and gas royalties. However this US government agency has estimated that foregone royalty relief could be as high as $US80 billion in 2004, as testified by the United States Government Accountability Office (USGOA) before the US Senate Committee on Energy and Natural Resources (18 January, 2007). The USGOA (2007) reported that the implementation and administration of the royalty relief provisions by the MMS were problematic, marred by inept record keeping, inconsistent enforcement and bureaucratic incompetence. The USGOA pointed to the MMS allowing companies to escape billions in royalties that they would otherwise have paid for 1998 and 1999 GOM OCS leases. The MMS also had the option of taking a percentage of the actual oil and natural gas, and selling it to themselves or using it for other reasons, such as filling the nation's strategic petroleum reserve. The MMS referred to this option as 'taking royalties in kind' (USGOA, 2007).

The MMS not only received monies from the oil companies for the auction of GOM leases, but also performed the environmental impact studies of the GOM OCS. For example, see MMS "Gulf of Mexico OCS Oil and Gas Lease Sales: 2009-2012 Central Planning Area

Sales 208, 213, 216, and 222, Western Planning Area Sales 210, 215, and 218, Final Supplemental Environmental Impact Statement" (September, 2008). This regulatory structural flaw created a conflict of interest where the same government agency is receiving substantial funding from the auction of oil and gas leases, but at the same time evaluates the environmental impact of those auctioned leases. Disgraced bankers Lehman Brothers[8] are also quoted by this MMS (2008) environmental impact study:

> "Lehman analysts believe that they *(oil and gas companies)* have recently become more attracted to unconventional gas plays and that increased competition abroad from national oil companies and limited access to some areas of the world is pushing the majors back to the United States (One Offshore, 2005b; 20:9). … Interest in deepwater oil and gas production continues to grow, with 67 percent of all blocks receiving bids in water depths greater than 400 m (1,312 ft)" (Minerals Management Service Gulf of Mexico OCS, 2008, p. 3-78).

The MMS allocation for environmental damage was inadequate considering the extent of the BP oil spill damage to the large environmentally sensitive areas of the South Eastern US, including the Louisiana wetlands and the Mississippi Delta. These areas are home to several endangered flora and fauna as well the largest US fishing ground that has yet to be fully accounted for. To ensure adequate funds for the clean-up, President Obama's administration pressured BP to suspend its dividend for the year (2010) and agree to a $US20 billion oil fund. In fact the cost to BP so far is about $US40 billion and counting. The Guardian reported that:

> "In late July BP set aside $32.2bn to cover the cost of the clean-up, more than the City had expected, a move which pushed the company into a record loss of $17bn for the second quarter of 2010. At that time, though, the Macondo well was still leaking oil into the ocean, and was only finally shut off in mid-September.
>
> Richard Hunter, head of UK equities at Hargreaves Lansdown Stockbrokers, said the additional $7.7bn provision was 'a stark reminder that the fallout from the spill will follow BP for some considerable time to come'.

[8] Lehman Brothers Bank collapsed in September 2008, the largest bankruptcy ever filed, amid accusations of securities and accounting fraud that precipitated the global financial crisis (Valukas, 2010).

The final cost of one of the worst environmental disasters ever could climb further. BP said that the total charge of $39.9bn was its 'current best estimate of those costs that can be reliably measured at this time" (Weardon, 2 November, 2010). As the MMS April 2007 study stated:

> "The immediate environmental risks of OCS oil and gas activities are borne primarily by producing regions and nearby onshore areas, while some of the financial consequences of those risks (e.g., financial losses due to unprofitable endeavors, compensation by responsible parties for natural resource damage and payments into funds established to provide compensation for losses not attributable to specific parties) are shared by companies and individuals throughout the Nation." (Minerals Management Service U.S. Department of the Interior, April 2007, p. 96).

A Congressional Research Report disclosed that the MMS were able to provide BP with environmental exceptions for their deep water drilling in Central GOM. Hence "Had this project occurred in a different geographical area, including the eastern area of the Gulf of Mexico, it would have undergone a higher level of environmental scrutiny" (Alexander, June 2010).

2.2 Regulatory capitalism compromises the MMS

We argue that the flawed regulatory structure and political appointees are evidence of regulatory capitalism that compromised the MMS's oversight of the GOM OCS oil fields. The flawed MMS oversight is evidenced in the LA Times Editorial (May 28, 2010) that reported MMS inspectors accepting meals and gifts from the companies whose work they were overseeing in the Gulf of Mexico. Moreover:

> "less than two years ago, a report revealed that employees at the Denver office were engaging in sex and using drugs with energy company representatives in addition to accepting gifts from them — all while overseeing billions of dollars worth of contracts.
>
> The agency has conflict of interest written into its very job description: It collects royalties for mineral leases at the same time that it recommends which leases should be granted, and then oversees the safety and environmental soundness of the projects. Its position on new Arctic oil exploration leases — suspended Thursday by President Obama — was evidence enough that the Minerals Management Service had lost its

> sense of mission. The agency never studied what would happen in the case of a catastrophic oil spill in the Arctic because it assumed the chances of such a thing happening were too remote. That's the same decision it made on BP's Deepwater Horizon project".

The ethicality of the MMS was under scrutiny as many congressional and internal investigations have found this oversight agency to be badly mismanaged and at times corrupt. Shockingly the New York Times (14 May, 2010) reported,

> "The minerals service short-circuited the process when it granted hundreds of recent drilling permits, according to documents and current and former government officials. The BP well that blew in the gulf in April was granted an exemption from the assessment process because company officials assured regulators that it carried little hazard. Officials went along with the company and granted the permit.
>
> The minerals agency also routinely overruled its staff biologists and engineers who raised concerns about the safety and the environmental impact of certain drilling proposals in the gulf and in Alaska, according to a half-dozen current and former agency scientists. Those scientists said they were also regularly pressured by agency officials to change the findings of their internal studies if they predicted that an accident was likely to occur or if wildlife might be harmed."

Other instances of MMS's lack of ethicality include one of its own auditors blowing the whistle on one major company cheating millions of royalty dollars in 2006. This auditor was reorganised out of the MMS and he subsequently sued the cheating oil company (Andrews, 2006). In fact since the agency's inception in 1982 by the Reagan Administration, it was criticised only six years later for bad auditing practices and not collecting billions of dollars of outstanding royalties from gas and oil companies (New York Times, 5 October 1988). Like a bad seed, the structural flaws of this agency stemmed from the neo-liberal Reagan administration that introduced regulatory capitalism, where the regulator and the regulated industries became dependently interlocked in complex economic and administrative relationships that support vested interests.

In 2006, the Office of Inspector General (OIG) instigated three separate investigations into

allegations of corrupt MMS employees. The US Department of Interior Office of the Inspector General (9 September, 2008) reported to the MMS that he found a culture of ethical failure. For example, over 1/3 of the MMS royalty in kind staff socialised with, and received a wide array of gifts and gratuities from the oil and gas companies with whom these MMS staff members were doing business (United States Department of Interior Office of Inspector General, 9 September. 2008).

Clearly the flawed regulation of the gas and oil industry, provided by the inept and sometimes corrupt MMS failed in their oversight duties to prevent the catastrophic BP GOM oil spill in April 2010, not long after the BP Texas oil refinery exploded disastrously in March 2005. On June 21, 2010, the MMS was fundamentally restructured and renamed the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) as it underwent reorganization and reform to split the agency, separating the officials who are responsible for overseeing natural resource extraction from those who are charged with ensuring its safety (see www.boemre.gov). Marketized public governance of the US gas and oil industry clearly failed, but what was BP' governance role?

3. BP's Greenwash – a history of failed sustainability

Indeed BP has a long history of oil spill accidents that have cost human lives and also caused catastrophic environmental damage, particularly since the 1990s. A little-reported giant gas leak in Azerbaijan in September 2008 has recently emerged from leaked US embassy cables (Webb, 2010). The leak occurred at the Azeri-Chirag-Guneshi (ACG) Field, Azerbaijan's largest producing oil field in the Caspian where vast undeveloped gas reserves are situated. BP is the operator and largest shareholder in the consortium, which includes US companies Chevron, ExxonMobil and Hess (formerly Amerada Hess), as well as Norwegian firm Statoil

and Azerbaijani state owned oil company Socar. BP has been criticized by its partners in the gas field for limiting the information it has made available about the accident, both to the public and to its ACG partners. While BP was able to evacuate its 212 workers safely after the accident, output was cut by 500,000 barrels a day with production disrupted for months. In January 2009 BP blamed a “bad cement job” for the gas leak, which bears a resemblance to Tony Hayward partly blaming a “bad cement job” by contractor Halliburton for the GOM OCS incident. BP’s annual report does not mention this blowout, instead referring only to a “subsurface gas release” (Juhasz, 2011). The President of Azerbaijan has also accused BP of stealing $10 billion of oil reserves and using “mild blackmail” to secure the rights to develop vast gas reserves in the Caspian Sea (Webb, 2010).

Other recent accidents occurred in March and August 2006, when BP Exploration (Alaska) Inc (BPXA) had two major leaks of crude oil in Prudhoe Bay, Alaska due to corrosion of the pipeline system. On 20 November 2007, BPXA entered into a criminal plea agreement with the US Department of Justice (DOJ) relating to these accidents. BPXA pleaded guilty to a misdemeanor violation of the US Federal Water Pollution Control Act. The penalty included a three year term of probation that required BPXA to meet certain benchmarks relating to replacement of its transit lines, upgrades to its leak detection system and improvements to its integrity management program. On 31 March 2009, the DOJ filed a complaint against BPXA seeking civil penalties and injunctive relief relating to these 2006 oil spills. The complaint alleged violation of various federal environmental and pipeline safety statutes, and associated regulations, as well as its maintenance and operation of the North Slope pipelines. The State of Alaska also filed a complaint on the same date alleging BPXA’s corrosion management practices violated various statutory, contractual and common law duties to the State, resulting in penalty liability, damages for lost royalties and taxes, and liability for punitive damages

(BP Annual Report, 2007). Prosecutors estimated that BP saved $9.6 million by not regularly cleaning and inspecting the pipelines (Juhasz, 2011).

On 23 March 2005, an explosion and fire occurred at the BP Products' Texas City refinery in the isomerization unit as it was starting up after routine maintenance. The accident claimed the lives of 15 workers and injured many others. BP Products has since resolved all civil injury claims arising from the March 2005 incident. In March 2007, the US Chemical Safety and Hazard Investigation Board (CSB) issued its final report on the accident, which contained recommendations to the Texas City refinery and to the Board of the company. On 25 October 2007, the DOJ announced that it had entered into a criminal plea agreement with BP Products relating to the March 2005 accident. On 4 February 2008, BP Products pleaded guilty to one felony violation of the risk management planning regulations promulgated under the US Federal Clean Air Act. On 12 March 2009, the court accepted the plea agreement and BP Products paid a $50 million criminal fine and was sentenced to three years' probation. Conditions of the probation included compliance with a 2005 US Occupational Safety and Health Administration (OSHA) settlement agreement, and an agreed order entered into with the Texas Commission on Environmental Quality (BP Annual Report, 2007). BP also paid a fine of $21.3 million to OSHA to resolve more than 300 separate alleged violations of OSHA safety regulations (BP Annual Report, 2005). A US government report into the accident blamed systemic lapses in management, budget cuts and unacceptable maintenance (Bower, 2010).

In the wake of the 2005 Texas explosion, and on the recommendation of the US Chemical Safety and Hazard Investigation Board, the BP US Refineries Independent Safety Review Panel (the Panel) was established in 2006 to review process safety management at the five

US refineries and the culture of safety management. The Panel was however, chaired by the former US Secretary of State, James A Baker III, once again indicating a close relationship between BP and the US government (The BP US Refineries Independent Safety Review Panel, 2007). The Panel issued its first report in January 2007 making 10 recommendations, including consistent implementation of risk identification tools, improvements in incident reporting and investigation systems, and enhancements to the group's reporting and monitoring programs (see BP Annual Report, 2007 p. 28). At the Panel's recommendation in May 2007 the Board appointed L Duane Wilson, who was a member of the Panel, as an independent expert to monitor progress. The Panel reports directly to the BP Board's Safety, Ethics and Environment Assurance Committee. In 2006 BP also established the Group Operations Risk Committee, chaired by Tony Haywood, to scrutinize the group's safety performance in implementing the operating management system that embraces the recommendations made by the Panel in January 2007, essentially ensuring a system of self-regulation.

BP touts support for the Global Reporting Initiative (GRI), the global standard for corporate sustainability reporting instituted by the United Nations and CERES. BP's logo brazenly advertises the company as a GRI sponsor in the latest G3 version of the standard (Lewis, 2010). At the same time Greenpeace recognized BP's attempt to greenwash its brand by awarding the company the first annual Greenpeace 'Emerald Paintbrush' award in 2008. Greenpeace highlighted that under Tony Hayward GCE, BP had spent millions of dollars on an advertising campaign announcing its commitment to alternative energy sources, using slogans such as "from the earth to the sun, and everything in between" and "the best way out of the energy fix is an energy mix". In reality however, the company had allocated 93 per cent, or $20 billion of its total investment fund for the development and extraction of oil, gas

and other fossil fuels, while committing a mere 2.79 per cent to wind and 1.39 per cent to solar power. Greenpeace also argued that in reality BP is one of the world's largest corporate emitters, with the company in 2007 releasing over 63 million tonnes of CO^2 into the earth's atmosphere, roughly the equivalent of Portugal (Greenpeace, 2008).

> "The Deepwater Horizon oil spill highlighted shortcomings of existing financial and sustainability disclosure standards and practice. Viewed in retrospect, it is apparent that both BP's financial and sustainability reports veiled core weaknesses in how the company managed pivotal issues of maintenance and safety. Assertions of NGOs that BP's sustainability claims were greenwash came through with a vengeance."

3.1 BP's financial link to oil accidents and spill.

The BP GOM OCS oil spill is directly linked to short term financial decisions that caused massive environmental and social damage, nearly wrecking the business. Teetering on the brink of insolvency, BP was rescued by selling off assets and accepting maxima mea culpa at the behest of the US government. BP reported during the 2010 financial year that it had taken a total pre-tax charge of $40.9 billion in relation to the accident and spill. Hence BP was forced to announce the sale of up to $30 billion of assets and by the end of 2010 had agreed to almost $22 billion of disposals. The cancellation of three dividend payments to shareholders was also made, as well as significant changes to the Board, to overcome the threat to the very existence of the company (BP Annual Report, 2010).

We argue that a major reason for BP's vulnerability to major oil spills and accidents is linked to management's chase for super growth and profits, boosted by severe cost cutting of maintenance and safety, initiated by the ambitious and ruthless Lord Browne the then CEO (1998–2007)[9]. Accounting and BPs accountants are also implicated as accounting numbers serve to justify decisions to pay excessive executive compensation, at the same time as firing

[9] Since 2001, Lord Browne has been a crossbench member of the House of Lords. In 2007 he was fired by BP's Board for dishonesty in the High Court attempting to hide a messy breakup with a gay lover he met through the internet. He also wanted to avoid Board and shareholder scrutiny about his lavish lifestyle funded by the company. He left with 32 million pounds compensation and his reputation tarnished.

thousands of workers, to achieve financial targets required by the Board and ultimately BP shareholders. Accounting has distributive and hegemonic effects (Cooper & Sherer, 1984) which reflect and perpetuate social injustices by "appraising the terms of exchange between social constituencies (and by) arbitrating, evaluating, and adjudicating social choices" (Tinker, 1985, p. 81). Moreover, any form of accounting has representational elements of a particular social, political, and cultural context (Cooper & Sherer, 1984), and by extension, main stream accounting represents the social, political, and cultural aspirations of capitalist economics.

Hence, executive rewards are far from fair and just, as in BP's remuneration policy that stresses demanding performance targets for shareholder interests and profit generation.

> "The remuneration committee's reward policy reflects its aim to align executive directors' remuneration with shareholders' interests and to engage world-class executive talent for the benefit of the group. The main principles of the policy are:
>
> - Total rewards should be set at appropriate levels to reflect the competitive global market in which BP operates.
> - The majority of the total reward should be linked to the achievement of demanding performance targets.
> - Executive directors' incentives should be aligned with the interests of ordinary shareholders. This is achieved through setting performance targets that take account of measures of shareholders' interests and through the committee's policy that each executive director should hold a significant shareholding in the company, equivalent in value to 5 x the director's base salary.
> - The performance targets in the Executive Directors' Incentive Plan should encompass demanding comparisons of BP's shareholder returns and earnings with those of other companies in its own industry and in the broader marketplace." (BP Annual Report, 2004, p. 107).

This form of compensation encourages and is encouraged by the "glorification of self-interest" or the "selfish syndrome" (Mintzberg, Simons & Basu, 2002, p. 67). Mintzberg et al. (2002) criticize Jensen and Meckling's (1976) narrow view of economic man or *Homo*

economicus, where everyone and everything has a price and corporations exist to maximize shareholder value achieved ostensibly by the 'CEO as hero'. This pervasive "glorification of self-interest" and 'CEO as hero' are examples of extreme individualism that have resulted in senior executive pay and conditions exploding since the 1990's, which continues today even after recent asset bubble crashes have left a trail of economic and social devastation (Boyer, 2005; Stiglitz, 2010).

Governments have been successfully persuaded to leave executive pay to the market with formal regulation designed for market efficiencies in an essentially self-regulated governance system. Senior executives effectively pay themselves through lucrative compensation contracts, supposedly linked to company performance, negotiated with compliant or passive boards that abound with conflicts of interest. In effect, powerful and wealthy corporate elites are able to arrange their compensation with minimum external oversight or transparency that effectively firewalls senior management from an organisation's internal labour norms and values at the expense of the workers (Sikka, 2008). Rather than performance, evidence indicates that the increase in senior executive pay is linked to increasing the firm size, even when the firm's market value is reduced which "could explain some of the vast amount of inefficient expenditures of corporate resources on diversification programs that have created large conglomerate organizations …" (Baker, Jensen & Murphy, 1998, p. 609). A meta-analysis of CEO pay studies found that firm size more so than performance significantly influenced CEO pay. That is, the bigger the firm the larger the executive pay packet (Tosi, Werner, Katz, & Gomez-Mejia, 2000). Additionally Tosi et al., (2000, p. 329) argue that their findings are consistent with,

> "those theoretical explanations that emphasize organizational size as an important determinant of total CEO pay; that is, indicators of firm size, taken together, explain almost nine times the amount of variance in total CEO pay than the most highly correlated performance measure."

BP was no exception and achieved its conglomerate status when the then CEO Lord Browne financially engineered massive takeovers and mergers of other large oil companies, including AMOCO in 1998 (previously Standard Oil). This transaction of $US31 billion was the largest financial transaction in history (at the time), as BP massively increased its ordinary shares from 2 billion pounds to 12 billion pounds (Amoco and BP Oil, 1998), thus making BP more beholden to its shareholders and the financial markets. Boyer (2005, p.9) argues that "financial market-related incentives, supposed to discipline managers, have entitled them to convert their intrinsic power into remuneration and wealth, both at micro and macro level. This is the outcome of a *de facto* alliance of executives with financiers, who have exploited the long-run erosion of wage earners".

As banks and corporate advisors were reaping huge fees[10] associated with these large transactions, BP's accountants began slashing maintenance and firing over 10,000 employees including experienced engineers and oil men (Bower, 2009). A review of BP's annual reports (2001-2010) reveal that there were 115,250 employees in 2002, but by 2010 employee numbers were slashed to 79,700 (reduced by 35,550 employees or 31%) with termination payments of $166 million in 2010, $945 million in 2009 and $669 million in 2008. At the same time Lord Browne's bonuses, shares and options increased from $US2.8 million salary and bonuses, 472,500 shares and 1,269,843 options in 2001 to $US5 million salary and bonuses, 474,384 shares and 2,006,767 options in 2006. Shareholders including senior executives (capital) were the winners but the BP workers, and genuine long term sustainability (labour and society), were the losers as globalised capital ignores workers' rights proclaimed by the Universal Declaration of Human Rights. Investigative historian Tom

[10] Estimated fees and expenses incurred or to be incurred by BP in connection with the 1998 Merger are approximately $80 million (Amoco and BP Oil, 1998).

Bower (2009) writes:

> After his appointment as BP boss in 1998, Lord Browne swiftly transformed the firm from a dying oil corporation with just two fields - in Alaska and the North Sea - into the world's second largest behemoth. By re-focusing on so-called elephants (the big oil reservoirs) and ruthlessly cutting costs, his mastery of financial engineering used BP's rising share price to launch audacious take-overs of failing oil companies, especially in America. His success earned worldwide plaudits. After re-branding BP as Beyond Petroleum - the world's most environmentally friendly oil company - he boasted during visits to Washington that BP was not only the largest producer of oil in America, but also the most successful explorer in the Gulf of Mexico, one of the most difficult places to extract oil. …
>
> His philosophy was 'more for less': operations would be completed at a cost that was 10 per cent cheaper than the previous time, and so on. Taking his cue from New Labour, targets became the Holy Grail. In July 2000, he announced that production would annually grow over three years by 5.5 to 7 per cent, mostly in the Gulf of Mexico and Angola. This optimism was hailed and BP's share price soared. But, in fact, BP's growth turned out to be only 2.9 per cent and BP could hit its targets only by more ruthless cost-cutting.
>
> Hundreds of engineers were sacked. Budgets for safety and maintenance were slashed. Skilled oil men resigned in disgust. While Lord Browne was busy rebranding BP with a new 'green' logo (a typically vacuous - and expensive - New Labour gimmick), Doug Ford, an American responsible for BP's refineries, attacked what he believed was an increasingly badly-run organisation. After Lord Browne ignored his warnings about the consequences of cost-cutting, Mr Ford resigned and others followed. …
>
> Unwilling to tolerate criticism, Lord Browne favoured only 'the turtles' - the sycophants trusted to deliver his targets. Tony Hayward was one of the chosen ones. Meanwhile, Mr Ford was replaced by John Manzoni, an accountant and Lord Browne 'turtle' with little understanding of the complicated engineering skills required to run refineries properly. And to satisfy Lord Browne's 'more for less' mantra, Mr Manzoni[11] zealously pruned safety and maintenance costs.

Upon taking the CEO helm Tony Hayward (2007-2010)[12] continued with a culture of cost cutting, reduced oversight and engaged in greater risk taking. He took BP into the Canadian tar sands, one of the most environmentally destructive methods of extracting oil on earth, destroying the lands of the First Nations peoples. While shutting down BP's alternative energy headquarters in London in 2009, he significantly expanded BP's offshore operations

[11] Mr Manzoni was fired by the Board in 2006 (along with Lord Browne) as a consequence of the 2005 Texas oil refinery explosion.

[12] On 27 July 2010 BP released a statement that Tony Hayward was stepping down as CEO. He would receive about $17 million in severance and pension payments, and was appointed to the board of BP's Russian partnership, TNK-BP (Juhasz, 2011). Bob Dudley is now the CEO.

in Canada, Egypt, Trinidad, as well as Angola and Azerbaijan – among the world's most repressive and corrupt governments. Hayward also expanded operations in the GOM, where it partners with every major oil company, e.g. ExxonMobil, Chevron and BHP Billiton (Juhasz, 2011).

Hence, other oil companies are no better. A United Nations Environmental Programme Report (2011) exposed the full horrors of a half a century of oil production in Nigeria leaving extensive environmental, social, economic and health damage. Moreover the report (2011, p. 139) found similar regulatory flaws where

> "… there is clearly a conflict of interest in a *(Nigerian)* ministry which, on one hand, has to maximize revenue by increasing production and, on the other, ensure environmental compliance. Most countries around the world, including in the Middle East where oil is the mainstay of the regional economy, have placed environmental regulation within the Ministry of Environment or equivalent. It is noteworthy to mention in this context that after the 2010 *Deepwater Horizon* incident, it came to light that the US Offshore Energy & Minerals Management Office (under the Bureau of Ocean Energy Management, Regulation and Enforcement) responsible for the development of the offshore oilfield was also the body that issued environmental approvals."

Spills in the U.S. however, "are responded to in minutes; in the Niger delta, which suffers more pollution each year than the Gulf of Mexico, it can take companies weeks or more" (Vidal, 2011). Shell Oil as one of the biggest oil producers in Nigeria is currently being sued in the British courts by Nigerian complainants for the destruction of the Niger River delta and its fisheries, a valuable livelihoods and food source of hundreds of thousands of people. Insidiously, organised crime has moved into the Niger Delta where Russian Gangsters swap arms with war lords for illegal bunkered oil, thus destroying progress and development for all Nigerian society (Vidal, 2011). Additionally the BBC (15 February, 2011) reported Chevron Oil was successfully sued.

> "A court in Ecuador has fined US oil giant Chevron $US8.6bn (£5.3bn) for polluting a large part of the country's Amazon region. The oil firm Texaco, which merged with

> Chevron in 2001, was accused of dumping billions of gallons of toxic materials into unlined pits and Amazon rivers. Campaigners say crops were damaged and farm animals killed, and that local cancer rates increased. … The lawsuit was brought on behalf of 30,000 Ecuadoreans, in a case which dragged on for nearly two decades. The plaintiffs said the company's activities had destroyed large areas of rainforest and also led to an increased risk of cancer among the local population."

The capital markets however, do not seem to have noticed Shell and Chevron's unethical oil production practices in developing countries. By contrast, BP was punished as its share price dropped dramatically within days of the Deepwater Horizon disaster in April 2010. Share price materiality would suggest that oil spills in developing countries (and associated investments in safety measures in those countries) are immaterial. Such information need not be disclosed and therefore is considered to be unimportant.

3.2 BP's disingenuous sustainability

BP provided voluntary sustainability reviews that some stakeholders believed to be the result of capitalist enlightened self-interest. As Unerman and O'Dwyer (2007, p. 339) point out though:

> "… for other stakeholders who do not accept this narrative, realisation that enlightened self-interest of corporations has not resulted in, or guaranteed that, business expert systems operate in a manner which does not damage aspects of society and/or the environment, can render ineffective business claims that their voluntary action should be trusted to protect the social and ecological interests of a wide range of stakeholders."

In fact Unerman and O'Dwyer (2007) argue the business case for the regulation of corporate social and environmental reporting, as a way to enhance both stakeholder and shareholder value by ensuring credible and transparent reporting. To support their case Unerman and O'Dwyer (2007, p. 347) provide the example of the BP Texas City refinery explosion in 2005, even though BP had proclaimed safety and responsible operating supported by advanced audits in the prior years' sustainability reports.

Unerman and O'Dwyer (2007) cite the scathing report by the Panel (2007). The report stated that while BP had 'aspirational goals' of no accidents and no harm, the company had not provided an effective leadership or a process of safety as a core value across its five refineries in the US. Further BP had not effectively shown that it held senior executives, line managers and supervisors accountable for safety performance across its five US refineries. The report pointed out several other weaknesses with BP's safety performance, in contrast to the portrayal in its sustainability reports of a company genuinely committed to the safety of its workforce.

> "Where events such as the BP Texas City Refinery explosion occur which shed light on an underlying reality which seems to be at variance with the image portrayed by the glossy SEAR, this calls into question the credibility of the SEAR" (Unerman & O'Dwyer, 2007, p. 347).

BP's oil spill and other major accidents in recent years indicates the failure of corporate sustainability reporting; and that BP's sustainability reporting is no more than greenwash to mimic genuine environmental and social commitment by a company mired in scandals and the dirty business of oil exploration and extraction. BP's bad record on environmental issues resonates with Gray's (1992) argument that "the roots of modern (especially Western) society are essentially incommensurable both with continued survival and with any set of values other than those of (very) short-term (human and economic) self-interest (p.399). Further, a search of BP's 2009 sustainability review revealed 'sustainability' was mentioned over a thousand times; hence sustainability loses its imprimatur and becomes a 'catch' word that suggests more BP's un-sustainability. BP's liberal but devalued use of the word sustainability is symptomatic of the contestability of sustainability and what it really means. Gray's (2010) concern about the un-sustainability of "western, expansive and financial capital" starts a discourse of a more nuanced understanding of sustainability and its troubled relationship with modernity, particularly modern science. Ironically modern science aided in the development

of the technologies that allowed BP to drill for oil in very deep water that resulted in the largest and most catastrophic oil spill in US history.

The greenwash in BP's commitment to sustainability is portrayed as highly responsible in regards to health, safety and the environment.

> "BP operates globally according to a system of internal control that extends from corporate governance policies at board level to detailed processes that are applied in our operations. … The board is responsible for the direction and oversight of BP p.l.c. on behalf of shareholders; it is accountable to them, as owners, for all aspects of BP's business. The board sets the tone from the top, and has established a set of board governance principles, which delegate management authority to the group chief executive (GCE) within defined limits. These include a requirement that the GCE will not engage in any activity without regard to health, safety and environmental consequence. On 1 January 2010, the board was composed of the chairman, eight non-executive directors and five executive directors.
>
> The board maintains five permanent committees that are composed entirely of non-executives. They include the audit committee, the remuneration committee and the safety, ethics and environment assurance committee (SEEAC). Monitoring the GCE's identification and management of the group's risks – both financial and non-financial – is conducted through the board and its committees. SEEAC monitors non-financial risk, which includes regular reviews of information and reports from the safety and operations function. It also acts for the board in working with the Independent Expert to review the progress made in implementing the recommendations of the BP US Refineries Independent Safety Review Panel[13]." (BP sustainability review, 2009, p. 5)

BP's system of internal controls to monitor safety, health and the environment is flawed - and is just that, internally self-regulated by a few directors with little transparency or critical external review about the processes. When then BP spokesman Mark Salt, was questioned about the company's safety record in the Gulf he noted that according to the MMS Incident of Non-Compliance (INC) data, Transocean's Deepwater Horizon has had an unblemished safety record since 2004. MMS figures also show that BP drilling rigs in the GOM outperformed the industry average on safety for six years running. BP had also been a finalist for the MMS National Safety Award for Excellence for the past two years, supporting their

[13] This Panel was appointed as a result of BP's 2005 Texas refinery explosion that killed and maimed workers.

reputation for pushing the frontiers of offshore drilling and making it pay for their shareholders (Sutherland, 2010).

The alarm bells however, had been ringing for a long time. Green groups and ethical investment funds have endeavoured to question the company for more details on the environmental and social risks it was taking (Monbiot, 2010) for many years. Due to concerns about the company, in 2002, Henderson Global Investors withdrew BP from its socially responsible investment funds after one of its analysts conducted his own research into the safety risks that BP were taking in Alaska. Generation Investment Management, co-founded by David Blood and Al Gore, deemed BP to no longer be a suitable investment when Lord Browne stepped down as BP's chief in 2007, to be replaced by Tony Hayward who did not embrace its transition from a petroleum company to an energy company (Van Dyck, 2010). Similarly, Walden Asset Management also made an early call on BP's risky behaviour liquidating its investment after the Texas City refinery accident.

3.3 BP and the aftermath of GOM oil spill

While the GOM oil spill has had an unprecedented impact on the human health, environment and wild life of the region, perhaps the most insidious impact was "the cure being, in many ways, worse than the disease" (Juhasz, 2011, p. 89). In an attempt to deal with the approximately 5 million barrels of oil and 500,000 tons of gas released into the Gulf, BP used more than 1.8 million gallons of toxic chemical dispersants, which were mixed into the water and sprayed from the air, to disperse the oil. Dispersants however, do not remove the oil they simply disperse it throughout the water.

> BP chose the type of dispersants and made the decision to use them. The coast guard and the EPA authorized its use in the face of great opposition, including by the EPA's own scientists (Juhasz, 2011, p. 97).

As detailed by Juhasz (2011), BP first used Corexit 9527A, a highly toxic formula designated by the EPA as a chronic and acute health hazard. Corexit 9527A has been identified as the cause of chronic health problems and even several deaths amongst the clean-up workers of the 1989 Exxon Valdez oil spill. Intense public pressure regarding its use, led the EPA to require a less toxic formula. Hence BP switched to Corexit 9500, which is also toxic to humans and a known animal carcinogen. Both of these dispersants are known to bioaccumulate up the food chain, thereby their impacts could last for at least twenty years or even longer. For the first time ever and without testing its effects, BP also used these dispersants subsurface at the wellhead, without approval from the EPA, in a major experiment as it grappled to deal with the magnitude of the disaster. At least 410 fires were also ignited on the water's surface by BP, the MMS and the coast guard to burn the oil away, causing further pollution. None of these impacts have been reported in the 2010 Annual Report or Sustainability Review once again indicating greenwash by the new management.

Kendall (2011) also reported that in the wake of the GOM oil spill a global coalition of fund managers, led by the US based Christian Brothers Investment Services and including the Ecumenical Council for Corporate Responsibility (United Kingdom) and the Ethos Foundation (Switzerland), formed as a group of investors to vote against BP's 2010 Annual Report and accounts at the company's annual general meeting in London in April, 2011. The coalitions' main concern was the lack of sufficient detail to assist in determining "how the company's safety and risk management function has been strengthened; how it is being evaluated, managed, and mitigated; how the board will oversee it; and how progress is to be assessed and measured,…as well as BP's remuneration proposal and key board positions, particularly members of the Safety Committee" (p.1). In an attached seven page assessment of the BP 2010 Annual Report, the coalition was critical of a lack of substantial new

information in four main areas of concern being; Health and Safety, Remediation of the Gulf Oil Spill, Transition to a Low Carbon Economy and Board oversight. The assessment noted that "It is critical that BP demonstrate its understanding that the spill was not the result of human failure, but failure by BP to create adequate systems to prevent it" (p.2).

Conclusion

This paper has examined the underlying reasons that predisposed BP's disastrous accident resulting in millions of gallons of oil spilt into the GOM, a prime habitat for sea life. We have provided evidence that marketized public governance failed in its duty to protect society and the natural environment which were sacrificed for the exploration and extraction of oil. Instead the marketized public governance protected the markets from society, rather than protecting society from the pernicious aspects of the markets. Evidence also indicates that private governance failed, that is BP's board and its various sub-committees charged with monitoring the safety, health and the natural environment failed in their responsibilities. BP's Deepwater Horizon oil rig explosion killed 11 workers, spilt millions of gallons of oil into the ocean for 86 days, closing down the largest fishing grounds in the U.S., killing unprecedented numbers of wildlife, loss of income for the local population and long term health concerns from the toxic cleanup. The picture described in the BP annual reports (2001-2010) and sustainability reviews that of an upstanding corporate citizen caring for its people and the natural environment is in tatters. BP's greenwash will forever be stained by the dirty and un-sustainable business of oil exploration and extraction.

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