

Critical Criminology

State-Corporate Crime and the Process of Capital Accumulation: mapping a global regime of permission from Galicia to Morecambe Bay.

--Manuscript Draft--

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Abstract:	<p>This paper seeks to develop the principle concerns of the state-corporate crime literature by drawing connections between two incidents that occurred 15 months apart: the sinking of the oil tanker the Prestige in Galicia in November 2002 and the killing of 24 Chinese migrant workers at Morecambe Bay in the North West of England in February 2004. It begins by introducing the key features of the two cases, before exploring how they might be described and understood as state-corporate crimes. It then identifies a tendency within the literature to analyse state-corporate crimes as 'moments of rupture' in the regulatory relationship. Seeking to move beyond such 'moments of rupture, the paper argues for an understanding of regulatory relationships as part of a broader regime of permission that seek the smooth and uninterrupted accumulation of capital. It thus identifies the 'process' that must be analysed as a process of capital accumulation. This process is illustrated by focussing on the spheres of production and distribution in this story of capital accumulation. In the course of describing the complex 'regime of permission', the paper uncovers a structure of impunity that generally enables the most powerful architects and beneficiaries of state-corporate crime. Rather than seeing this as an epiphenomenon, or a consequence of bias in criminal justice systems, the paper will argue that the basis for impunity is a constituent part of into the system of accumulation.</p>
Response to Reviewers:	<p>We have responded to the reviewer's comments by first strengthening the way we present our argument in order to make it clear that the paper uses the State Corporate crime literature as a foundation, and the work of Tombs and Lasslett as its point of departure to extend/deepen the S-C Crime critique. We have also clarified further how we conceptualise 'moments of rupture' and have sharpened our reflections on the literature in order to show more clearly how the S-CC scholarship might be strengthened. The changes we have made in order to accomplish those aims are set out in detail below.</p>

1) A re-written final section in the first para of the introduction sets out more precisely how the S-CC literature locates the production of crime in the structures of capitalism and points to literature on 'empire crime'.

2) New material is introduced after the sub-heading From Regulatory Pathology to the Regime of Permission (para 3 and first half of para 4, and opening sentences in paras 7 and 9 of this section), which makes more clear the (subtle) difference in our analysis (how we need to view a broader system of production and entirety of social relations that enable criminal and harmful practices to occur) vis-à-vis theirs (that normal political economy of hydrocarbon production produces deviant outcomes) and the structure of this section is re-organised to reflect this

3) New material is introduced to the conclusion to clarify this perspective. Here we argue: "In neither case were the formative conditions of the criminogenic 'event' found in particular decisions and actions or non-decisions and inactions of state or government institutions. There were elements we could describe as state initiated or state facilitated, but those conditions don't fully describe the state-corporate crimes here. The circumstances that led to the Prestige and Morecambe bay disasters can only be partially explained using a concept of state-corporate crime. The corporate crimes we describe here emanate from an architecture of power in which states guarantee corporations various privileges and infrastructural capacities." In order to accommodate this, we have deleted the section on structures of impunity which gets in the way of the core argument.

We have also thoroughly proof-read the article dealt with the typographical and the presentation issues.

Many thanks again for the time you have taken to respond with a very detailed level of engagement.

State-Corporate Crime and the Process of Capital Accumulation: mapping a global regime of permission from Galicia to Morecambe Bay.

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State-Corporate Crime and the Process of Capital Accumulation: mapping a global regime of permission from Galicia to Morecambe Bay.

Introduction

Studies in state-corporate crime, organised around a growing and relatively new agenda in corporate crime research, take the on-going and often symbiotic relationship between state/public actors and private actors (normally large corporations) as the point of departure for its analysis (Kramer et. al., 2002). There are three major challenges to criminology that this approach implies. First, by developing an analysis of power relations beyond the immediate circumstances of a particular moment, fixed in time, with very particular circumstances, it takes us beyond a paralysing fixation that mainstream criminology has with criminal ‘events’, a fixation that is of limited value because it does not allow us to view the conditions that produced those crimes as rooted in more on-going and ever-present social conditions of unequal power (Pearce, 1976). The state-corporate crime literature thus points consistently to a structure of political economy which creates the particular conditions that shape the relationship between states and corporations (Kramer et. al., 2002; Kramer and Michalowski, 2006). In this sense, the literature seeks to develop an understanding of the *social* content of the relationship between states and corporations in modern liberal democracies. A similar critical observation is made consistently in feminist analyses of male violence; which is conceived of as a form of violence that can only be understood as part of an on-going state of gendered *power relations* (Walklate, 2003: 127-129). Second, moving from event to process poses a difficulty for more statist or administrative criminological approaches, since it shifts the terrain on which we search for who might be held

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‘criminally’ responsible. Third, this literature locates the production of crime in the structures of capitalism, not least in the drive for accumulation that shapes the relationship between states and corporations (the motivations for crimes the lack of control and regulatory structures and the relative impunity granted to corporate actors). The literature that points to ‘empire crime’ is particularly illuminating in this respect, highlighting as it does, the deep historical origins of state-corporate collusion (for example, Iadicola, 2010 and 2011 see also, Kauzlarich and Matthews, 2006).

We develop the latter point later in this paper, and argue that understanding state-corporate crime as part of a historically configured process of capital accumulation impels us to look beyond the actors and social relationships that are immediately visible in the circumstances of the ‘crime’ or ‘event’.

The importance of understanding of state corporate crime as an historically and socially situated process is illustrated by our analysis of the sinking of the Prestige oil tanker in Galicia in November 2002 (an environmental catastrophe reportedly with greater economic and environmental costs than the Exxon Valdes spill; Carstens, 2003) and the killing of 24 Chinese migrant workers at Morecambe Bay in the North West of England in February 2004 (the worst industrial multiple fatality in the UK since the Piper Alpha disaster). As we uncover the historically and socially situated *immediate* conditions of those cases, we argue that the Prestige disaster to some extent accounts for the conditions that produced the Morecambe Bay disaster. We explain how we come to this conclusion in the discussion below, before returning to uncover the historical and broader social content of those ‘events’.

From Galicia to Morecambe Bay: connecting two criminogenic ‘events’

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5 The sinking of the Prestige oil tanker in November 2002 created a spill that polluted
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7 thousands of kilometres of coastline and in terms of the ecological and economic
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9 damage suffered in the aftermath, was certainly the worst oil spill in Spain’s history and
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11 perhaps the worst in Europe’s history. The immediate crisis was immeasurably
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13 worsened by the Spanish government’s order to tow the vessel out to sea, away from
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15 Spanish waters, despite warnings that the ship would not be able to withstand the storm
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17 conditions forecast for the area (Naucher, 2013). In trying to remove the threat of both
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19 the environmental and political fall out from the spill, the Spanish government caused a
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21 further major rupture in the vessel and turned a manageable spill into the disaster of
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23 unmanageable proportions. Had it followed its own protocols set out in the Spanish
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25 National Emergency Plan, it would have towed the vessel into the port to deal with the
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27 spill (Greenpeace, 2012). Ángel del Real, Maritime Captain of the port of La Coruña
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29 gave the order to tow the vessel 160 km from the coast escorted by the Spanish Navy.
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31 The decision was approved by the Minister for Development, and later by the Prime
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33 Minister José María Aznar. The ship owners and the company of the rescue opposed the
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35 decision to tow the vessel away from the coast. Moreover, it seems that the decision to
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37 change the direction of the vessel was also taken partly due to pressure from the French
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39 government (Catalán Deus, 2003; 82).
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51 Measured in terms of the impact on biodiversity and the environment, the collective
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53 cost of the catastrophe was huge. The ‘black tide’ was certainly the biggest ecological
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55 disaster to hit the Spanish coast, and was possibly the most damaging oil spill in
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57 European history. More than 2,000 km of coast were affected. Shellfish, particularly
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mussels, were badly affected, as were other staple seafoods. For example, octopus catches fell by 50% in 2004 and 2005 in many areas. The Spanish Society of Ornithology estimated the number of sea birds deaths caused by the oil at between 115,000 and 230,000, one of the highest sea bird mortalities by non-natural causes ever seen (Ecologistas en Acción, 2012). These are aspect of the consequences of the disaster, related to the loss of biodiversity, are difficult to translate into monetary terms (Prada et. al. 2002). At the same time, the cleaning and the restoration are collective costs that *are* measurable in monetary terms. The cost of the post-disaster clean-up was estimated at around 107 million euros.¹ The most affected people were relatively low paid workers in the fishing and seafood industry. The impact on those sectors can be calculated in monetary terms according to the transformations in quantity and quality of the goods and services offered in the market (Varela et. al. 2002: 139). In 2003, the value of fishing and tourism lost totalled around 1.4 billion euros (ibid.: 148). This disaster is aggravated due to Galicia's status as one of the poorest areas in Spain together with its dependence on natural marine resources (Surís & Garza, 2003: 317).

The circumstances of this tragedy seem rather distant from the Morecambe Bay disaster. Yet, both tragedies can be understood as part of the same complex chain of events. It is a chain that is connected by the dramatic impact upon market conditions precipitated by the Prestige disaster. One consequence of the Prestige disaster was the banning of all fishing and shellfish harvesting along the Western and Northern coasts of Spain. The ban, combined with what was generally a poor harvest year in Europe, intensified demand for a number of seafoods, including cockles. This intensification of demand led to pressure on other areas of shellfish production to maximise production in order to

¹ Figures taken from *eldiario.es*, October 2014, available online <http://www.eldiario.es/temas/prestige>.

1 meet the demand. One of those areas was the west coast of Britain. In April 2002, it was
2 reported that the price of cockles in the UK had soared from £200 per tonne in 2000 to
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4 £2,000 per tonne in the months prior to the disaster (*The Independent*, 29th April, 2002;
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6 *The Guardian* 7th February 2004). The period between 2003 and 2004 was
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8 exceptionally good period for the cockle harvest in Morecambe Bay, making a
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10 significant increase in production possible. High prices were sustained over the next 2-
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12 3 years following the closure of the Galician cockling sites. In late 2004, 9 months after
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14 the disaster local newspapers in the North West of England were reporting the need for
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16 more migrant cocklers to meet a sustained demand.
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24 On 5th February 2004, 23 cockle pickers were drowned at Morecambe Bay on the
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26 English Lancashire coast. The dead were immigrant workers from China who had been
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28 put to work on the cockle beds of the Fylde coast. The tides at Morecambe Bay are
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30 notoriously quick and the area was known for its difficult currents and quick-sands. On
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32 the day of the disaster, the tide times allowed for only 3 hours of work before dusk, and
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34 the cockle pickers had begun work just as daylight was fading. The fact that the cockle
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36 pickers were working under highly dangerous conditions was largely due to the
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38 intensification of global demand for cockles.
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46 At the time, major questions were asked about the negligence of the British state.
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48 Several clear warnings about the possibility of fatalities occurring at Morecambe Bay
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50 had gone unheeded. In June 2003, the local MP Geraldine Smith had written to the
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52 Home Office with concerns that inexperienced Chinese cocklers were being employed
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54 on a fifth of the wages of British workers and that the conditions that they worked under
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56 were more acutely dangerous than the conditions faced by their British counterparts. A
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rescue of 40 workers from the sands occurred just 6 weeks before the disaster had been reported, yet no action was taken in response (*Liverpool Daily Post*, 7th December 2005).

Because we can identify a role played by the state in either producing or failing to prevent what happened in Galicia and in Morecambe Bay harms, they begin to look like archetypal state-corporate crimes. That is, they appear to fit closely with a standard definition of state-corporate crime as “*illegal or socially injurious actions that result from a mutually reinforcing interaction*” between state and corporation (Kramer and Michalowski, 2006: 20). It is this focus on the “mutually reinforcing interaction” between state and corporation that is the point of departure for our discussion in the following section.

Beyond State-Corporate Antagonism

Generally, when we analyse such crises of regulation, we impelled to look for a breakdown in the relationship between two, potentially antagonistic, parties (the state and the corporation). Yet, as the literature on state-corporate crime illustrates clearly, often there no clear antagonism or opposition of interest in those relationships, since those crimes often occur as a result of commonly shared or mutual goals (Kramer, 1992; Aulette and Michalowski, 1993; Kramer et al. 2002).

The state-corporate crime framework advances this approach by identifying two types of institutional relationships: those that are state-facilitated and those that state-initiated (Kramer et al., 2002; Bruce and Becker, 2007). It is this duality that the literature uses

1 to explore the full complexity of state involvement in, and contribution to, the
2 circumstances that lead to corporate crimes. In the former case, state-corporate crimes
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4 are the result of negligence or inactivity on the part of the states or their regulatory
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6 agencies in ways that collusively facilitate corporations in the commission of state-
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8 corporate crime. Thus, the state fails to provide the necessary mechanism to effectively
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10 balance or control the corporate activity. Often, a concept of “nested contexts” is
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12 introduced to show there is always a political economy that shapes the conditions for
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14 state-corporate facilitated crime, particularly when failure of regulation are discussed
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16 (Kramer, 1992; Aulette and Michalowski, 1993; Matthews and Kauzlarich, 2000;
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18 Crucioti and Matthews, 2006). In the case of the latter – state initiated crime - state
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20 institutions pursue pro-active strategies that play a leading role in the commission of
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22 state-corporate crimes. Here, the state not only fails to regulate the private sector, but it
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24 has a paramount role in fostering the criminal activity that benefits corporations (see, for
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26 example, Rothe, 2006; Whyte, 2007).
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36 At the global level, international financial institutions such as the World Bank or the
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38 International Monetary Fund can play the same role as public institutions or nation-
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40 states in facilitating or initiating corporate crimes (Friedrichs and Friedrichs, 2002;
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42 Wonders and Danner, 2006). A variation in the literature points to corporate-facilitated
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44 and corporate-initiated *state* crimes, a modification which foregrounds the agency of the
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46 corporation and the primary casual nature of capital accumulation in state-corporate
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48 crimes (Matthews, 2006; Whyte, 2009; Lasslett, 2014).
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55 The state-corporate crime approach has been subject to some critique on the basis that it
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57 does not go far enough in revealing the social content of state corporate crimes. As
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1 Tombs (2012) has argued, for example, the state-corporate crime literature retains a
2 tendency to focus upon the immediate circumstances of:
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4 discrete joint ventures between corporations and states, either at specific
5 moments or towards specific ends, thus abstracting these from a more
6 generalized set of social relationships, which are on-going, enduring and more
7 akin, in fact, to a process.
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16 Similarly, Lasslett (2010: 212) has noted that this literature is characterised by its
17 inability to concretise state-corporate crimes as part of a broader system of production
18 and “orient the researcher to less evident, but extremely important social realities that
19 inform the crimes of the powerful.”
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27 We would agree with both Tombs and Lasslett. The description of our cases above
28 provides the basis for launching an exploration of state-corporate crimes as events that
29 are produced as part both of a more generalized set of social broader system of
30 economic production. We say this because the most apparent link across those cases
31 seems to be that they are “crimes of the economy” (Ruggiero, 2013) in the sense that
32 their circumstances are rooted in a classical political economy understanding of the
33 human consequences of shifts in the forces of supply and demand that are shaped and
34 co-ordinated in a global economy. The abstraction that both Tombs (2012) and Lasslett
35 (2010) point to in their critique of state-corporate crime, however, is something beyond
36 the *observable* features of political economy. They are concerned with the way that
37 particular approaches to political economy produce an abstraction of social
38 relationships.
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1 In order to deepen their critique – and to begin to see how we might make social
2 relationships more concrete in the analysis of state-corporate crimes - we argue that
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4 much of the scholarship in what Lasslett (ibid.) calls orthodox studies of crimes of the
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6 powerful tends to develop its analysis around a particular flaw or problem in the
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8 institutional relationship between the ‘state’ and the ‘corporation’, or what we call in the
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10 discussion that follows, a *regulatory pathology*. Indeed, it is this understanding of the
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12 regulatory process that constitutes a primary example of the tendency to abstract social
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14 relationships that those previous critiques have identified.
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21 **From Regulatory Pathology to the Regime of Permission**

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26 The state-corporate crime literature has produced significant analyses of the subject of
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28 this paper: oil spills.
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34 Bradshaw’s discussion of the criminogenic structure of the industry represents a
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36 development of the conceptualisation of state-corporate crime by introducing the
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38 concept of ‘industry’ level to those of ‘institutional’, ‘organizational’ and ‘interactional’
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40 levels that were firstly advanced by Kramer et al. (2002). Thus, the article points to the
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42 competition between business organizations that lead to more “criminogenic industry
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44 structures” (p. 380), showing how governmental regulatory processes shape patterns of
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46 state-corporate harm. What is more, Bradshaw signals the role of the state apparatuses
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48 in fostering markets in the industry.
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56 In this vein, Cruciotti and Mathews’ (2006) article on the context that produced the
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58 *Exxon Valdez* spill highlights the importance of “a complex series of interactions
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1 between social actors” (p. 149). The paper, following Aulette and Michalowski (1993),
2 argues that the “nested contexts” made this crime inevitable; that is, that societal,
3 political and regulatory contexts established the basis for the crime to happen. The state-
4 corporate crime occurred, the authors say, as a result of the profit motive intersecting
5 with a lax regulatory environment. Thus, we are encouraged not to see these events as
6 ‘accidents’, but as the result of a series of practices engaged in by a series of relevant
7 actors. But what is interesting in this chapter is that the authors go way beyond their
8 conclusion that the disaster resulted from the “wrongful intersections of government and
9 business.” In doing so, they point to a more historically and socially complex set of
10 circumstances, including: the way that automation had led to fundamental changes in
11 the labour process; the origins of Alaskan state government in the 19th century Gold
12 Rush; and the emergence of a political economy of speed following the discovery of oil
13 in 1968 and the OPEC embargo of 1973. Thus, the chapter actually goes much further
14 in its analysis than simply elucidating some “wrongful intersections”, but develops a
15 complex and historically situated political economy. The paper in fact exposes a set of
16 circumstance that are neither related to: a) the failure of government in fulfilling its *in*
17 *vigilando* role; nor b) practices that were clearly initiated by the government authorities
18 involved in taking decisions that led to the disaster. The paper shows how both those
19 ‘state-initiated’ and ‘state-facilitated’ features were shaped by a deeper political
20 economy of oil production.

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51 Indeed, neither Bradshaw nor Cruciotti and Mathews’ cases appear to us to be merely
52 illustrating *deviant* state practices – rather they also illustrate practices that are
53 constructed within those states as normal and acceptable. Of course, the particular
54 events that occurred can be understood as both deviant – and in any interpretation of

1 those terms – their effects are criminogenic. But, the circumstances that led to the
2 events cannot be regarded as deviant practices. As Bradshaw indicates, the political
3 economy of hydrocarbon production is rooted in a much greater human catastrophe –
4 climate change – and yet this is constructed only as deviant when a major event like the
5 Gulf of Mexico spill occurs. Likewise, as we have indicated, Cruciotti and Mathews’
6 discussion of the Exxon Valdes case is rooted in a ‘normal’ political economy of
7 hydrocarbon production that produces ‘deviant’ outcomes. The implication of what we
8 are arguing here is that the state-corporate crime approach usefully draws attention to
9 some kind of constitutional flaw, or *moment of rupture* in the relationship between
10 public (state) institutions and private (corporate) institutions. It is this tendency in the
11 literature to focus upon what might be called *moments of rupture* in the constitutional
12 public/private relation that leads us to analyse state-corporate crimes in a particular way,
13 impelling us to look at immediately apparent empirical conditions where public
14 authorities have either colluded in ways that breach the normal constraints of their
15 ‘public’ role, or have failed to protect us, the public, from the harmful activities of the
16 private (corporate) sector (Whyte, 2014).
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41 In this sense, we are arguing that state-corporate crime should not be *pathologised*.
42 That is to say that state-corporate crimes are not necessarily accurately described as
43 “wrongful interactions” because they are not necessarily *deviations* from a normal
44 social path or social state in which a ‘better’ relationship between government and
45 corporation can guarantee protection from the process of capital accumulation. Rather,
46 corporate crimes are better understood as *interruptions or unplanned phenomena that*
47 *arise from the normal conditions of doing business*. As this article will argue, in order
48 to fully understand the formative conditions of state-corporate crime, it is not enough to
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2 look to regulatory pathologies; it is not enough to limit our analysis to the empirical
3 conditions of regulatory ‘collusion’ and ‘failure’.
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7 How, then, could we think about the deeper architecture of corporate power in order to
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9 take us beyond the immediately observable conditions of those regulatory pathologies?
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11 We approach corporate crime and its regulation as a distillation of a range of social
12 relationships, institutions and practices that exist *prior* to the immediately observable
13 conditions and relationships that produced the criminal event. In doing so, this shifts our
14 focus away from the moment of rupture towards a concern with recovering the social
15 content and the historical context of those immediately observable relationships.
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26 We therefore note at this stage something that none of the state-corporate crime scholars
27 we cite would disagree with: that states or governments do not merely *facilitate* or
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29 *initiate* criminal and harmful practices. Rather, capitalist states produce the entirety of
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31 the social conditions that enable criminal and harmful practices to occur. In capitalist
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33 social orders, states play a creative and enabling role for regimes of capital
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35 accumulation; corporations are the key institutions in realising capital accumulation.
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37 Governments establish the juridical and administrative framework for corporations,
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39 transport and communication infrastructures, and organise diplomatic relationships with
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41 states to enhance opportunities for import, export and investment and so on. States help
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43 to constitute capital, commodity, commercial and residential property markets; help to
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45 produce different kinds of ‘human capital’; constitute labour markets; regulate the
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47 employment contract; constitute corporations through the rules that permit particular
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49 forms of ownership; specify the rules of corporate liability and so on (Tombs and
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51 Whyte, 2015).
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2 The corporation, in the sense that it is established formally, is permitted through its
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4 legal and political status to structure its activities in particular ways. Those include: its
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6 ability to trade as a separate entity; its ability to structure ownership in particular ways,
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8 its ability to attract investment through a range of incentives and so on. Those
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10 privileges are generally guaranteed by the rules of incorporation in a given national
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12 state. Corporations are normally registered by the state for commercial purposes and
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14 are granted a legal identity. This legal identity enables corporations to exist as an entity
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16 wholly separate from the individual identities of its owners or stockholders. It is this
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18 identity that enables corporations to assume a status as holder of particular rights, to
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20 own property and to exploit particular privileges such as ‘limited liability’. As part of
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22 this process of incorporation, companies are permitted to establish complex ownership
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24 chains in which their operations are spread across a number of ‘formally separate’
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26 companies.
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36 By foregrounding this deeper, constitutional, relationship, we are beginning to probe the
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38 *a priori* - historically constituted - architecture of state-corporate power as part of what
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40 Tombs calls “a more generalized set of social relationships”. In this sense, we are
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42 seeking to concretise, following Lasslett, the “a broader system of production”, which
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44 in capitalist social orders, is organised around a process of capital accumulation. In
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46 order to do so, we see the observable institutional relationship between ‘state’ and
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48 ‘capital’ as merely an epiphenomena of a broader *regime of permission*, and therefore
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50 an epiphenomena of how capital accumulation is more generally reproduced through
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52 regulatory structures. It is this understanding that can more fully illuminate the social
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54 content of corporate crimes. And it is to this task that the rest of the paper turns.
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The Regime of Permission from Galicia to Morecambe Bay

Here we specify the regulatory process – or the regime of permission - that enables capital accumulation to be reproduced. This is how we begin to discover the entirety of the social conditions that enable criminal and harmful practices to occur.

The broader regime of permission that we point to can be usefully delineated into four major spheres, the categories that Marx called the ‘moments’ of capital accumulation: the spheres of production, distribution, exchange and consumption (Marx, 1993). He argues that since production is the predominant sphere, the latter categories of distribution, exchange and consumption merely represent different stages or ‘moments’ in the life of a product. However, the three other spheres also determine the form that production takes (ibid.). In this analysis we are largely concerned with the social content of the spheres of production and distribution because this is most clearly where we can observe the regime of permission in our cases. It is clear that there is a lot to be said about how the events that we describe here have impacted upon exchange and consumption, not least how the profound reshaping of seafood markets and the fluctuation of seafood prices in the wake of the Prestige undoubtedly had socially harmful effects (for example in the emergence of intensified demand, a decline in the quality of food products and so on). Whilst this is beyond the scope of this paper, we would therefore stress that there is much to be learned from a fuller analysis of the spheres of exchange and consumption as part of the totality of the regime of permission.

1 Our priority here, however, is to see a little more clearly how both the Prestige and the
2 Morecambe Bay disaster were made possible through a set of *a priori* social
3 relationships that in each of those spheres of production and distribution are reproduced.
4 By doing so, we uncover a highly complex regime of permission, a core part of which
5 materialises in each case as a structure of impunity. Through this analysis we can see
6 precisely how the major players are the architects and key beneficiaries of each ‘crime’,
7 but in its aftermath are permitted to continue as if nothing had happened.
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19 Although our case is largely a case of oil *distribution*, we offer our first set of
20 observations, on the sphere of oil production, as context for understanding the social
21 content of our case.
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28 *Oil Production*

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34 The regulatory practices that govern the production of oil are based upon one over-
35 riding principle: the permission to continue the extraction of oil at the most profitable
36 rate of production. The regulation of oil *production* is highly regulated in this sense by
37 oil producing states. The US, as the major oil producing nation, controlled oil prices for
38 the early half of the 20th century, ceding its influence to the OPEC countries in the
39 1970s. The current global dip in the price of oil is a result of the weakening of this
40 system of production controls in the OPEC oil producing countries and a re-shifting of
41 the balance back to Western producers (Harvey 2010; Arrighi, 1999).
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55 The sphere of *exchange* comes to life here since the regulation of production in oil
56 markets is concerned largely with *price* regulation. Of course, there are a complexity of
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1 social and environmental regulatory structures that, for example, aim to mitigate spills
2 and impose particular safety protections for workers. Those standards apply differently
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4 across jurisdictions. However, although they may impact on the conditions of
5
6 production, those forms of regulation are not concerned with limiting the volume of
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8 production *per se*, but with minor adjustments to the way that oil is produced.
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10 Environmental controls are also imposed after the production process: at the stage that
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12 the product is used. Thus, emissions controls on industry or on the use of road vehicles
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14 seek to limit use at the point of *consumption*. Thus, climate change treaties or
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16 international agreements that seek to mitigate the impact of the use of hydrocarbon fuels
17
18 seek to limit carbon emissions. If there is a rudimentary system of regulation set out in
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20 agreements such as the Kyoto protocol, it is one that seeks to regulate the end point of
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22 the production cycle, rather than control the level of extraction *per se*. Whilst our very
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24 truncated and selective over-review of some key of dynamics in the regulation of oil
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26 production may not seem empirically relevant to what follows (and the origin of the
27
28 heavy fuel being transported by the Prestige is not known) we have in this section
29
30 identified a core principle of regulation: a clear regime of permission principle at work,
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32 in which the potential harms of hydrocarbon production are subordinated to the
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34 production process itself. This is the broader regime of permission that frames our
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36 discussion here: one that sets the coordinates for understanding the principle on which
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38 the distribution of oil proceeds.
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51 *Oil Distribution*

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56 The regime of permission that is significant in the distribution of oil by sea is
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58 notoriously complex and fragmented. Each nation state has its own regulatory structure
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1 for merchant shipping. At the same time, there is an international treaty structure and a
2 number of international organisations responsible for regulation. A UN organisation, the
3
4 International Maritime Organisation (IMO) is responsible for developing and
5
6 maintaining safety, environmental protection, and security issues relating to shipping.
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8 IMO regulations on the transportation of oil cover a range of issues including the
9
10 technical specifications applying to ballast and stability, the location of oil storage on
11
12 ships, the hull structure (single hull tankers are being phased out as a result of IMO
13
14 double hull regulations), and the rules for assessing risk and reporting requirements. In
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16 this industry, a very specific process of regulating the ownership of vessels is organised
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18 under a system commonly known as using a ‘flag of convenience’ or ‘open register’.
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20 Employment practices in shipping are governed by other sets of regulations, namely the
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22 standards set by another UN organisation, the International Labour Organisation.
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31 However, a system of ‘flags of convenience’ generally enables national regulations to
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33 be flouted in marine employment. This basically means that a vessel can be registered
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35 in a different national state than the ship’s owners under a ‘flag of convenience’ or
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37 ‘open register’. Owners’ reasons for opting for an open register are many and varied and
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39 may include secrecy, tax avoidance, and avoiding national labour or environmental
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41 regulations. Flags of convenience therefore make it difficult to obtain any detailed
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43 information about the company. In the case of the Prestige, the device of open
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45 registration served the owners well.
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53 As Hansen’s (2008) forensic analysis shows, the company that owned the Prestige,
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55 Mare Shipping, was registered in Liberia, a flag of convenience jurisdiction. The oil
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57 tanker was chartered by a Swiss company, Crown Resources, also the owner of the
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1 cargo who set it on course for Gibraltar where it was to wait for new instructions.
2 Crown Resources itself was owned by a holding company based in Luxemburg, which
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4 in turn was owned by another holding company, based in Gibraltar, in turn owned by
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6 third company based in Liechtenstein. The third holding company was owned by Alpha
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8 Group, one of Russia's largest investment fund groups that has major interests in
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10 commercial and investment banking, asset management, insurance, retail trade, water
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12 utilities, and a wide range of other investments. Alpha Group is therefore the real owner
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14 of the oil carried by the Prestige. Using different companies located in several
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16 jurisdictions made the attribution of liability difficult. The countries outside Russia
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18 involved in this secondary chain of ownership (Luxembourg, Gibraltar and
19
20 Liechtenstein) are all tax havens, and are known for the protection of commercial
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22 secrecy. This ownership chain, involving three different secrecy jurisdictions, made it
23
24 difficult to obtain reliable information on the circumstances leading to the disaster. It is
25
26 this complexity of the ownership chain that also minimized financial and reputation
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28 damages to the ultimate owners, Alpha Group. Following the disaster, the various
29
30 assets of Crown Resources were sold off in separate parts, and then reconstructed
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32 around a new enterprise, 'Energy Resources' and 'Commodities Trading Company'
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34 both based in Switzerland. This strategy enabled the real owners to further distance
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36 themselves from the Prestige disaster and to avoid accusations of wrongdoing, as well
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38 as continue trading in exactly the same way as before (Catalán Deus, 2003: 224-225).
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51 It took 14 years before a judgment in the Spanish Supreme Court in January ruled that
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53 Mare Shipping, along with the ship's insurer were jointly liable for the spill (Spain.
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55 Supreme Court 11/2016). It remains to be seen if there will be any action to recover the
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57 damages. However, even if damages were sought, because they are owners of
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incorporated businesses it is highly unlikely that the individual owners of those companies will be asked to pay full costs of the disaster.

Instead, criminal responsibility has been focussed on the individuals involved in the immediate circumstances of the disaster. A similar observation, as we shall see, can be made about the Morecambe Bay disaster. The criminal trial of three men, the captain, the chief engineer and the Spanish government's General Director of Marine Affairs, López Sors, began in Spain in November 2012 in the Audiencia Provincial de La Coruña, and was finally confirmed in the Spanish Supreme Court case in January 2016 noted above. The court delivered its sentence one year later, eleven years after the disaster. The captain had been found guilty in an earlier case and sentenced to two years in prison (serving nine months of the sentence). Only the captain was found guilty of crimes against the environment. López Sors, the only representative of the Spanish government to be indicted was acquitted, even though the government's negligence was clear: a Governing Committee was never constituted, no qualified personnel were sent to the ship, and the ship was knowingly sent into a storm and then ordered to change the direction several times, making a spill inevitable. Thus, the judgement against the captain effectively absolved both the government its responsibility for managing the crisis along with the owners of the oil and the vessel (Naucher, 2013).

What we have described here is a series of complex regulatory mechanisms that originate in the process of capital accumulation, and in the way that a particular form of property ownership (the corporation) is reproduced in regulations that are universally applied across capitalist states. Those mechanisms have reproduced a structure of impunity that enabled both the owners of the vessel and the oil to escape liability for the

1 disaster. A crucial aspect of regimes of permission, is, in other words, revealed clearly
2 here as a complex structure of impunity.
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7 This structure of impunity extended to the US regulator. In a failed attempt to obtain
8 compensation for the disaster (El País, 9th June, 2008), the Spanish government, instead
9 of pursuing Mares Shipping or the Alpha Group, which would have proved difficult for
10 reasons set out in the preceding discussion, attempted to prosecute the regulator that
11 permitted the Prestige to operate, the American Bureau of Shipping (ABS). In this case,
12 the US courts ruled that Spain could not prove that the actions of ABS constituted a
13 cause of the wreck of the Prestige. Spain made several arguments in the case. For the
14 purposes of our paper, three of those arguments are significant. The first related to the
15 failure to ensure compliance of standards relating to the inspection of condition of the
16 vessel. After the Erika disaster off the coast of France in 1999, the ABS proposed that
17 major classification organisations must adopt a number of measures, including
18 classifying old tanks, organising annual inspections, and the mandatory use of the
19 SafeHull program. ABS had been accused of failing to act on knowledge of structural
20 damage to the hull of the Prestige that it had possessed since 1996 (ibid.; Reino de
21 España v. American Bureau of Shipping). The court found that although the regulations
22 were not followed in the case of the Prestige, they were not mandatory at the moment of
23 the wreck and thus ABS was not liable.
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51 The Prestige was inspected but remarkably, the results of the Marine Services
52 inspection were not reported because the Crown Resources did not pay the fee that was
53 due for the full inspection program. This is remarkable, because the condition of the
54 vessel was hidden simply because the Prestige's charterer had refused to pay a statutory
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1 fee. Because of this and ABS's failure to share the information of the previous tests
2 with local surveyors, Spain alleged that ABS was reckless. Spain additionally
3 suggested that ABS was reckless as the Prestige's then Captain Kostazos sent a fax to
4 Marine Services in August 2002 alerting the regulator of the serious condition of the
5 Prestige and asking for an emergency inspection. According to the American court that
6 since ABS was a parent company, then it could not be held liable for the knowledge
7 held by its subsidiary company. Spain could not prove that Marine Service ever
8 informed ABS, or that ABS was aware of the issue; or even that the fax arrived to its
9 destination. Thus, the court dismissed the Spanish petition and decided that ABS had
10 no legal responsibility for the condition of the Prestige (Reino de España v. American
11 Bureau of Shipping). The latter finding is particularly instructive, since we can discern
12 a principle of outsourcing *within* the administration of the US regulatory system
13 (Hansen, 2008). It is this principle of outsourcing that enabled the regulator – as well
14 as the owners of the vessel and the oil to escape liability!

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36 In sum, this structure of impunity ultimately ensured the status quo: the commercial
37 strength of the corporate owners of the oil was maintained; the system of shipping
38 regulation and of oil distribution remained unchallenged; and crucially, the pattern of
39 ownership was undisrupted. Those different forms of impunity, drawing upon a myriad
40 of different legal structures and different institutional forms converge as part of the
41 general regime of permission.
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53 *Seafood Production*

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1 The production of seafood is, in general terms, regulated in ways that seeks to limit its
2 environmental impacts at the point of production and to ensure a stable and sustainable
3 fishing industry. This is not to say various international mechanisms have been
4 successful in meeting this aim. But social protection is at least one of the stated aims of
5 such regulatory policies. International fishing limits, such as those imposed by the
6 European Union are aimed at precisely this form of control (Pearse and Walters, 1992).
7 The closure of the fishing grounds by the Spanish government following the Prestige
8 disaster was done ostensibly to protect human health, but also to enable fish stocks to
9 recover and be replenished. As we have seen, one of the effects of this ultimately was
10 to create a new set of risks to the safety of workers in UK shellfish production.
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27 In times of shortage or environmental disaster, production controls on cockle picking in
28 Morecambe Bay are similarly imposed by a statutory government agency. The
29 regulator currently empowered to do this notes that its formal aim in law is to secure
30 “the right balance between social, environmental and economic benefits to ensure
31 healthy seas, sustainable fisheries and a viable industry.”² At the time of the
32 Morecambe Bay disaster, stocks were healthy, and therefore did not require such
33 controls.
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46 Labour conditions in the production of seafood in the UK are the responsibility of a
47 range of agencies. Foremost amongst those is the Health and Safety Executive,
48 responsible for enforcing safety standards that are designed to protect workers across
49 the seafood production sites that are the concern of this paper. In practice, however, in
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56 ² North Western Inshore Fisheries And Conservation Authority Constitution March 2013, online at:
57 [http://www.nw-](http://www.nw-ifca.gov.uk/contents/images/NWIFCA%20Constitution%20March%202013%20%28Final%29.pdf)
58 [ifca.gov.uk/contents/images/NWIFCA%20Constitution%20March%202013%20%28Final%29.pdf](http://www.nw-ifca.gov.uk/contents/images/NWIFCA%20Constitution%20March%202013%20%28Final%29.pdf),
59 viewed 6th April, 2016.
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1 the context of the regulation of the *undocumented* labour market that the Morecambe
2 Bay cockle pickers were part of, the regulatory authorities have neither the resources
3
4 nor the political will to inspect and investigate unregistered enterprises and seek
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6 compliance or take enforcement action in this sector. In any case workplace safety
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8 regulators are operating in an environment that is dominated by immigration control. In
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10 the months and weeks leading up to disaster, cocklers on Morecambe might have had a
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12 chance of seeing immigration officers, but would have had little chance of seeing
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14 workplace safety regulators (for example, *The Daily Mail*, 23rd August, 2003).
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17 Certainly the level of state effort directed at controlling ‘illegal’ workers dwarfs the
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19 state effort that seeks to ameliorate the conditions that enable migrant workers to be
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21 exploited (Burnett and Whyte, 2010).
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29 Indeed, it is in this context that we must understand the prosecution of the Chinese
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31 ‘gangmaster’ who employed the cockle pickers. In March 2006, Lin Liang Ren was
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33 convicted for the manslaughter of 21 cockle pickers (by the time of the court case, two
34
35 of the bodies had not recovered from the sea) and given a 14 year jail sentence. Two
36
37 others involved in their employment, Zhao Xiao Qing and Lin Mu Yong were also
38
39 convicted of facilitating *contraventions of immigration law*. They were sentenced to two
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41 years and nine months, and four years and nine months respectively. The Liverpool Bay
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43 Fishing company that bought the cockles from Lin to sell on to larger producers were
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45 cleared of facilitating the crime. All of the larger market players: the canning factories,
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47 the exporters and the corporations marketing and selling the cockles were sufficiently
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49 distanced by the supply chain to prevent them from even being questioned in public
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51 discussion about their role in the deaths of the 24 workers. The role of those players is
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53 discussed briefly in the section that follows.
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2 *Seafood Distribution*
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7 Responsibility for seafood distribution is similarly spread across a complex chain of
8 different entities. A large part of the global demand for shellfish is driven by Spanish
9 consumers. Indeed, the Spanish market is certainly the most important market for
10 cockles in Europe, buying most of its cockles from European countries. This market
11 had previously been supplied mainly from Galicia (Pawiro, 2010). Recognising the
12 opportunities in Britain, some of the Spanish companies moved in to buy cockles from
13 producers they have not dealt with before. One indication of this entry into the market
14 by big Spanish players illustrated when in 2002 the Spanish company Conservas Dani
15 bought a family-run firm based in Wales which had previously preferred to deal with
16 established cocklers (Herbert and Nash, 2004). The net effect of the entry into the
17 market of the large Spanish market players was therefore that pre-existing supply chains
18 were re-configured.
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39 The intensification of market conditions had some very direct impacts on labour
40 conditions. An ongoing dispute between British and Chinese gangs of cocklers
41 intensified during the months and weeks leading up to the disaster. The dispute was
42 partly about the territorial rights to work the Bay, but was also fuelled by the
43 assumption that Chinese labourers were gaining a competitive advantage because they
44 were more likely to take risks than locally established cocklers. In the week before the
45 disaster, buyers were being asked by British cocklers not to purchase cockles harvested
46 by Chinese gangs (ibid.). However, the reconfiguration of trading relationships in the
47 industry most probably made it easier for new sellers of British-harvested cockles to
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1 enter the market. Indeed, it was reported in court that the Liverpool Bay Fishing
2 Company who would were buying the cockles from the direct employer of the 24
3 workers were selling to the large Spanish market players (*Daily Post*, 20th September
4 2005). If the shift in conditions of the normal sites of shellfish production in Europe
5 intensified demand for production in Britain, the restructuring of ownership patterns in
6 the industry thus led to the repositioning of trading relationships in the industry. Those
7 changes in economic relationships combined to create new opportunities for
8 gangmasters employing Chinese workers to enter those markets.
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21 In the aftermath of Morecambe Bay, none of the key players in the labour market
22 described above were even questioned, never mind investigated for their role in creating
23 the conditions of the crime. In many ways this is a very obvious point, for the structure
24 of regulation in both the seafood and labour markets, and the regulatory regimes that
25 governed those markets, enable the most powerful players to remain distant from the
26 conditions of exploitation that they benefit from. In this context it almost seems
27 ludicrous to question why they were not prosecuted. How could the most powerful
28 players – the buyers of the cockles that existed several stages removed along the supply
29 chain – possible be questioned when the likely destination of the cockles – and the
30 source of the demand - was masked by a complex supply chain?
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48 The production and distribution of oil and seafood, though organised in different
49 geographical and regulatory spaces are organised using the same principles. There is a
50 similar principle of outsourcing and fragmented structure of ownership across
51 production and distribution in those industries. It is this organised fragmentation that
52 guarantees a number of crucial outcomes: cost reduction, labour casualization and
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1 ultimately distancing the most powerful players from the entry-end of the supply chain.
2 A complex regime of permission thus provides the foundations for capital accumulation
3 before it establishes regulatory protections for the environment or workers.
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9 **Conclusion**
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12 Systematically drawing the connections across two connected ‘events’ reinforces the
13 problems we face in focussing on immediately perceived criminal practices. Both are
14 disasters that must be understood as part of what Ruggiero (2013) has called the
15 collateral damage of the market. So both disasters are linked in this broad sense.
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17 Making those connections also demonstrates more specifically the inadequacies of a
18 pre-occupation with either the moment of ‘failure’ of the state to regulate or control
19 (and the state-corporate crime literature very often points to a deliberate failure), or with
20 the moments at which we can identify visible collusion between states and corporations.
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35 Those state-corporate crimes were not explained by a breakdown in the regulatory
36 function of the state; they occurred not because the state was disobeyed, but either
37 because the state was *obeyed*, or merely because they had conformed to a pattern of
38 social relations - embedded in particular social and economic practices - that has existed
39 form many decades. In neither case were the formative conditions of the criminogenic
40 ‘event’ found in particular decisions and actions or non-decisions and inactions of state
41 or government institutions. There were elements we could describe as state initiated or
42 state facilitated, but those conditions don’t fully describe the state-corporate crimes
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1 The circumstances that led to the Prestige and Morecambe Bay disasters can only be
2 partially explained using a concept of state-corporate crime. The corporate crimes we
3 describe here emanate from an architecture of power in which states guarantee
4 corporations various privileges and infrastructural capacities. As we have noted in
5 some detail here, the Prestige crisis was certainly aggravated as a consequence of the
6 negligence of the US regulators, and the international systems of regulation. In this
7 sense, some elements of the Prestige can easily be described as state-facilitated. But
8 what was facilitated here? It makes little sense to describe the immediate circumstances
9 in those terms, since the US state had no direct stake in the structure of profit or
10 ownership in this case. Rather, it had a stake in a global regime of permission that
11 enables capital accumulation from oil markets generally. The Spanish state similarly
12 benefits from this regime of permission.
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31 The response of the Spanish state to the disaster indicates the complexity of tracing any
32 common goal here. After all, the Spanish government clearly attributed the problem of
33 regulation to the US state, as is indicated by its attempt to sue ABS. This complexity is
34 also illustrated also by the immediate response of the Spanish government in the
35 ordering of the vessel to be towed out to sea away from Spanish waters, an order that
36 was strongly resisted by the ship's owners. Again, if there is a common goal, it is not
37 clear in relation to the immediate circumstances of the disaster, but at a very general
38 level in the global regime of permission.
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53 It is a process of capital accumulation that is guaranteed and under-pinned at every turn
54 by this complex regime of permission. And this process of capital accumulation reveals
55 much about the real structure of social relations. The workers at Morecambe Bay died
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1 producing value for corporate players from a commodity that at some time in the past
2 was a common resource. Their position was made more vulnerable by the commodified
3 distribution of another common resource, oil.
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9 If the social relations of expropriation and exploitation that created the Prestige and
10 Morecambe Bay disasters are to be fundamentally challenged, then we must
11 contemplate something more profound than a shift in the relationship between the state
12 and the corporation. We must contemplate how we can sustainably manage common
13 resources for the common good. Clearly this is not possible under a capitalist regime of
14 permission. We must therefore begin to explore exactly how we can manage those
15 resources under a different system of social relations, one in which corporations are no
16 longer permitted to function in the way they currently are. And to do so we need to
17 think about how social relationship should be altered not merely in the conditions that
18 we find in the moments of rupture, but in the social relations that are deeply conditioned
19 in the moments of production, distribution, exchange and consumption.
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