The Shifting Imaginaries of Corporate Crime

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Abstract

This paper begins by setting out an analysis of the process of conventionalizing corporate crime that arises from the symbiotic relationship between states and corporations. Noting briefly the empirical characteristics of 4 broad categories of corporate crime and harm, the article then turns to explore the role of the state in its production and reproduction. We then problematize the role of the state in the reproduction of corporate crime at the level of the global economy, through the 'crimes of globalization' and 'ecocide', warning of the tendency in the research literature to oversimplify the role of states and of international organizations. The paper finishes by arguing that, as critical academics, it is our role to ensure that corporate crime is never normalized and fully conventionalized in advanced capitalist societies.

Keywords

Capitalism, Corporation, Crime, Regulation, State, Globalisation, Ecocide

Introduction

In 1976, Frank Pearce reminded us of the imaginary social order that is reproduced through the complex and varied relations within and between states and corporations. An illusionary portrayal of society is constructed in that the material realities of life under capitalism are, indeed, significantly different from what is officially claimed through liberal democratic speak. This helps to reproduce and maintain capitalism, which is never "a planned or automatic outcome". (Pearce, 2015: 13)

The imaginary social order is never *purely* imaginary, but is always closely connected to the real social order; it draws upon 'common sense' understandings of the world to reinforce real social relations. Academics, in their role both as traditional and organic intellectuals, are central to the reproduction of this imaginary social order – which, for criminologists, shapes what we think about the problem of crime (Tombs and Whyte, 2003). So, as this paper will argue, is the broader assemblage of state apparatuses that instruct us to adopt a particular understanding of the problem of crime and how we should react to it.

In this paper, we make a series of observations about corporate crime, drawing attention to what we see as important recent trajectories within the literature, in order to show how academic scholarship can contribute to an alternative imaginary, and an alternative social order. The paper is *not* an overview of the field *per se*, nor is it a review of its key disputes or achievements, nor the leading authors or texts therein. Rather it is a series of reflections which we hope will illustrate how and why the regulation of corporate crime is a decisive issue for our time, and one that others might engage in, in future issues of the Journal.

Corporate Crime and the State

When we begin to scratch the surface of any corporate crime, we begin to see the extent to which the crimes committed by corporate executives and by corporations always implicate states, and that their production is always conditioned by a process of regulation. Yet as Pearce noted over forty years ago in the seminal Crimes of the Powerful:

> "within sociology, and particularly within criminology, the serious study of the state and its agents and of the activities of the ruling class is virtually non-existent" (1976: 158).

One might add that in the period since Pearce wrote those words, many have argued that the state and state power has diminished, become de-centred, or has declined in significance under the twin processes of neo-liberalism and globalisation. Both within and beyond nations, it has been claimed that the state had retreated from providing goods or services, ceased to regulate markets, and was dwarfed by the power of transanational capital. (Tombs, 2007)

However, in the early 2000s, a small body of work began to foreground the state-corporate relation as a means of understanding the production of corporate crime. This literature focused on the close, and often symbiotic, relationship between state/public actors and private actors (normally large corporations). In doing so, it consistently points to the structure of political economy that creates particular conditions that produce corporate crime (Aulette and Michalowski, 1993; Kauzlarich and Kramer, 1993; Kramer, 1992; Friedrichs, 1996; Kramer et. al. 2002; Kramer and Michalowski 2006; Lasslett 2014). Corporate crimes from the perspective set out in this literature appear not merely as the result of a breakdown in the regulatory function of states; they occur as part and parcel of a process of corporate power-mongering, and, in the main are tolerated and encouraged by states (see also Bittle 2012; Snider 2015; and Bittle and Snider 2006).

In this literature state-corporate crime comes in two varieties: 'state-initiated' (in which government agencies play the leading and organising role and are assisted by corporations) and 'state-facilitated' crime, a category which describes crimes arising not from a positive engagement or encouragement to commit crimes, but negative forms of complicity (failure to adequately regulate, wilful blindness and so on). More recently, Lasslett usefully expanded upon these sub-categories, thus:

> "Corporate-initiated state crime occurs when corporations directly employ their economic power to coerce states into taking deviant actions", while 'corporate-facilitated state crime' occurs "when corporations either provide the means for states criminality (e.g. weapons sales), or when they fail to alert the domestic/international community to the state's criminality, because these deviant practices directly/indirectly benefit the corporation concerned" (Lasslett, 2010).

What we are beginning to explore here are the ways that governments and private corporations interact as 'partners in crime' (Whyte, 2009). The depth of this partnership raises the possibility that particular groups and institutions that are

normally regarded as existing 'outside' of the state can be used to project state power. Indeed, we can question the extent to which an institution or group can be considered to exist 'outside' the state if it is committing acts on the state's behalf, or if there exists a symbiotic relationship between 'public' and 'private' sectors. The distinction between the 'private sector' and a 'public sector', is a distinction that is defined in law. It is the formal definitions and powers prescribed in law and custom that decide which institutions are regarded as 'public' and which are regarded as 'private'. As Althusser (1971/2008: 18) put it: "the State…is neither public nor private; on the contrary, it is the precondition for any distinction between public and private".

So what exactly is 'the state'? The prominent state theorist Bob Jessop (1990) argues that the state is not a 'thing' that possesses or concentrates power but an ensemble of institutions and processes that provide a basis for the organisation of social forces. Schools, churches, business organisations, as well as police forces and armies are part of the ensemble that projects state power. They contribute to a projection of state power by providing leadership and tutelage in the dominant morals and political ideas – and through this moral and intellectual leadership, hegemony may be secured. (Gramsci, 1971) The state mediates power relationships in society through key institutions (workplaces, the family, the market and so on), and as such the state can be more usefully thought of as a complex of mechanisms and apparatuses that mediates and organises social relations of power. And corporations play a crucial role in this process.

To say that private institutions can be defined as part of the state ensemble is not to say that they are under the spell of governments or that their interests always coincide with those of public institutions. Corporations enjoy some measure of real autonomy from the state – they have their own histories, customs and belief systems. Indeed, many of the largest corporations in the world today exist on the same scale – in economic terms – as some national governments and this makes them formidable power structures in their own right.

Yet, without the state, corporations can have no meaningful existence: they can have no legal basis for their function as the primary institution through which capital is reproduced, can have no infrastructure or indeed political allies or representatives in government. The depth of this relationship immediately questions the one-dimensional view of regulation as something that states 'do' to 'control' corportions.

As the following section will map out, processes of regulation are only ever partially concerned with the 'control' of crime or illegalities. In most contexts, regulatory systems are ultimately unable to resolve conflicts and crises, but can merely repackage them in ways that allow governments to, temporarily at least, retain some control over the amelioration of corporate harms (Tombs 2012; Tombs and Whyte 2015; Whyte 2004). In this sense, the term 'regulation' should be understood *pace* the 'regulation school' that is, as a matter of how capitalist social orders are governed and normalised (Aglietta 2000).

Conventionalisation and the Reproduction of Corporate Crime

Corporate crimes can be defined as illegal acts or omissions that are the result of deliberate decision making or culpable negligence within a legitimate formal

organisation and are committed on behalf of the corporation, or in pursuit of its formal goals (Pearce and Tombs, 2019). Examples of corporate crime dealt with in the research literature typically include: financial crimes, crimes against consumers, crimes associated with employment relationships (including those related to employee safety) and crimes against the environment and eco-system.

It is very difficult to argue against the evidence that the scale of corporate crime dwarfs all forms of crime. Indeed, this has virtually become the received wisdom in the discipline of criminology. Yet in political practice generally and in criminal justice practice in particular, corporate crime has, to use Carson's (1979) concept, become conventionalised. State practices ensure that corporate crimes are normalised and pulversised in public debate. Such 'pulverisation' allows these events to be *isolated*, "made into something unique, something incomparable, and something quite special, individual and atypical'', far too exceptional for any generalised lessons to be drawn or arguments made (Mathiesen, 2004: 38).

In what follows, we briefly analyse how those forms of corporate crime become conventionalised and normalised through law and the regulatory process. Ultimately, as this section will argue, the effect of legal regulation is to ensure that capital – in the form of the corporation – continues to reproduce itself regardless of its deleterious effect on the capacity for human life to reproduce itself.

Corporate Theft and Fraud

The general category of corporate theft and fraud has attracted some renewed academic and popular attention since the 2007/08 financial crash. Those types of crimes include: bank interest rate fixing, insider dealing, and illegally leveraged mergers and takeovers; various forms of tax evasion; bribery; and other forms of illegal accounting. The collapse of Enron, and the associated collapse of its auditor Arthur Anderson is perhaps the classic example of the latter and has joined a list of offenders—including Guinness (involved in illegal share dealings in the 1980s; see Punch, 1996: 167–80) and BCCI, a global bank which was systematically involved in fraud, money laundering and bribery (ibid.: 9–15)—as symbols of what we mean by the term 'financial crime'.

The general evidence available to us indicates that corporate financial crime is widespread. Rebovich and Kane (2002) have estimated that 37 per cent of the US population have been victims of some form of corporate theft or fraud, a figure closely approximated in a later such survey which measured victimisation to various kinds of business frauds (Huff et al., 2010: 17). More recently, calls for the criminalisation of bankers and financeers became the focus of public demonstrations (specifically in the Occupy movement), and became commonplace across the mainstream media in the wake of the financial crisis. As a number of commentators have observed, a large number of individuals in the US finance industry who could easily be held accountable and prosecuted for a range of serious frauds that were causal in the 2008 financial crash (Ferguson, 2012). Yet the crisis prompted little or no credible criminal justice response: "None of the key guilty parties have been sent to prison; rather, Wall Street almost immediately called for returning to 'business as usual', has aggressively contested relatively modest new regulatory initiatives, and has altogether done well for itself while much of the balance of the economy and the American people continue to suffer"

(Friedrichs, 2011). By the spring of 2012, Greg Barak (2012: 102) had identified three criminal cases – all involving individuals "pretty far down the financial food chain", so that "no senior executives from any of the major financial institutions had been criminally charged, prosecuted, or imprisoned" (ibid.: 95) - as well as 12 civil cases arising out of investigations connected to the US financial crisis (ibid.: 91-113).[1] The only UK criminal case against a bank chief executive for charges related to the financial crisis began in June 2017, when the Serious Fraud Office announced charges against four former Barclays executives (Croft and Thompson, 2017). At the time of writing, the case is ongoing.

Of the examples discussed in this section, such crimes appear on the face of things to be the easiest to criminalise. Although they use large complex organisations as their modus operandi, very often there is a detailed paper trail that can establish the direct involvement of senior individuals in fraudulent and illegal activities. This is clear in the small number of cases that have been prosecuted. The major barrier to such crimes being dealt with by the criminal justice system is not one of practicality, but of politics. Pursuing such crimes requires sufficient political will to ensure that regulators are given the material, logistical and moral support to challenge some of the largest and most powerful corporations in the world. The system of corporate crime regulation that exists in most economies is one that ensures minimal interference in the financial system. This is a core feature of regulation that is often overlooked: its purpose is to reproduce the conditions under which capital can reproduce itself. Regulation ensures that although a small proportion of corporate theft and fraud might be subject to control, most corporations for most of the time are relatively free to engage in criminal practices.

Crimes Against Consumers

A second class of corporate crimes and harms are those committed directly against consumers, such as illegal sales/marketing practices, the sale of unfit goods (such as adulterated food), conspiracies to fix prices and/or carve up market share (as forms of cartelisation), and various forms of false/illegal labelling. Some of the preceding category of crimes predominantly affect consumers (bank rate fixing, for example) – yes this category includes a much wider range of crimes associated with products that are purchased through commercial transaction.

One example of corporate offending in a particular industry that captures those diverse offences is 'food crime' – crimes at all stages of food production, distribution, preparation and sale which may ultimately result in consumers being over- or wrongly charged, misled, made ill or even killed (Croall, 2007;Gray and Hinch, 2018). The regulation of food adulteration, of fraudulent under-selling and of the labelling of ingredients in this area is long-standing and, indeed, in its origins in the UK from the latter half of the 19th Century onwards, was the outcome of a struggle involving class alliances. (Tombs, 2018). But what is perhaps most significant here are those activities related to the food industry which remain virtually unregulated , wholly normalised, and fundamentally destructive. Thus, Gray has noted,

[1] And this also indicates that corporate and senior management impunity is dynamic – Pontell contrasts these levels and quantity of prosecutions with the far greater prosecutorial zeal which followed the Savings and Loans crises of the early 1980s; Pontell et al, 2014

> "Food systems, particularly animal agriculture, are leading contributors to climate change. The production of livestock and animal products dominates environmental impacts involving carbon footprints, air and water pollution, and land use. Animal agriculture is responsible for up to 51% of anthropocentric greenhouse gas (GHG) emissions and meat-free human diets can reduce GHG emissions by up to 50% of current levels. Unfortunately, it is a vicious cycle where agricultural land, increasingly subject to devastating droughts, floods, and carbon dioxide levels, becomes less efficient and produces less nutritious food."

Thus, practices that are normalised in food production are highly dangerous and indeed contain threats to our ability to reproduce ourselves and sustain our planet. Yet at the same time, the inbuilt feature that exists in the logic of financial regulation, also exists in the case of food regulation: capital must be relatively free to reproduce itself, no matter the cost.

Crimes Against Workers

Third, crimes against workers include cases of sexual and racial discrimination, violations of wage laws, of rights to organize and take industrial action, breaches of privacy, breaches of workplace safety law and breaches of human rights law. Death, injury and disease caused by working are global, routine phenomena. The International Labour Organization (ILO), a United Nations (UN) agency, has estimated that over 2.3 million people die as a result of work-related injuries or diseases every year (i.e. 3.9 per cent of global deaths per annum). Of those, 350,000 are killed on the job, and occupational injuries and 2 million are victims of work-related illnesses annually (International Labour Organization, 2015: 1). An earlier analysis by the ILO (2005) revealed that by far the greatest number of deaths (around 64%) occurred in Asia, but victimisation is distributed truly globally. In the UK, there are 1200–1500 work-related fatal injuries each year (Tombs and Whyte, 2007). And in terms of fatal disease, an annual total of some 50,000 deaths to workers in the UK has been estimated by Rory O'Neill et al. (2007). This conservative figure still excludes some major categories of disease, but includes cancers, respiratory illnesses and heart diseases.

Of the 1200–1500 work-related fatal injuries each year in the UK, most are likely to be the result of legal breaches, yet typically only 80–90 lead to successful prosecutions per annum, or around 6%. Further, as research by the Centre for Corporate Accountability (2002) showed, less than 1% of occupational illness and disease is reported to the Health and Safety Executive (HSE); and only around 1% of those cases are prosecuted. This means that of the 50,000 annual deaths in the UK resulting from fatal exposures and over-working, very few, if any will ever reach the courts. Even in this relatively active area of state prosecution, the level of criminalisation is remarkably low. (Alvesalo-Kuusi et al., 2018).

Precisely the same logic that we have identified in other forms of corporate crime is at work here. The death of workers is normalised as a routine 'effect' of capitalist forms of work and economic organisation.

Crimes Against the Environment

A fourth category of crimes and harms are those that victimise our natural environment; these include illegal emissions to air, water, and land, hazardous waste dumping, and illegal manufacturing practices. Air, land and water pollutants are a further key cause of death and disease. If we take exposure to airborne pollutants, such exposure is a major killer, causing some 4.2 million early deaths every year according to the World Health Organisation. The effects of air pollution are predominantly located in those states across the Global South that are the least able in terms of resources either to prevent or respond to such harms - 91% of these deaths occur in low- and middle-income countries. (World Health Organisation, 2018: 1) Now, separating the corporate from individual sources of environmental pollution (the key example of the latter being personal vehicle use) is not an easy task. However, without underestimating the extent of the harm caused by motor vehicles, it can be assumed with confidence that most deadly environmental pollution is caused directly by corporations (Whyte, 2004).

As a rule, corporations are rarely prosecuted for pollution offences, and corporate executives prosecuted even less frequently (Whyte, 2010). In the case of environmental pollution-related deaths, for example, it is highly unlikely that any will result in prosecution. This is partly because cases of deaths 'brought forward' by pollution are not generally subjected to any process of investigation, and partly because of the complexities of investigating and prosecuting such cases. Unless the victim lives or works close to a major source of pollution, it may be difficult to identify a causal link between the source of the pollution and the victim. However, even in cases where identifying a source may be possible, prosecution for causing a death is likely to be difficult to pursue unless there has been a breach of regulations. A key issue that takes this beyond the scope of criminal process is that much of the air and water pollution that has deadly effect in industrial societies is legalised – it is permitted by government licence.

This discussion of deaths attributed to pollution is, of course, distinct from the over production of carbon dioxide, which, combined with seismic changes to the ecological balance of the planet, is now placing the future of the human species under threat (and we shall retrun to the problem of 'ecocide' later in this paper).

Both problems – the slow deaths caused by pollution and the climate crisis - capture most dramatically the enduring logic that we identify in this section. It is a logic that is perhaps most obvious in the context of the crimes of pollution. That is, causing death through exposure to pollutants is an inevitable, normal effect of legal productive activity, and one that is largely permitted by systems of regulation.

As the brief review of evidence in this section has shown, most of what we describe as corporate crime appears not at all as crime, but is normalised through state practices. State culpability extends through their formal legalisation of much of this harm, their licencing of harm production, their failure to develop adequate law and regulation which might mitigate these harms, their failures to enforce adequately such laws as do exist, and/or their failures to impose effective sanctions where violations of law are proven.
In other words, corporate crime very often occurs not because the state is disobeyed, but generally because the state is *obeyed*. Already, then, we can see how in any

recognition of corporate harm and crime, we cannot proceed adequately without understanding the role of the state as bystander, facilitator and even conspirator.

New Imaginaries: Corporate Crime and the Global Economy

The period from the mid-1970s to the present has been crucial for thinking about the state in this way: as bystander, facilitator and conspirator in corporate crimes. In this period, we have witnessed the emergence to international dominance of 'neo-liberalism', a set of ideas and government practices that elevate commodified social relations through privatization and the active encouragement of ever faster and more intense forms of capital accumulation. In the 40-plus years since Frank Pearce wrote about the material force of the imaginary social order, politicians of all stripes have accepted neo-liberalism as a new form of reality. There is, for them, no alternative to the rise of 'free market' capitalism. Indeed, the concept that is used to understand and speak about the internationalization of neo-liberalism - 'globalisation' – also became cast as some form of naturally unfolding reality; a force of nature which gave governments no choice but to embrace policies of deregulation, low taxation, and declining expenditures as the price of nation-state integration into this 'global economy' - and in so doing they increasingly relinquished control over domestic policy agendas. (Leys, 2011: 8-37). By adopting such a fatalistic stance, and swallowing so easily the idea that the rise of 'market forces' could not be opposed, governments reinterpreted what had previously been the wishful thinking of large corporate interests as the national interest. Neo-liberal fatalism on the part of governments became a self-fulfilling prophecy. (Tombs, 2007). Thus, the *idea* of deregulation, itself claimed as economically determined by the seemingly naturally unfolding of neoliberalism-as-globalization, strengthened during this period. (Bordieu and Wacquant, 2001).

It is in this context – this new set of imagineries – that there emerged a recent development in corporate crime scholarship, one organised around the concept of 'Crimes of Globalisation'. One of the defining features of globalisation is the growth and scale of transnational corporations. The corollary of this is that if companies act on an international or indeed global scale, then they can also engage in crime or produce harm on this scale.

Michalowski and Kramer (1987) had identified how the vast expansion of transnational corporations operating across the Global South had exposed the citizens of those countries to a growing number of corporate harms. It is through orchestrating a 'space between the laws' that the export of harms is encouraged. For Michalowski and Kramer, corporations can exert both direct and indirect influences on actual or potential host Goverments. Direct influences refer to the straightforward use by corporations of their economic power to influence government decisions. Indirect influences refer more to the ways in which what is considered to be politically feasible can be structured - making an economy 'attractive' to global investment often means 'playing easy to get' and ensuring that social and environmental regulations are lax and corporate taxes are low, and so on. This allows corporations to 'regime shop', to walk the aisles of the global economy making decisions about which regulatory and political regimes most favours a specific country or countries being those where production facilitates will be located – which regime to choose from the shelf, so to speak.

Regime shopping, and the spaces between the laws, exist precisely because regulation operates at the level of the nation-states whilst the corporations to which we are referring operate across national-state borders – they are trans-or multi-national. This indicates that the spaces between the laws can only be closed by bodies which also operate across national borders.

Export processing zones (EPZs) are the paradigmatic example of the space between the laws. The ILO defines EPZs as 'industrial zones with special incentives set up to attract foreign investors, in which imported materials undergo some degree of processing before being re-exported' (ILO, 2003: 1). Those special incentives may include suspension of normal rates of export and import duties, tax exemption and exemption from labour rights and health and safety regulations. Export processing zones are therefore set up by governments as lawless or liminal zones with the deliberate intent of attracting corporations – to operate within a haven from law.

So a somewhat distinct set of phenomena which come into view once we approach crime and harm at the supranational level are what have been termed crimes of globalisation. According to David Friedrichs and Dawn Rothe, those are crimes and harms which occur principally in or disproportionately affecting the poorer countries of the world, and which principally benefit institutions based in or dominated by richer countries. The key institutions which commit and/or benefit from such crimes are national-states, transnational corporations and international institutions. It is in respect of the latter that the idea of crimes of globalisation makes a novel contribution to our understanding of the crimes of the powerful. The World Bank, the World Trade Organisation, the International Monetary Fund – all 'International Financial Institutions' (IFIs) –as well as other supranational bodies such as the United Nations and the Organisation for Economic Co-operation and Development can all be understood as practising criminal activities.

Such crimes are neither simply state nor corporate crimes:

> IFIs are neither state entities in the traditional sense nor are they corporate or private sector entities by any conventional definition of these terms. However, the relationships between these international financial institutions and crimes of states and state-corporate crimes are vast. (Friedrichs and Rothe, 2014: 157)

More broadly, beyond IFIs, Rothe and Friedrichs define crimes of globalisation as

> those demonstrably harmful policies and practices of institutions and entities that are specifically a product of the forces of globalisation, and that by their very nature occur within a global context (Rothe and Friedrichs, 2015: 26)

For Friedrichs, Rothe and others, it is the conditions of rapidly expanding globalisation which give rise to new types of crime captured by this term. Much of their focus is on the role of international financial institutions which make loans to countries in the Global South with a series of conditions attached. Often captured by the term 'Structural Adjustment Programs (SAPs)', such conditions of lending impacted negatively on citizens of these countries. At its most extreme, for example, Rothe et al (2009) have linked the conditions attached to loans made by both the World Bank and the IMF to the

Rwandan genocide; similarly, Stanley documents the relationship between the Word Banks' lending to the Indonesian Government and the latter's ability to carry out a brutal military campaign against its own citizens in East Timor. (Stanley, 2009).

Beyond the relationship between international lending practices, other common examples of the crimes of globalisation include a plethora of public/private partnerships projects within the Global South, funded by IFIs. These range from mineral resource extraction and pipeline projects, dam and water projects, 'villagisation' programmes - which are mass, forced relocations – and intervention centres, which refers to detention of people with drug or alcohol dependencies in the name of rehabilitation, detention often linked to forced labour, torture and other forms of harm. (see Rothe and Friedrichs, 2015: 42-56).

If we accept, as we have argued in this paper, that the conventionalisation of corporate crime arises from a symbiotic relationship between states and corporations, there are three major challenges that the emergent literature on the 'crimes of globalisation' has to face.

The first of those is the conceptualisation of the nation 'state' in the global order. As we have noted, there are scholars who enthusiastically heralded the death, or at least the diminution, of the nation state in the face of the global market. We have argued for a long time that such assumptions are based upon naive and misplaced analyses (Tombs and Whyte, 1997). If anything, the core nation states in the global economy have extended their power over the periphery and over the global economy, and this has accelerated the conventionalisation of corporate crimes on a global scale.

The second is that, at the same time, the imaginary global social order – the portrayal of globalisation as both inevitable and necessary – has made cororate *crime* less visible and more ambiguous (Snider, 2000). Indeed, one ideological advantage of the global order is precisely this: the nation state is made to appear as part of a consensual, capitalist order, jn which the corporation is pre-eminent, rather than a conflicted social order in which collective struggles against states and corporations continue on a daily basis. Global politics is a rarefied political field in which such collective struggles of resistance are more easily absorbed (Khoury and Whyte, 2017). At the same time, the industrialisation of the Global South has been accelerated in a period in which political arguments for regulatory controls on business have been relatively weak. This has left workers and communities in major parts of the global economy unprotected by legal limits on working hours, chemical exposures, protective equipment and so on (Tombs, 2016). This, imaginary 'dissappearance' of corporate crime is in fact a process of conventionalisation – now occurring on a global scale - akin to Carson's description of early industrialisation in Britain.

The third challenge is the challenge of what we argue for in law. It is worth repeating the argument we have developed so far. The regulatory regime to which corporations are subject is put into place and maintained by the state. To the extent that this regime allows harm (through its very nature) or crime (through its non-enforcement) to be produced, this should lead us to understand such harm or crime as 'state-corporate' in character. In this sense, all forms of corporate crime and harm implicate the state to a greater or lesser extent. In this context, should we rely on states to regulate

corporations? If the relationship between states and corporations is the driving force of corporate crime, is arguing for more law, better enforcement and tougher punishment enough?

We write as the global movement against climate catastrophe has helped to revive a 50 year old concept in criminal law: 'ecocide' (Falk, 1973). A growing movement for climate justice has revived the call for the offence of ecocide, a call that has its origins in the aftermath of Vietnam and the movement of non-aligned states in the early 70s. What is significant in this discussion is the demand to make individuals and corporations accountable for knowingly causing damage to the planet. Yet in the commentary to Falk's original formulation he makes a chilling declaration that resonates with the argument presented here. He points out that: "the State system is inherently incapable of organizing the defence of the planet against ecological destruction." (ibid.: 20).

The proposal for a new law of ecocide follows a well-worn path. The idea is that the statute of the International Criminal Court, and other relevant international bodies are amended to allow individuals to be tried for knowingly destroying the eco-system. It has been argued, that this offence might be applied to the CEOIs of the major oil companies for example. To the extent that, symobilically at least, this proposal holds out the prospect for the shaming and labelling of CEOs for their environmentally destructive commercial activities, it is an interesting one, and one that might prove to be a significant site of struggle for a growing eco-justice movement. Howover, at the same time, it fails to deal with the practices that law has conventionalised in corporate captialism: the production of plastics, the production of pollution, the relatively unrestricted killing of workers, the wholesale destruction of the Amazon and other rainforests for corporate economies and so on (Whyte, in press, 2020). In other words, whilst corporate crime needs to be confronted head on in the debate about our future and the future of the planet, it is the damaging practices that have been conventionalised and made the least visible in debates about 'crime' and 'harm' that need to be prevented. This is the core contradiction facing the demand to criminalise the crimes of globalisation.

Conclusion

As we write, it is at least possible to argue that evidence of such offending and harm production is so prevalent that it is almost normalised and has disappeared from view – at times generating popular anger but at the same time perhaps anxiety, or, even, political and social apathy. On the latter, the routine and seemingly endless production of harms may inure people to their perniciousness, as the population becomes anaesthetised to such harm, seeing but not seeing, which is the most pernicious effect of all. What is there to be surprised about any more about the corporate world? About the state? And - in the absence of alternatives to either, nor mechanisms for achieving these in any case, certainly not in the formal political sphere - is not at least one reasonable response simply to retreat into apathy, alienation and atomisation? In this context, if there is a sense in which these crimes and harms are inadequately known, they are at the same time all too well-known by the population.

At the same time, the concepts and language of *crime* remain crucially important to the popular movements that continue to emerge to challenge the powerful. Just as the Occupy movement used the imagery of the 'bankster' and the criminal elite for its political slogans, so too the language and concept of ecocide has become central in the youth movement against climate change, the school strikes, and organisations such as Extinction Rebellion.

The problem here, then, is not necessarily the invisibility of the structural violence, it is in some ways its very visibility through its "ceaseless repetition" (Dilts, 2012: 192; Winter, 2012). Indeed, it is this ceaseless repetition which represents an academic and, most of all, a pressing political challenge for those who would resist such harms (Tombs, 2013). Our job as academics is to sharpen the focus in this challenge. Part of this means identifying the weak points in the system of corporate capitalism and highlighting precisely which corporations and which elites that stand behind the corporations can be held accountable for their crimes. It is on this basis, too, that this new journal may contribute not simply to further exposure of such harm, but to effective challenges to it, to the state and to the private corporation.

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