What Can We Learn From Oil Spills? (Speech Text)

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The Need for a Strong Safety Culture in Our Government and in Private Industry

In April 2010, an explosion on the BP Horizon Deepwater oil rig caused the deaths of 11 people—in fact, they were never found (Flournoy 281). The blowout at the underwater drill site released 4.9 million barrels of crude oil into the Gulf of Mexico (United States. Congress vi). To put this in perspective, the next largest U.S. oil spill was the Exxon Valdez in 1989, which released nearly 11 million gallons—the equivalent of filling 430 classrooms (United States). Multiply that times the amount from the BP spill, and we have 7,817 classrooms—full of crude oil. Except the oil is not contained inside buildings, it is flowing in the ocean and wetlands, the heart of our subsistence on this planet.

How could this unimaginable catastrophe occur? Experts point to problems with regulatory policy and enforcement in both government and private industry, offering solutions for damage assessment and response, legal action, and disaster prevention. There is a clear need for stronger, more effective policy, and for proper use of the legal system in achieving justice for wrongs committed. In light of this, I will first discuss harms to the environment; second, harms to the economy; and third, harms to people.

Oil spills are bad for the environment. Brooklyn Law School J.D. candidate Edward Thrasher stated in a 2012 edition of the Brooklyn Law Review that Louisiana “is home to more than 400 marine [and other] wildlife species” and that within a few weeks of the disaster, “more than seven hundred dead animals had already been collected from just a few parishes” (1286). “Wetlands are essential to the water quality of estuaries” (Thrasher 1287), but now they are “impossible to clean up without doing additional
damage” (Thrasher 1286). According to Jay Angle and fellow J.D. candidates from The Dickinson School of Law in a 2011 Penn State Environmental Law Review article, “under [the Oil Pollution Act of 1990], natural resource damages are recoverable” (427). Angle acknowledges that legal challenges arise with the contingent valuation method, which they claim is “a respected valuation technique and is used in situations where no other way to determine value exists” (430). While there are critics of contingent valuation, “other areas of law accept damages that are uncertain, such as pain and suffering or emotional distress damages in torts” (Angle 430).

This presents another legal challenge: the use of tort law in environmental harms. Professor of Law at Vermont Law School Mark Latham and others wrote about tort in the Fordham Law Review in 2011. Their main idea is two-fold. First, environmental law is expanding to cover most of the issues that arise. Second, they assert that tort law has a long history of stability in dealing specifically with “civil wrongs recognized by law as grounds for a lawsuit [in which the] primary aim is to provide relief for the damages incurred” (Tort), and so should be used cautiously when attempting to remedy damages to the environment. Latham’s team creates criteria for successfully applying environmental tort action, including strict definitions such as when the harm “closely fits the traditional elements of a tort cause of action” (750), so that any overlap of tort and environmental law remains very narrow (Latham 765-772), in theory reducing the number of cases seeking “short-sighted relief” from an environmental disaster (773).

Oil spills are bad for the economy. According to Thrasher, “the spill was particularly alarming for those people involved in Louisiana's seafood, tourism, and recreation industries, which bring in almost $4 billion each year” (1287). When the government issued a six-month moratorium on offshore oil drilling in the region, critics
saw this as adding economic insult to injury in foreseeing unemployment for people in the oil industry. Their displeasure instigated predictions of enormous economic loss. Litigation ensued *en masse*, including the Hornbeck Offshore Services L.L.C v. Salazar case. A group of oil drilling related service providers sued the government over loss of oil exploration contracts, asserting that the government was unconstitutionally “taking” of the company’s private property (Thrasher 1288-1289), while Thrasher argues for a more context-specific application of the “takings” clause (1326-1327).

Oil spills are also bad for people. The BP disaster radically altered the lives of the people of coastal Louisiana—for the worse. Itzhak Kornfeld, Faculty of Law at The Hebrew University of Jerusalem, wrote an article in the 2011 issue of the Boston College Environmental Affairs Law Review. He says “the Cajuns and the local native tribes have a close relationship with the land and water of south Louisiana, where for some ten generations they have worked, lived, and gathered their families” (322). Vast amounts of spilled oil “destroyed oyster beds, fisheries, and the livelihoods of fishermen, shrimpers, and crab processors” (Kornfeld 323). When participating with BP in the damages hearings, “these personally injured public members are at a distinct disadvantage to corporate expertise and agency” (Kornfeld 321).

Naming responsible parties leads to looking at flawed systems. Along with two co-authors, Mark A. Cohen, professor of management and professor of law at Vanderbilt University published an article in the November 2011 issue of Vanderbilt Law Review about “safety culture” in high-risk industries. Companies with a strong safety culture are high-reliability organizations, and exhibit “preoccupation with failure, reluctance to simplify interpretations, sensitivity to operations, commitment to resilience, and deference to expertise” (Cohen 1860-1861). Companies that do not exhibit these traits
have a weak safety culture. BP has a documented history of weak safety culture as shown in a study about their 2005 Texas City refinery explosion. The U.S. Chemical Safety Board decided, “senior executives did not adequately address major hazard risk or process-safety performance” (Cohen 1865). An internal audit found that “managers…focused on budget cutting goals that compromised safety” (Cohen 1865-1866). Cohen and his team argue for government intervention. They recommend setting a per-well liability cap based on worst-case scenarios, implementing mandatory third-party insurance, and creating policies such as increased disclosure.

Since the 1989 Exxon Valdez oil spill, we have made progress in preventing and responding to oil spill disasters. But the BP disaster proved that both government and private industry have areas that are weak in safety culture. In order to restore our environment, our economy, and our people to health and well being, it is time to scrap inadequate, outdated regulations and practices, and institute policies designed for today’s complex socioeconomic needs. What more do we need to see than the sights of crude oil spewing out of a hole in the ocean floor for nearly three months, uninhabitable oil-slicked wetlands, and thousands of dead oil-covered ocean creatures, to understand that if we don’t have a living planet, we don’t have anything.