4 State complicity in the production of corporate crime

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Introduction

There are a series of ways, some well recognised, others less so, in which states are complicit in the systematic, routine production of corporate crimes.

First, and most obviously, states are complicit in corporate crime production through their failures either to put into place more effective legal regimes, or to enforce adequately existing laws, or to respond effectively to violations of such laws, with respect to corporate activity. If all of this appears as complicity via omission, there is in fact a great deal of active work undertaken to maintain such omission – and this work will be explored.

Second, states are more actively complicit in their relationships with the corporate sector – as partners in economic activity, as out-sourcers and sub-contractors, as purchasers of corporate goods and services – and thus in the production of illegal activities.

Third, and perhaps least recognised, is that once one departs from a view of state–corporate relations as characterised by externality, then it becomes clear that 'the' state – at its various levels – is implicated in the production of corporate crime through the complex inter-dependence of these apparently separate sets of entities. Some aspects of these intimate relationships are captured by the emerging concept of 'state–corporate crime', and the usefulness, and limitations, of this concept will be explored.

This paper considers each of these forms of state complicity in turn. As it does so, its empirical reference point is safety crimes in the UK. On the basis of this exploration of the role of states in the production of corporate crime, we seek to indicate a more realistic view both of the extent to which illegal and harmful corporate activities can be more effectively controlled, and of the limits upon such control efforts.

State complicity through 'failure'

States are complicit in corporate crime production through a series of failures, specifically in terms of their failures to put into place more effective legal regimes; to enforce adequately existing laws; to respond effectively to violations of such laws. Such failings are well documented, and there is no need to enter into a detailed discussion of each of these aspects of complicity here. However, in order to emphasise the fact that 'failure' does not imply omission, it is useful to explore some aspects of this form of complicity.

One empirical indicator of the scale of non-enforcement of existing law – let alone the reluctance on the part of states to develop laws that might be more constraining of corporate activity – is to be found through an albeit brief overview of enforcement data in relation to occupational safety in the UK (see Tombs and Whyte, 2009 for more detailed considerations). There we find, over a recent five-year period, what we have elsewhere referred to as a 'crisis of enforcement' (Tombs and Whyte, 2008) which represents an effective institutionalisation of decriminalisation. Thus, for example:

- at 1 April 2002, the number of FTE HSE staff was 4,282; by 1 April 2008 there were 3,399 staff;
- of these, there were 1,238 'front-line inspectors' at 1 April 2008, compared with 1,625 in April 2002;
- in 2006/07, just 10.5 per cent of major injuries that were reported were actually investigated – compared with 18.3 per cent in 2001/02;
- enforcement authorities issued 7,715 enforcement notices in 2007/08, compared with 17,042 in 2001/02;
- there were 1,028 prosecutions in 2007/08, compared with 2,336 in 2001/02;
- the average penalty on conviction in 2007/08 was £12,896 – compared with £11,141 in 2001/02, an increase, but from an extremely low level.

Two observations need to be made here. First, that all of these absolute figures indicate very low levels of enforcement. Second, that on almost all of the above indicators – all save the level of fines, which are determined through the courts – we see a decline in HSE's enforcement activities. However, whether looking at the absolutely low level of enforcement or the trends which indicate a decline in these activities, we need to emphasise that while we can use the term 'failures', we should not confuse this with 'mere' complicity via omission. In fact, the trends in decline can only be understood within the context of *a great deal of work* – a long-term ideological softening up (Tombs, 2007, 2001) and much material effort – through and by the state in relation to corporate crime control in general, and safety law enforcement in particular. That is, a key context for the above data is the construction of what we can refer to, by way of shorthand, as the *Hampton Agenda*.

The emergence of this agenda can be traced back to the introduction of Regulatory impact assessments (RIAs) in 1998, with a newly formed Regulatory Impact Unit within the Cabinet Office given, a year later, the remit to ensure that RIAs were being implemented across government departments. RIAs aim to measure the costs and benefits of all proposed policy and legislative reforms affecting business, and contain structural biases towards less rather than more business regulation: first, their very rationale is the need to 'ensure any regulatory burden they add is kept to a minimum';[1] second, their economic form is likely to produce a financial argument for less rather than more regulation, since the business costs of meeting new regulatory requirements are more calculable than economic or social benefits of such regulation (Cutler and James, 1996). Thus a key function of RIAs in practice has been to pre-empt and minimise legislative and regulatory cost impacts upon business by formalising a business-sensitive cost benefit analysis in the legislative process.

~~More specifically, in any capitalist state, private corporations are key sources of providing goods, services, taxation and employment – all of which are politically, economically, and socially necessary.~~ This prioritised the motivation of employers by explaining the benefits to industry of a good health and safety regime, while at the same time noting the need to 'legislate to make the punishment fit the crime' when 'health and safety standards are flagrantly ignored'. Such an approach was famously characterised by Braithwaite in terms of the need for regulators to speak 'softly' but carry 'big sticks' (Braithwaite, 2000a: 205–261), while in practice such strategic claims translate into much speaking softly, with big sticks far from apparent. Thus the *RHS* strategy, which observes that: 'while appropriate enforcement and deterrence is crucial, this must not be at the expense of promoting voluntary compliance and models of excellence' based upon 'partnership'. So while recognising that law enforcement has a place in the regulatory system, it is set against its notional opposite: 'partnership'. In practice, compliance styles of regulation pose a choice between walking softly *or* carrying a big stick, with the latter featuring always as a resort of the very last option.

With the election of a second Labour Government in 2001, the extent of New Labour's long-term plans for a reconstructed system of business regulation became fully apparent. After much ideological softening up through the proliferation of anti-regulatory discourse, the crucial moment came in March 2004; then, the Treasury, under Gordon Brown, established the Hampton Review, to 'consider the scope for reducing administrative burdens on business by promoting more efficient approaches to regulatory inspection and enforcement without reducing regulatory outcomes' (Hampton, 2005). Its report – *Reducing Administrative Burdens: Effective Inspection and Enforcement* – called for more focused inspections, greater emphasis on advice and education and, in general, for removing the 'burden' of inspection from most premises (specifically, for the reduction of inspections by up to a third which, across all regulatory agencies, would equate to one million fewer inspections). Then, in March 2005, the Cabinet Office's Better Regulation Task Force published its review of regulation, *Less is More: Reducing Burdens, Improving Outcomes* (2005); this proposed a crude mechanism for controlling the regulatory 'burden': a 'one in, one out' approach to regulation, whereby all new regulations were to be accompanied by the withdrawal of existing regulations. The recommendations of these reports came together in the Legislative and Regulatory Reform Act, which passed into law in November 2006. The aim of the law is to 'enable delivery of swift and efficient regulatory reform to cut red tape' (Cabinet Office, 2006). The Act itself therefore is framed by 'burdens on business' rhetoric, a rhetoric that juxtaposes economic health and success as a counter-balance to over-bearing investigation and enforcement. Thus, section 1 of the Act creates a remarkable new power for a Minister of the Crown to make an order that removes from government a 'regulatory burden', defined in the Act as a 'financial cost', an 'administrative inconvenience' or 'an obstacle to efficiency, productivity or profitability'.

The explicit pro-business rationale at the heart of the Hampton agenda reforms reached their high point in the new *Regulators Compliance Code*,[2] published in December 2007. Therein, regulators, including HSE, were advised that: 'By facilitating compliance through a positive and proactive approach, regulators can achieve higher compliance rates and reduce the need for reactive enforcement actions' (Para. 8); they should 'take account of the circumstances of small regulated entities, including any difficulties they may have in achieving compliance' (Para. 8.1); '[r]egulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection' (Para. 3). Thus the Hampton Review and the reforms that followed have extended the scope and reach of the burdens on business agenda directly into the *day-to-day work* of inspectors, further marginalising the enforcement role of the HSE and giving renewed momentum to New Labour's pro-business trajectory.

State complicity through increasing interdependence with the corporate sector

A second way in which states are complicit in corporate crime production is through their increasingly formal and intimate relationships with the corporate sector. These relationships take various forms, such as in states' (local, regional, national) effective roles as joint partners with the private sector in various forms of economic activity, as out-sourcers and contractors of economic activity, and as purchasers of corporate goods and services.

Now, in one sense, states and private corporations have always existed in a relationship of dependence with capital. Certainly, nation-states have been and remain engaged in a constant, 'competitive process of attraction-and-immobilization' (Holloway, 1994: 38) of capital – and importantly, one element of this is to provide the most 'favorable conditions for the reproduction of capital within [their] boundaries' (ibid. 1994: 34–35). More specifically, in any capitalist state, private corporations are key sources of providing goods, services, taxation and employment – all of which states are necessarily, politically, economically, and socially, for states.

However, we need also to be aware of the extent to which these relationships have been deepened and extended, through formal state policy and practice – and this makes state complicity in corporate crime arising out of these relationships empirically more likely. Thus, with the emergence in the UK, post-1979, of ideas and practices subsumed under the shorthand of 'neo-liberalism', we find an elevated ideological and material place for the private sector. There are numerous indices of this increasing status, including: private capital as an increasingly key provider of goods and services; private business increasingly represented as the model to be emulated (efficiency etc.); the increasing prevalence of business news, so that sectional interests are increasingly represented as national interests; the emergence of business-people as celebrities (see Snider, 2000; Tombs, 2001).

Thus, post-1979, if we confine our considerations to the UK, as neo-liberal ideas became powerful to the point of virtually uncontested dominance, then they also helped to produce that which they sought to describe and prescribe, notably in terms of increasing popular dependence upon the private sector. For as new markets were created by states for private capital through privatisation and deregulation, as states withdrew from providing a host of goods and services, many people really were made more dependent upon the private sector to provide basic goods and services: increasingly private sector organisations *must* provide goods and services which states have withdrawn from providing – and, having withdrawn from such provision, are less and less able to reassume such a role.

Across four Conservative governments between 1979 and 1997, literally hundreds of publicly owned companies were sold into private hands. British Aerospace, telecommunications, gas, electricity and water supply, shipbuilding, freight and ports, coal, railways, and atomic energy were all privatised during this period. In 1979, nationalised industries accounted for over 10 per cent of GDP; by 1993, this was less than 3 per cent, and public sector employment had fallen by 1.5 million. Little wonder, then, that by the time the first Labour Government was elected in 1997, under Blair, there was little left to privatise (Parker, 2004). And by then, with much of the economy now (again) in private hands, the ability of the state – in theory, at least, if having proven problematic in practice – either to manage, regulate, or even hold to account major economic actors had been all but relinquished. Thus, such shifts have created *new* and significant dependencies upon private capital, given the centrality of the goods and services at issue and which states have relinquished the monopoly to produce and/or provide.

The Labour Government did, of course, institute a series of major 'reforms' to the public sector and many to the nature of the welfare state, on the basis that, familiarly, there was 'no alternative'. These stopped short of further full-scale privatisation, but were generally couched in terms of greater 'choice' and 'efficiency'. There were also a series of measures rolled out to attract private capital into the 'public sector' – that is, through contracts, to further intertwine state and private corporate activities. The latter, under the guise of Private-Public Partnerships and the Private Finance Initiative, proved highly controversial; most crudely, each of these initiatives represented mechanisms for effectively privatising profits whilst socialising financial risks in areas previously untouched by private sector involvement.

Importantly however, it should be emphasised that almost all of these initiatives have been accompanied by the creation and re-creation of immensely complex – and many would argue highly inefficient – regulatory regimes. And this complexity is exaggerated when the regulation involves the provision of a basic service – such as gas, health, or rail travel. For some commentators, such changes in the role of the state have signalled the 'death of the Keynesian state', and the emergence of a 'regulatory' or 'advanced liberal' or 'post-social' state. Thus, 'Privatisation combined with new regulatory institutions is the classic instantiation of [the] prescription for governments to steer but not row' (Braithwaite, 2000b: 50). However sustainable such claims are, it certainly is the case that privatisation has increasingly seen Government shift from service provider to the chief architect in the construction, then regulation, of markets. We can also see in the emergence of the 'regulatory state' the resolution to an apparent paradox – a Government committed to privately owned, 'free' enterprise which has created a complex web of (re)regulation.

Thus we see here that regulation, following deregulation or privatisation of an area of economic activity, necessarily becomes more complex through reconstruction at arm's length. This itself is a stunning example of a key dissonance between the rhetoric and reality of the relationships between neo-liberalism and public policy – for while the former claims the supremacy of free markets, the latter in fact engages in an awful lot of work to construct and maintain markets so that they may appear to be free. Over half a century ago, Polanyi documented the 'embeddedness' of markets, and their construction through economic, social and public policy (Polanyi, 1971/1944). More recently, Sayer (1995) has argued that not only has a 'free' market never existed, but that an economy characterized by the term 'free market' simply could not exist. States help to constitute capital, commodity, commercial and residential property markets, help to produce different kinds of 'human capital', constitute labour markets, and regulate the employment contract; the state plays a role in constituting economic enterprises through specifying rules of liability, often specifying the rules of incorporation. In other words, regulation is a necessary function of a state even in the quintessential market economy, even while advocates of global neo-liberalism consistently deny such a role for the state and regulation. While 'the ideological notion of latent or implicit markets which only need freeing figures strongly in neo-liberal rhetoric' (Sayer, 1995: 104), this contrasts with the overwhelming empirical and theoretical evidence attesting to markets as social constructions.

Indeed, there is now a burgeoning literature which attests to the fact that states perform an ongoing role in the provision of an economic and legal infrastructure for the risk-taking activities of entrepreneurs. Paradigmatic here is the work of Vogel, who has documented the extent to which, and the ways in which, *freer* markets tend to be constructed through '*more* rules' (Vogel, 1996). Focusing upon Japan and the United Kingdom in general, and the regulation of telecommunications and financial service sectors – 'the most dynamic and the most global of industries' (ibid: 2) – Vogel presents a series of case studies which elaborate upon four ideal-typical forms of re-regulation: pro-competitive, juridical, strategic and expansionary re-regulation. While the first two of these ideal types 'undermine governmental control over industry', the latter two actually 'enhance government control' (Vogel, 1996: 18). He demonstrates the enormous amount of work that states perform in order to (re)construct markets, and also attempts to document empirically and then theorise the bases of the 'remarkably different ways' (Vogel, 1996: 3) in which states have reacted or indeed driven or exacerbated a seemingly universal logic of economic globalisation.

The link between these new state–corporate relationships and the production of crime is clearly, if gruesomely, illustrated in the killing of Simon Jones, a 24-year-old student, taking a year out of study, who signed on for casual work in 1998 with a local employment agency in Brighton, 'to get the dole off his back'.[3] Simon was required to register with the agency, Personnel Selection, whose role it was to find him work. Under the Job Seeker's Allowance scheme – part of New Labour's broader Welfare to Work strategy – claimants must continually demonstrate availability for and willingness to work; these conditions make refusing offers of work liable to lead to a withdrawal of state 'benefits'. Simon's first job with Personnel Selection was at Shoreham Docks, working for Euromin Ltd, a Dutch cargo company. He went to work in a ship's hold, unloading its cargo. Within an hour of arriving for his first day of work, he was dead; his head had been crushed and partially severed when a three tonne 'crane' grab closed around it. No prosecution was ever taken against Personnel Selection, though they are covered by the legal requirement to ensure the suitability of work which they assign or offer. Initially, the CPS also declined to prosecute Euromin, the firm for which the student was working (at just over £4 an hour) – though after a protracted, high-profile campaign by the Simon Jones Memorial Campaign, a judicial review led to Euromin being successfully prosecuted for two health and safety offences in November 2001, and fined £50,000.

The Simon Jones Memorial Campaign had based their fight around the issue of casualisation – a growing feature of working life in neo-liberal Britain. For the campaign, casualisation translates into people being 'forced into low-paid jobs with little or no training, no job security, no sick pay and no holiday pay means bigger profits for companies'. As one of the campaigners stated, 'Ten years ago, if you were going to work in a dock, you would have had to have some training and knowledge. Nowadays, with the growth of casualisation, the search for cheap and throwaway labour, you have people doing work on docks that they have no training to do.' Casualisation, short-term employment, and agency work are all common features of the re-regulated labour market. They are also furthered by a benefits system which forces claimants to take work – even work for which they are patently 'unfit' – on threat of withdrawal of financial support from the state. Finally, the role of Personnel Selection – acting as the 'middle-man' between the state and Euromin – is also symptomatic of a state contracting out its functions to the private sector. In short, Simon's death is only explicable in the context of neo-liberalism, and *a specifically constructed form of state–corporate complicity*.

State–corporate crime and beyond

Some aspects of this increasingly complex relationship between states and the private sector, as well as a direct attempt to both theorise and document state complicity in the production of corporate crime, are captured by the emerging concept of 'state–corporate crime'. Developed by corporate crime scholars in the USA, the term state–corporate crime first appeared in 1990, when Kramer and Michalowski (2006a: 14) defined this phenomenon as: 'illegal or socially injurious actions that occur when one or more institutions of political governance pursue a goal in direct co-operation with one or more institutions of economic production and distribution' (ibid: 15).

Importantly, the concept of state–corporate crime directs our attention to deviance as the 'outcome of relationships between different social institutions' rather than as discrete acts; second, through focusing upon 'the relational character of the state', rather than viewing either business or government as closed systems, it locates potential for crimes and harms in 'the horizontal relationships between economic and political institutions' (Kramer and Michalowski, 2006a: 21). Thus what appear at first sight to be discrete events are in fact better understood as the products of processual, complex relationships between public and private actors.

The conceptual lens of state–corporate crime has been applied to a diverse range of events and processes, from the explosion of the space shuttle Challenger (Kramer, 2006), to the technological underpinnings of the Holocaust (Matthews, 2006), the contemporary seizure of natural resources in occupied Iraq (Kramer and Michalowski, 2006b; Rothe, 2006; Whyte, 2007) and diverse sectors such as the Latin American shrimp industry, the Nigerian oil sector, and the arms trade (Green and Ward, 2004: 28–51). A more recent, 'UK based', case of such crime has been revealed by the Haddon-Cave Report in October 2009 following his review of the crash of a Nimrod aircraft as it refulled over Afghanistan in 2006. Haddon-Cave concluded that the Nimrod 'was lost because of … significant failures on the part of all those involved' (Haddon-Cave, 2009: 20), locating responsibility between the Ministry of Defence, BAE Systems and QinetiQ. Of particular interest is that the Report devoted a section to the 'lessons' of the Space Shuttle Challenger, drawing a close parallel between this and the crash of the Nimrod (Haddon-Cave, 2009: 447–454).

For Michalowski, Kramer and other scholars of state–corporate crime, such crime can be *initiated* and *facilitated* by states. Thus corporations engage in illegality at the prompt or with the approval of state institutions, and/or state actors fail to prevent, respond to or collude with such illegality. Yet we would argue that this perspective fails to capture the totality of the state–corporate relation. For it remains wedded to a tendency to think of corporations as autonomous entities which not only exist independently of, but often work in opposition to, states; we should bear in mind a rather important obviousness – namely that the corporation is a creation of the nation-state, and is maintained through an awful lot of state activity. As we have already indicated, corporations are institutions that are created for the mobilisation, utilisation and protection of capital within recent socio-historical state formations. As such, they are wholly artificial entities whose very existence is provided for, and maintained, through the state via legal institutions and instruments, which in turn are based upon material and ideological supports. Indeed, maintaining the conditions of existence of corporations, even, or perhaps especially, in 'free' markets, requires an enormous amount of state activity. The corporate form and the state are thus inextricably linked.

Thus the markets within which corporations act are themselves created and maintained by state activity – not least the re-emerged so-called 'free' market.

These observations lead us to a key point in terms of thinking about state complicity in the production of corporate crime: for just as states create and sustain markets, so too can and do they create and sustain criminogenic markets, that is, markets that are conducive to, or facilitate, the production of harms and crimes.

How the creation and maintenance of a sector and a market can produce rather criminogenic outcomes can be illustrated through the case of UK construction, and safety crimes in construction in particular. The construction industry is one of the UK's most dangerous sectors. We need to be clear, however, that despite the fact that most fatalities and injuries in this industry – just as in every other industry – are likely to result from breaches of the law, few are ever processed as such (Tombs and Whyte, 2007). The sector has a fatal injury rate of over five times the all-industry average and accounts for 30 per cent of all worker deaths. In absolute terms, it has the highest absolute number of any sector, with the number of workers killed in the construction sector each year in Britain remaining in the region of around 70–80 since 1996/97 (Health and Safety Commission, 2007). And if we move beyond a specific focus upon safety, there appear to be very good reasons for thinking that the construction industry is criminogenic, that is, if we consider: the documented ill-health effects of working in an industry that has very high rates of asbestos-related disease; the tendency towards cartelisation that characterises the sector which generates price-fixing, bribery and corruption; the environmental damage associated with the industry, and the detrimental effects upon local human rights where its activities take place overseas.

The main causes of fatal injuries are relatively mundane and highly preventable. As the employers' body, the Federation of Master Builders, put it, 'there is nothing intrinsic about construction that suggests that somebody has to die … [yet the] culture has become so engrained that construction is dangerous, therefore someone is always going to get hurt' (cited in London Assembly Health and Public Services Committee, 2005: 9–10). Rather the source of risk for workers is located in the organisation of the sector and in work therein.

The construction industry is probably the last remaining heavy industry of any size in Britain. It employs 2.25 million people, and contributes up to 10 per cent of GDP, making it the single biggest industry in the UK and thus a key source of Treasury revenue. Government in general is the largest customer of construction industry services, while Defence Estates, responsible for the management of the MoD's land and property holdings at home and overseas is the 'single biggest customer of the UK construction industry'.[4] The industry is central to the myriad of local and regional regeneration schemes across the UK. If this has always been the case, it is a situation accentuated and further formalised through, first, the Public Finance Initiatives (PFI) and more latterly Public Private Partnerships, upon which the building of prisons, hospitals, schools, airports, and underground, rail and road networks, as well as flagship projects such as the London Olympics, the 'new' Wembley stadium and even the Millennium Dome are even thinkable. According to the Major Contractors Group, representing key UK players such as Carillion, Costain and Amec, construction companies engaged in the PFI expect to make 'between three and ten times as much money as they do on traditional contracts' (Corporate Watch, 2004). Industry sources estimated economic growth of the industry at 30 per cent between 1995 and 2005 (Lobban, 2005).

Our earlier observations regarding states establishing codes of rules, infrastructure and so on to bring corporations to life and to provide the conditions under which they are able to thrive, are clearly illustrated by the fortunes of the construction industry in recent years. For here is an industry whose success is largely down to state intervention in the economy, the creation of new regulatory mechanisms for public building programmes, the reform of planning regimes (Monbiot, 2001) and so on. The building trade has been given a major boost by the re-regulation of the industry.

Juxtaposed with the economic importance of the industry is the fact that HSE's enforcement record with respect to the sector is a poor one (Centre for Corporate Accountability, 2009; Donaghy 2009; UCATT, 2009), notwithstanding its own evidence of the scale of offending across the construction industry: the subject of frequent enforcement 'blitzes' by the HSE, these concentrated enforcement initiatives regularly lead to HSE ordering work to be halted on large numbers of construction sites (see Tombs and Whyte, 2007: 13–14), rather indicating a high level of safety crime across the sector. No doubt HSE would, all things being equal, prefer a safer (not to mention healthier) industry. *But all things are not equal*. In this context, HSE, as an agency of the Department of Work and Pensions, stands in opposition to other, much more powerful, branches of Government, including the Treasury, the Department for Business, Enterprise and Regulatory Reform, the Ministry of Defence, and the Foreign Office, to name but a few. Institutional inequality across those branches of the state is created by the outcome of competing political ideologies and practices. In an overwhelmingly pro-business climate, the economic success of business is always juxtaposed with the 'burden' of regulation – as summed up by the new Compliance Code for Regulators, discussed earlier. The parallel trends of growing economic importance and declining regulatory intervention, then, have to be first placed within the context of a complex and contradictory political sphere.

We can also note here how the state-constructed lines between legality and illegality are, at best, somewhat blurred. Thus the construction sector is based upon a large informal sector, with an estimated £4.5–£10 billion construction work nationally undertaken on a 'cash in hand' basis. Companies who do not pay their taxes are also likely to have a 'less safe working environment' for their workers; further, the informal economy creates market conditions that put 'pressure on legitimate builders to cut corners in order to compete for work' (London Assembly Health and Public Services Committee, 2005: 10). If it is indeed the case that this is a criminogenic industry (and see also Braithwaite, 1984, on pharmaceuticals and Carson, 1982, on the offshore oil industry, as further examples), it remains one that is established and maintained by, and central to, the national and local states. In so far as its function is to support government-sponsored building programmes, generate export revenue and more generally contribute to economic growth, the construction industry can be said to have a symbiotic 'insider' relationship to the state. Meanwhile, HSE continues to go through the motions of regulation via inspections, blitzes, educative initiatives, and even the odd prosecution. In this sense, the construction industry can also be said to be external to the state. This dual relationship creates opportunities for and limits upon regulation, as the state is both dependent upon, but required to represent itself as regulator of, the sector.

Conclusion

It remains to emphasise why these differing views of state–corporate relations in general, and thus of state complicity in corporate crime production in particular, are of significance. Certainly, both empirically and theoretically it is useful to develop an understanding of the variety of ways in which states help to produce corporate crime. Not least, perhaps, because corporate crime research has often proceeded by way of a focus on case studies – thus, for example, raising questions of generaliseability – it was once described as an area characterised by theoretical under-development (Cressey, 1989). Albeit that the past twenty years has seen some significant theoretical contributions to this area of study, to the extent the sketches in this paper point to further lines of enquiry regarding the production of corporate crime, they may help to contribute further in this respect.

However, a further and more significant issue here is that viewing corporate crime through the lens of state complicity allows us a consideration of the most effective points of intervention in terms of control and prevention – and, indeed, of the limits upon such efforts.

In the context of state complicity through failure, clearly struggles for law reform can and do proceed – witness the long travails around the Corporate Manslaughter and Corporate Homicide Act which eventually reached the statute books in 2007 after the Law Commission had originally proposed reforms in 1996. Similarly, enforcement activities can be improved, notwithstanding the fact that current and recent trends indicate that this is unlikely (Tombs and Whyte, 2008, 2009). That said, given that this paper has argued that state failure in these respects hardly equates to state inactivity, then one must recognise that there are real limits upon, or at best obstacles in, reform efforts targeted at state institutions themselves.

In general, and as this paper has argued, state complicity becomes apparent once one moves from a view of state–corporate relations as characterised by externality, and recognises: a complex and necessary inter-dependence between apparently separate sets of entities; the corporation as both ‘inside’ and ‘outside’ of the state; the need to consider ‘the state’ at various levels. These observations point to even greater obstacles in controlling or preventing corporate crime, since each level of analysis herein indicates the extents to which states are intimately related to corporate activity and thus the production of crime and harm arising out of these activities.

However, this paper is not an argument for the impossibility of effective reforms, merely a demand that some of the targets and vehicles of reform need to be reconsidered or augmented. For example, states have classically and continue to represent themselves as protectors and guarantors of a general, often national, interest – so that exposing states' roles as in fact highly sectional in their complex relationships with the corporate sector is a useful tactic in itself. In the wake of the international economic crisis, critical attention has turned not just on the activities of financial institutions themselves, but also on the role of states in terms of regulation as well as their general dependence upon the wealth generated by the sector – especially in the UK. This is one example of an exposure of the imbrication of state and private business actors, and the political furore that can accompany it – though it is too early to say as we write whether there will be progressive outcomes to this. Beyond such forms of exposure and critique, it should also be recognised that states, *unlike corporations*, have duties to their citizens under human rights legislation – so that there may well be mileage in pursuing corporate harms and crimes via state activity or apparent inactivity through discursive and formal challenges to states under the rubric of human rights.

These are brief indications only of where the arguments contained in this paper leave those who would challenge corporate crime. Indeed, it is beyond the scope of a paper such as this to seek to generate answers. What it has sought to contribute to, however, is a consideration of where one might look for the most appropriate questions, and to where these might be best targeted.

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Notes

1 *Scrutinising New Regulations*, at http://www.berr.gov.uk/whatwedo/bre/policy/scrutinising-new-regulations/page44076.html.

2 See http://www.berr.gov.uk/files/file45019.pdf.

3 According to his friend, Emma Aynsley, cited at http://www.simonjones.org.uk/articles/bigissuesep98.htm.

4 http://www.bipsolutions.com/events/ctf_2007/speakers.html.