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Lawful but awful: ‘Legal Corporate Crimes’[☆]

Nikos Passas^{*}

Northeastern University, Boston, MA, USA

Abstract

By concentrating on what is officially defined as illegal or criminal, a more serious threat to society is left out. This threat is caused by corporate practices that are within the letter of the law and yet have multiple adverse social consequences. Thus, just when more effective regulatory action and oversight is imperative, the global neo-liberal agenda and practice promotes de-regulation and a further reduction of the role of the state. Not only does this have criminogenic consequences of its own, it furthers types of misconduct undermining democratic processes and sustainable economic growth.

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1. Introduction

Since the 2001 terrorist attacks in the US, counter-terrorism has become a top priority for law enforcement and other agencies. Still, billions of US dollars and enormous intellectual and human capital are spent annually fighting the “crime problem”, which is essentially constructed as a “street crime problem”. Calls for attention to “crimes in the suites” from students of white-collar crime and several non-profit organizations have had a limited impact on actual public policy (Clinard, 1990). Despite convincing evidence and arguments that

[☆] This paper summarizes many of the themes and issues explored in more detail in a forthcoming book to be published by the University of Michigan Press under the title *It’s Legal, but It Ain’t Right*, edited by Nikos Passas and Neva Goodwin.

^{*} Present address: Northeastern University, College of Criminal Justice, 400 Churchill Hall, Boston, MA 02115-5000, USA. Tel.: +1 617 373 4309; fax: +1 617 373 8998.

E-mail address: n.passas@neu.edu.

“crimes in the suites” victimize more people and whole societies than street offenders, widespread public perceptions and policy priorities continue supporting practices that make “the rich get richer and the poor get prison” (Reiman, 2000). The threat of transnational organized crime (TOC) has also become prominent in media, policy, and intelligence circles. Without any universally accepted definition of TOC, the emphasis is usually on misconduct perpetrated by stereotyped, ethnic and marginal groups, as many authors ignore or neglect the various kinds of interface between legal and illegal enterprises (Passas, 1998, 1999a; *Tribunali di Milano e Napoli*, 1996).

For instance, according to a definition of the British National Criminal Intelligence Service, an organized crime group meets the following criteria: “contains at least three people; criminal activity is prolonged or indefinite; criminals are motivated by profit or power; serious criminal offences are being committed” and added that “[t]his definition is selected to ensure consistency with the characteristics used by the Home Office and European Union” (NCIS, 2000). This does not guarantee consistent application of these very general criteria. There is no reason why this definition would not apply to big corporations with established records of repeated felony convictions (e.g., General Electric). Yet, the groups that are deemed by NCIS to represent a threat are mostly Albanian, Turkish, African, Colombian, West Indian, and Asian ethnics, along with some “British Caucasians” and motorcycle gangs. So, even when official agencies attempt to define the problem, some of the most serious and powerful offenders are excluded in practice.

However, criminal justice and other legal biases do not stop there. By concentrating on what is officially defined as illegal or criminal, an even more serious threat to society is left out. This threat is caused by a host of company practices that are within the letter of the law and yet, they have multiple adverse social consequences. Quite often, the main reason why these practices remain legal and respected is that these industries are able to mobilize financial and other resources in order to avoid stricter regulation. The recent revelations regarding the tobacco industry illustrate the point. Tobacco is merely one of several industries that clash with the public interest. Additional illustrations can come from the gambling industry, weapons makers, private security firms, petrochemicals, pharmaceuticals, biotechnology firms, offshore financial institutions, law firms, and antiquities traders.

The argument of this paper is that we have set our priorities wrongly by overlooking crime and malpractices with far more negative consequences than the official crime problem. Instead of attempting to remedy this problem, we are moving in the opposite direction compounding the problems. Just when more effective regulatory action and oversight is imperative, part of the neo-liberal agenda and practice around the globe is to de-regulate businesses and further reduce the role of the state. Not only does this have criminogenic consequences of its own (Passas, 2000), it also furthers certain types of misconduct that undermine democratic processes and sustainable economic growth. The first section offers an alternative definition of crime, which nevertheless follows both the logic and spirit of criminal law. It then suggests that some of the most serious domestic and transnational crimes are committed by corporations, even if their acts are not labeled as such. Many companies get away scot-free, because globalization and neo-liberalism allow them to manage their international business in a way to avoid the violation of criminal or other laws. In other words, globalization facilitates “crimes without lawbreaking”.

The second section argues that certain practices by several industries are entirely lawful, yet they turn out to be more harmful than crime. In these cases, calling the practices ‘criminal’ would be a bit of a stretch. On the other hand, the externalities of these industries are so obvious and substantial that even fervent proponents of free market systems can see that much more harm is generated for the overall economy than good. The practices of many industries, in other words, are lawful but awful both for underprivileged people or countries and for global capitalism itself.

2. Corporate crimes without lawbreaking

The controversy over what is crime anything but new. Take, for instance, the introduction of the concept of ‘white-collar crime’ by Sutherland in the 1940s. He was so concerned about lawsuits of companies he was going to name in his book as white-collar offenders that he ended up omitting their names (the uncut version appeared a few decades later; Sutherland, 1983). The problem was that, since the law did not define their misconduct as crime, they should not be branded as criminals. Decades later, some criminologists still refuse to adopt any standard other than existing criminal law. It is clear, however, that national laws cannot provide the sole basis on which to define crime both for domestic and international/comparative purposes. Powerful actors constantly influence the laws of nation states. What is prohibited by criminal law and what is not may be decided by corrupt legislators, dictators, ruthless corporations, resourceful lobbies, etc. Such actors cannot be allowed to determine the scope of a social scientist’s object of study or a public policy maker’s actions. In addition, even if all legislative processes were well intentioned, there is a very substantial diversity of laws and standards in the global community that many conflicts can arise. Therefore, we need substantive criteria to guide our definition.

Earlier attempts to grapple with this issue showed how tempting it is to adopt completely non-legal criteria (Schwendinger and Schwendinger, 1975). Yet, this approach can lead to definitions that are criticized as subjective or relativist. So, the task is to define crime in an inclusive manner, but without going too far beyond the law. Along these lines, my working definition of crime is misconduct, which entails avoidable and unnecessary harm to society, which is serious enough to warrant state intervention and similar to other kinds of acts criminalized in the countries concerned or by international law. Crime will be considered transnational, when the offenders or victims are located in or operate through more than one country (Passas, 1999b). This way of conceptualizing crime is little more than a more consistent application of legal standards to classes of misbehavior that the law has left out for one reason or another, good or questionable.

Under this definition, some crimes committed on the domestic level may constitute no criminal law violations. Inside trading, anti-trust violations, misleading advertising, and many other malpractices addressed by Sutherland were not formally treated as “crimes” at the time, despite their obvious similarity to street crimes and the more serious harm they cause to society and the capitalist system. Given that such crimes do, however, involve some law violations, they will not be discussed in this paper.

Cross-border malpractices make the best candidates for crimes without any lawbreaking whatsoever. Whether the offenses and offenders cross-domestic state lines (in federal

states) or international borders is immaterial. Asymmetries in legal definitions and law enforcement enable corporations to do what is prohibited at home in other jurisdictions without breaking any laws. Processes of globalization have multiplied the opportunities for that. Compartmentalized corporate structures effectively raise firewalls protecting both the company and its executives from knowledge of wrongdoing and liability. Financial transactions that are disallowed or must be reported can be booked to offshore subsidiaries and branches. Research, experiments, manufacturing, and distribution of commodities or services that are outlawed or controlled in some countries can take place in countries with friendlier regulations.

Asymmetric environmental regulation illustrates well the criminogenic process. Increased awareness of serious health and environmental hazards in Western societies has led to legislation protecting the environment from industrial pollution, even if that might narrow the profit margin of affected corporations—e.g., companies found themselves constrained by laws regulating the disposal of toxic waste they generate.

Instead of drastically reducing the risk of improper treatment of toxic waste, such regulation brought about asymmetries, which gave rise to an illegal market for waste disposal. Within the USA, the rules defining what is “hazardous” and subject to regulation differed from state to state, when the Resource Conservation and Recovery Act of 1976 came into effect. This created an opportunity to get rid of hazardous waste in those states that were most permissive about such substances. The large differences in the cost of disposal created incentives to engage in cross-border trade of waste exported to states that left particular substances unregulated. Furthermore, there was a severe shortage of appropriate facilities to deal with the volume of toxic waste the industry generated. In the end, this shortage and concerns about profit maximization brought in “organized criminals” whose state-licensed companies illegally dumped the waste for the benefit of the chemical industry, which saved up to 80% of the disposal costs.

In this instance, the power of corporations to influence lawmaking was no match for environmental groups. The industry successfully lobbied for the non-regulation of production methods, which could have been altered in order to generate less waste. The industry also succeeded in avoiding criminal liability in the event their waste was discovered to be illegally dumped by their cheap hauling contractors. Control agencies, under-funded and plagued by incompetence or corruption, did little to remedy the situation. Corporations effectively externalized the blame, while reaping substantial benefits from nominal regulation and “organized crime” (Szasz, 1986).

Similarly, at the international level, regulatory discrepancies along with substantial economic and political asymmetries have given rise to an enormous market for toxic waste. Many Third World countries either did not regulate toxic waste or did so much less rigorously than industrial states. This provided the opportunity for companies to get rid of their dangerous waste in areas where rules were lax or non-existent (Center for Investigative Reporting and Moyers, 1990; Critharis, 1990).

Another illustration of crime without lawbreaking is provided by corrupt practices. Companies operating in countries with slow or inefficient administrations may pay “speed money”, in order to “get the job done”. In other cases, a company may lose contracts, if it is reluctant about matching the bribes offered by competitors. Again, legal asymmetries shield against the discovery or punishment of corruption. The funds may end up in a secrecy

jurisdiction with anonymous accounts. Additional protection is offered by the differential treatment of bribes to foreign officials. In some countries they are a serious offense, while in others they constituted tax-deductible business expenses until recent efforts to more aggressively fight against corruption (Passas, 1997).

The pharmaceutical industry also highlights how opportunities for crimes without law-breaking are maintained and exploited by transnational corporations. The initial testing of drugs can be conducted in the Third World where safeguards are lower, civil lawsuits are unlikely, and other forms of protest have slim chances of success. Countries with lax standards are used for first approval and manufacture, so that Third World markets can be entered, before final approval is made by stricter Western agencies. Components of dangerous and banned drugs can be made in places allowing their manufacture and then marketed in countries that have not banned them (Braithwaite, 1993). The Third World is not only used as a laboratory with guinea pigs, but also as dumping ground for dangerous products (Bryan, 1981; Clinard, 1990). Drugs with serious side effects are exported to several countries with the list of side effects getting shorter the farther to the South the drugs are going. Defective and harmful products, such as the Dalkon Shield IUD, can be exported and sold around the world despite their ban in the home country (Cashman, 1989; Mintz, 1985).

In yet another instance, the fight against European Union subsidy fraud has not been a high priority in the past. Not only the law enforcement has been extremely diverse, but in several Member States there were no criminal laws specifically dealing with the protection of the EU's financial interests (Passas, 1991; Passas and Nelken, 1991).

Other examples of crimes without lawbreaking include the use of child labor in poor countries that condone it by companies that then export the manufactured goods to countries that criminalize the practice (Burra, 1995). Taxes may be evaded legally through the practice of transfer pricing, which allows the profits to be booked in countries with no income tax (Picciotto, 1992; see also below on the practice of Foreign Sales Corporations allowed by US law, but attacked by the EU at the World Trade Organization). Dirty money can be laundered in countries requiring no reporting of even substantial amounts of cash deposits and then transferred to Western banks that may not know its criminal origin (and do not care to find out; Levi, 1991). A recent report has pointed out that US banks have been turning a blind eye to money laundering and other crimes that are perpetrated through the correspondent accounts they provide to foreign banks; in this way, they "have become conduits for dirty money flowing into the American financial system and have, as a result, facilitated illicit enterprises, including drug trafficking and financial frauds" (Minority Staff of the Permanent Subcommittee on Investigations, 2001). Globalization has enabled financial institutions to do overseas what they are disallowed to do at home. As the BCCI has shown, it has become possible for a financial institution to not have a home at all (Passas, 1995).

Lawyers, accountants, former government or military officials who act as consultants or private businessmen can offer advice on how to engage in harmful practices without breaking the laws of the countries where different operations take place. Consequently, transactions can be structured so that no country's laws are broken although the final outcome is "criminal".

In short, the globalization of markets and enterprises makes for fragmented regulation. The more a company grows into new geographic areas, the less subject it is to control, accountability and consolidated supervision. Thus, corporate criminals can slip through the

asymmetries of the international regulatory patchwork (Michalowski and Kramer, 1987; Passas, 1999b).

3. Lawful but awful

Common in all of the industries examined in this section is their ability to define their own conduct/operations as legal, while blocking attempts at regulation designed to reduce their harmful effects and externalities. Their ability to attract substantial pools of capital is quite instrumental. At the same time, the case of the National Rifle Association (NRA) shows that the ability to mobilize non-monetary resources can be just as effective. In some cases, grass-root organizations are energized in efforts to ensure the availability and low price of desired goods. In other cases, such organizations are in fact funded or activated by big industries (which would make them “astro-turf” organizations). All organizations seek to influence their task environment (clients, suppliers, competitors, and regulators). What makes the industries we wish to study distinctive is that not only are they highly successful and resourceful, they also are ultimately detrimental to society. As a whole, they conflict with theoretical/economic assumptions about the overall advantages the community is supposed to derive from the success of legal enterprises. In a sense, the more these industries flourish, the more societies fail (or their success can be taken as an indication of societies’ failure).

The industries with very substantial externalities can be divided into three general categories. Firstly, some may be classified as anti-social because their product per se is harmful. Tobacco, weapons, and gambling are three obvious cases. There is certainly demand for those products and services. A strong argument can be made, however, that society would be better off, if those industries did not operate at all.

Secondly, other businesses furnish legal and widely desirable goods or services, but production processes generate hazardous wastes or socially undesirable consequences. The factory farming of chickens and hogs, petrochemicals, pharmaceuticals, offshore financial institutions, and the antiquities business illustrate this category. One variation within this category is that of “facilitators”. That is, industries which offer needed and essential services, but which also assist other industries in the successful externalization of the costs we sketched above (keeping practices legal and critics or controllers at bay). Law, accounting, and lobbying firms illustrate this case as they pave the ground for a race to the bottom.

Finally, there are industries, which deliver privatized public functions or which support public functions, but do it in ways that produce predictably adverse consequences. Perhaps, the process of privatization has gone too far. Or perhaps some privatized functions require special supervision. Examples of this category include private security firms (which supply mercenaries and private armies) or private corrections corporations. Healthcare, natural resources, and infrastructure construction are other oft-discussed areas of concern. In such cases, there is an inherent conflict of interest with the public good. The more such industries grow, prosper and increase market share, the worse off societies are both in terms of financial and human capital (i.e., more people find themselves behind bars, stigmatized, disenfranchised, wounded, dead or captured in private wars, homeless, unemployed, forced to immigrate, etc.).

Contrary to a common assumption that legal practices and industries are basically benign and beneficial to society, it can be shown that, in balance, the society is worse off by allowing certain operations and practices to continue. Not everything that is good for business is good for America or the rest of the world. Externalities that remain unrecognized and sometimes are more dangerous than recognized social problems, such as crime. Unfortunately, the generators of these externalities shape the public opinion and their legal environment through various resources. They are able to manipulate the media; they persuade or purchase the support of policy/law makers through extensive lobbying and the use of political campaign contributions. Finally, they can effectively blackmail legislators and policy makers by raising “national economy” type of arguments—that is, “over-regulation” and “government interference” in their business will render them uncompetitive or unprofitable, they would have to cut down production or services, lay people off, and thereby negatively affect local communities or the whole country.

The bottom line is that several industries generate huge externalities forcing society to bear their expenses and hiding the real cost of their product. Ironically, at the very time arguments in favor of economic liberalization gain support after the end of the Cold War, societies *de facto* subsidize these industries. The externalized financial, environmental and other costs are immense and affect both the US and the international community. These hidden costs of legal businesses are mainly borne by the weakest and least privileged groups for the moment, but they contain at least the potential of undermining economic growth, democratic institutions, and processes of democratization in many parts of the world. Therefore, we must all be concerned about these externalities.

Nonetheless, the operations and practices of legal industries are not viewed as problematic. The adverse consequences are not clear or clearly understood. Some of them are occasionally appreciated, but are at the same time regarded as inevitable. Alternatives are thus not considered or are deemed too costly. Critiques of the industries in question are few and spring from partisan or radical groups, which are unable to reach a wide audience or alienate those who do not subscribe to the general views expressed by such groups. In other words, the externalities of legal practices and legitimate industries have not been successfully constructed as a social problem. As a result, there is little or no public debate on what can and ought to be done about this problem.

So, the first task is to address the issue of perceptions by defining the problem. Previous attempts to construct a social problem out of routine activities of powerful actors have had very limited impact due to the use of loosely defined criteria of wrong-doing, moralizing, and the introduction of subjective standards on what is desirable, harmful, and what should be criminalized. In order to avoid these pitfalls, we need to identify observable and, for the most part, measurable externalities. These include, but are not limited to, the following.

4. Physical costs

Few industries can rival the amount of pain and suffering caused by the tobacco industry. About 4 million people are killed by tobacco products every year. The projected number of deaths in the new century, if current trends are not reversed, is 100 million people. A long list of diseases caused by smoking become fatal for half of all life-time smokers who die

seven years earlier than non-smokers. In the USA, about 50,000 non-smokers also die due to inhaling of toxins from other people's cigarettes and another one thousand from fires caused by cigarettes. The misery of addiction and the reduction in freedom and life quality it entails complete the grim picture (Daynard, 2004).

In 1997, 32,436 Americans were killed with firearms. Firearms are the second leading cause of traumatic death related to a consumer product in the United States (after motor vehicles) and are the second most frequent cause of death for Americans aged between 15 and 24. The overall rate of firearms death in the United States is eight times higher than the firearms death rate of 25 other high-income countries combined (Diaz, 2004).

The so-called "defense" industry has been causing masses of deaths and injuries through the international sale of weapons fuelling conflicts and making them deadlier (Bondi, 2004). As the world shows sympathy for the plights of the Kurds under the regime of Saddam Hussein in Iraq, it ignores the atrocities they suffer under the Turkish army, which is supported by the USA. For instance, the Onyx Program has allowed Turkey to build, under a co-production agreement with the US Lockheed Corporation, one of the largest assembly lines for the F-16 fighter plane (Bondi, *ibid*). As has been reported, . . . F-16s have been used to attack villages and kill civilians in violation of international humanitarian law. In other instances, the planes have been used deliberately to destroy civilian structures, contributing to the general process of forced dislocation (Human Rights Watch Arms Project, 1995, p. 31).

Moving to the pharmaceutical industry, Silverstein (1999) has noted how the industry spends huge resources for the development of drugs for obesity, feet fungus, boldness, and the improvement of sexual life. At the same time, the industry spends virtually nothing for the (easy and cheap) development of drugs against curable tropical diseases that kill four times as many people as AIDS every year.

5. Financial costs

In the USA alone, the annual health care costs of cigarette smoking amount to more than US\$ 50 billion, while another US\$ 50 billion is wasted in productivity losses. These financial externalities easily outweigh any profit the industry is able to turn. Even employment would rise in the USA, if everyone stopped smoking (Daynard, 2004). One is hard pressed to find a more counterproductive and parasitic industry, which has also been directly involved in formally defined transnational criminality, such as subsidy frauds (USDA, 1990) and the smuggling of cigarettes, in order to avoid the high taxes some countries have imposed (Associated Press, 2000; Jamieson, 1999). Even the EU joined the crowds suing US tobacco companies and alleged that they were involved in well-orchestrated smuggling and tax evasion schemes (Reuters, 2000).

Switching to the gambling industry, the financial losses are staggering. Americans lost US\$ 47.6 billion in 1996, for example in legal gambling. As O'Brien (1998) pointed out, this amount is more than double the total sales of Coca Cola in that year. Additional costs are generated by bankruptcies, the rate of which has skyrocketed in areas with legal gambling facilities. For example, in Nevada, the rate is 50% higher than the US national average. In Atlantic City, the rate is 71% higher than the state of New Jersey average (SMR Corp., 1997). Despite promises of the industry about job creation and economic growth, empirical studies

show that, at best, people leave other jobs to seek employment in casinos. The overall economic impact of legal gambling has been rather negative for people who live or do business unrelated to gambling in the areas concerned (O'Brien, 1998; Pavalko, 2000; Vogel, 1997).

6. Environmental damage

Our environment is often treated with disregard or as a virtually limitless resource that can be exploited without grave consequences. Yet, the abuse the environment takes is sometimes irreversible (e.g., extinction of species) and always harmful to humans. Big and “efficient” industrial farms, for example are both damaging the environment and destroying large number of lives every year in the USA. Ritchie (2004) has pointed out that a single giant hog operation can produce as much fecal waste as a city of 360,000 people. This waste is most often stored in open pits (“lagoons”), where the manure decomposes into nearly 400 volatile chemicals—primarily methane, hydrogen sulfide, ammonia, and carbon dioxide. Over 500,000 people work on these corporate farms and are exposed to the chemicals every day. There are myriad terrifying stories of farm workers dying from asphyxiation from these lagoons. Many giant hog farms have inadequate wastewater treatment facilities, which means that much of the waste ends up flowing into lakes or rivers or filtering into underground water basins or aquifers. In addition to the nitrates and other nutrient pollutants, this waste also can contain disinfectants, insecticides, other pharmaceuticals, and can be a pathway for spreading pathogens throughout the environment. Sometimes, the impact can be absolutely devastating, as we have witnessed in the dead zone off the coast of New Orleans, where the runoff of manure and artificial fertilizer from farms throughout the Mississippi River basin has created an oxygen-depleted zone 5000 square miles in size.

The practices of bio-technology companies also require closer scrutiny. Not only are they engaging in highly debatable experiments creating life forms that they call “milk factories” or other reifying terms, so that they can patent them; they are also causing a drastic reduction in bio-diversity through the disappearance of plant species. Third World farmers are forced to purchase year after year the genetically engineered, pesticide-resistant seeds big transnationals are marketing (it would be a patent infringement, if they saved seeds for next year’s crop) and, thereby, abandon the varieties they have been cultivating and developing for centuries (King and Stabinsky, 1998–1999; Shiva, 1997). Sometimes this occurs with the active encouragement of their government (on the case of corporate farming and rice crops in Pakistan, see Rizvi, 2000).

Other examples of depletion of natural resources due to lawful activities of petrochemical, oil, and waste management companies or mining companies assisted by private security firms are legion (Center for Investigative Reporting and Moyers, 1990; Cilliers and Mason, 1999; Eaton, 1997; Economist, 2000b; Katsh, 2000; Pearce and Tombs, 1998).

7. Undermining the democratic system

Contrary to arguments that globalization and neo-liberal reforms foster and support democratization processes, there are plenty of instances where the opposite has taken place.

As was revealed by investigative reporters, a group of North American investors led by Chase Bank unequivocally urged the Mexican government to “eliminate the Zapatistas to demonstrate their effective control of the national territory and security policy” (Silverstein and Cockburn, 1995). This blatant interference in the internal affairs of Mexico was intended to warn the government that investor confidence could suffer (read massive flight of capital would occur) if the “Chiapas issue” was not “quickly resolved”. A Senior Fellow at a Washington, DC think-tank has been quoted as saying that “financial markets might not respond positively to increased democracy because it leads to increased uncertainty” (Silverstein and Cockburn, 1995).

This sort of meddling with other countries’ internal affairs is not atypical. As US Marine Corps General Smedley Butler confessed, “I spent 33 years . . . being a high-class muscleman for big business, for Wall Street and the bankers . . . I helped purify Nicaragua for the international house of Brown Brothers in 1909–1912. I helped make Mexico and especially Tampico safe for American oil interests in 1916. I brought light to the Dominican Republic for American sugar interests in 1916. I helped make Haiti and Cuba a decent place for the National City Bank boys to collect revenue in. I helped in the rape of half a dozen Central American republics for the benefit of Wall Street” (quoted in Clinard, 1990, p. 158).

A new instrument in the hands of multinational corporations is the growing industry of private security firms. Given the lack of accountability and regulatory oversight in that industry, it is hardly surprising that they face charges of being tools of neo-colonial exploitation in Third World countries and of using barbaric methods to maintain order (Cilliers and Mason, 1999; Howe, 2004).

At both the domestic and international level, potentially most industries can and do generate similar externalities, as they shape state policies against the public interest through campaign contributions, lobbying or revolving door traditions. The same occurs when democratic governments are forced to submit to unaccountable bureaucracies, such as the World Trade Organization and the International Monetary Fund (Mander and Goldsmith, 1996).

8. Crime externalities

Many industries generate crime externalities without necessarily committing crimes themselves. A case in point is the gambling industry that has been shown to correlate with high crime rates (O’Brien, 1998). Other industries occasionally interface willingly with criminals, sometimes they turn a blind eye, and sometimes they simply benefit from the operation of criminal organizations. Criminogenic effects can be direct or indirect (i.e., they facilitate crime or engage in it). Examples include the above-mentioned instances of cigarette smuggling across national borders in order to avoid taxes and levies, the dumping of toxic wastes generated by chemical firms (Szasz, 1986), the use of financial institutions based in reality or on paper in secrecy jurisdictions for the commission and cover-up of financial frauds (Blum, 1984) and money laundering (Blum and Block, 1993; Minority Staff of the Permanent Subcommittee on Investigations, 2001; Passas, 1995), the use of private galleries and museums for the looting of art-rich countries (Conklin, 1994; Gerstenblith, 2004) and oil companies fuelling genocide and ecocide for the sake of exploration and profit growth (Katsh, 2000).

9. Undermining economic growth

Some lawful business practices create extraordinary financial costs that engender systemic risks both domestically and internationally, as in the case of collapses or near-collapses of financial institutions. The Savings and Loan institutions disaster in the US, which cost between US\$ 500 billion and 1 trillion to taxpayers, was not caused entirely by fraud. The main culprits were de-regulation and relaxation of accounting methods of reporting, effectively allowing insolvent institutions to continue operations and compounding their losses (Calavita and Pontell, 1990). The Long-Term Capital Management hedge fund almost brought down the world financial markets, when it legally placed gigantic bets the wrong way with other (very wealthy) people's money. As long as it produced double-digit returns on the basis of some Nobel laureate-inspired complex formulae for investing, no one was paying attention to its activities. When it was about to fail, top federal regulators and Wall Street leaders sat together to bail it out—at least this time taxpayers money was not involved (Warde, 1998).

Most of the externalities outlined above have additional negative effects on economic growth. Exploitation and abuse, whether they are performed legally or criminally, inevitably contribute to the impoverishment of parts of the population and increases in the already very wide gaps between the rich and the poor in unsustainable fashion. The widening of these gaps has indeed accelerated during the past decade, which is characterized by economic globalization and neo-liberal policies (Passas, 2000). However, these processes can only go so far before they bring about a painful and universally experienced economic downturn.

10. Undermining international trade

Neo-liberalism preaches free markets and minimal state intervention in trade. It argues that state protectionism hampers international trade and economic growth, and introduces inefficiencies and waste. Yet, one can easily find a plethora of protectionist policies in the countries and groups of states leading the neo-liberal chant, such as the USA and the EU. The US allows by law the establishment of Foreign Sales Corporations, which are offshore shelters that US exporting companies can use to exempt about 15% of their profits from taxation. In 1997, the EU took action against this at the WTO, which ruled in its favor, but the dispute continues (Desai and Hines, 2000; Economist, 2000a). The EU, on the other hand, has been protecting several industries, especially the agricultural sector through export subsidies and import levies (Passas, 1991).

11. Unquantifiable externalities

There is a host of ill-effects of crimes without lawbreaking and lawful but awful corporate practices that cannot be expressed in numbers. For instance, how could one measure the cost of unfairness or of the dislocation and dismemberment of cultural monuments—and loss of opportunity to understand past civilizations and societies, because of the looting of artwork and the massive illegal antiquity trade to which galleries, museums and the

“civilized” art-collecting countries turn a blind eye (Conklin, 1994; Gerstenblith, 2004; Margules, 1992)? How could one quantify the demoralization of the general population, who may experience feelings of powerlessness or normlessness when they see that conduct akin to crime is tolerated and even rewarded (Passas, 2000) or the disruption of social life in entire communities or countries?

12. Opportunity costs

Some bio-technology firms holding patents on gene sequences and cell lines use their power to prevent other agencies or companies from finding socially responsible and productive applications. For example, there is a corporation that could use its breast cancer gene technology to identify environmental and other causes of the problem in order to prevent breast cancer. “Instead, it is using its technology and patent rights to sell a diagnostic test which informs the individual how much damage has already occurred in their genome. Exploiting patents requires selling consumers a product, not keeping them from contracting disease” (King and Stabinsky, 1998–1999, p. 85). Other industries, such as the private corrections corporations, marginalize very substantial numbers of people and render them unemployable (Yeoman, 2000).

More generally, opportunity costs resulting from the loss of natural resources, tax avoidance, the need to take care of those injured and ill due to corporate actions, the subsidization of wealthy enterprises, are inestimable. One can hardly begin to imagine what societies could achieve through a rational, productive, efficient and fair allocation of the financial and other resources wasted by amoral or morally bankrupt corporations.

Why do certain industries engage in such large-scale anti-social activities? Why do they produce so many hidden externalities? What hampers society’s efforts to control such enterprises and limit the externalities? An in-depth analysis of these questions is beyond the scope of the present paper, but answers may be sought generally in the direction of:

- corporate power;
- the differential ability to convince policy makers and to shape public opinion;
- weakened guiding power of conduct norms (due to the widespread rationalizations, such as “everyone else does it”, “if we do not do, someone else will”, “this is the way business is done”, etc.);
- the ideology of “free market” capitalism;
- arguments about “trickle down” benefits;
- culturally reinforced attitudes toward harmful practices, which end up being perceived as standard, routine, “natural”, inevitable, or beneficial; resistance to taxation and government intervention;
- short-term vision obscuring serious problems of the future.

13. Conclusion: moving forward

We have seen that a long list of industries do exactly what they are supposed to do, follow the procedures they are supposed to observe, and yet, the net balance is negative. Despite

the widely promoted and apparently accepted trickle down theory of positive effects on society at large, the end result will be damaging for everyone (although most direct harm is initially concentrated on the least powerful and privileged). Controllers and regulators are not expected or allowed to do anything about these problems, because laws are generally not violated. This is why the issue is particularly challenging from a policy perspective, because criminalization does not appear to be a viable or desirable option. Prohibitions can produce more problems than they solve. However, the need for the control of these legal but harmful practices on the grounds of the substantial externalities they impose on societies is clear. In the end, industries must re-internalize the costs they avoid for the moment. Prices must reflect the actual cost.

One could consider a range of measures from the short-term to the very long term, from the individual level to collective action, from the informal to the official and institutional, from challenging theoretical assumptions to hands-on actions. Key questions include: How should society attempt to control externalities without destroying an industry's ability to produce appropriate goods and services? Are there any common strategies and tactics that can be tried across the board? What industry-specific responses are most adequate? The quick answer is that there is an urgent need for transparency, regulation, accountability, and the reshaping of cultural norms. The more complex answer can be broken down into a series of rallying points for action.

- First, there must be a consistent application of the definition of organized crime to those who fall within its parameters whether they be a drug producing and smuggling operation, an organization devoted to profiting from gambling and loan sharking, or a seemingly legitimate public or private corporation. In short, our ideas about the “good guys” and “bad guys” must change.
- Because domestic legal definitions of crimes and culpability do not suffice and will not move an agenda of accountability forward, policymakers and scholars must engage in thinking outside the box when addressing harmful corporate practices. Toward this end, international and legal regimes may be helpful in limiting scope so that one does not stray too far a field. Our thinking and analysis must evolve if our legal regime is to do the same.
- Third, corporate influence on the legislative processes must be curtailed so that groups and individuals acting in the public's best interest have access to a more level playing field. From influencing elections, to buying access, to affecting votes, it may be legal, but it is not right. Fixing this problem is, of course, easier said than done, but no one should make the mistake of thinking an agenda of accountability can be moved forward until this becomes a front-burner issue.
- Additionally, the sunshine must be let in and shed light on jurisdiction shopping for transaction security and financial secrecy.
- Finally, meaningful, substantive discussion must be had and action taken regarding the legal, social and economic asymmetries that permit the Third World to be used as a literal and proverbial dumping ground for that which the First World cannot stomach. Whether it is the export of toxic waste or dangerous pharmaceuticals for profit, the exploitation must stop and it must be called for what it is: corporate criminal behavior.

The audience for this agenda must be wide-ranging. Those concerned about legal crimes cannot just preach to the choir. The case needs to be made to law makers so they understand that addressing these issues in the near future will prevent catastrophic and more costly public consequences down the road. Corporations need to be convinced that acting in their best interest, is both a short- and long-term proposition. To help convince, the concerned citizen has a wide range of tools at their disposal including the mobilization of shareholders, civil suits for both domestic and international human rights violations and other infringements, and the court of public opinion.

Indeed, it is clear that no remedial actions can be contemplated and applied without wide public support. Thus, a key goal is to change social attitudes, so that people both inside and outside the industries in question no longer think that everything that is not illegal is OK. In short, as indicated above, we must redefine legitimacy and change laws. Sometimes, changing laws changes legitimacy (e.g., in the case of gambling). Sometimes, changing legitimacy changes laws (e.g., in the cases of environment and tobacco). The two may have to be pursued in parallel.

People are more likely to take an interest in the issues raised here not simply on moral appeals but when they feel directly affected or can actually “see” the problem. Therefore, a concerted effort must be made to demonstrate why the wide public, policy makers, and corporate executives should care about the problem. We can work toward that end through an

- appeal to the public’s sense of justice and fairness (moral principles and fundamental values);
- stress as specifically as possible the ways in which externalities do or can touch the readers (they will bear the cost through taxes, environmental degradation, political degradation, loss of freedom, physical injury, etc.);
- provide concrete examples of opportunity costs (e.g., what could be achieved without extra taxes, if externalities are contained);
- visualize and humanize the externalities through true stories and case studies, where appropriate and feasible.

In sum, we must envision a future in which harmful corporate practices are shown for what they are: criminal. In so-doing, we can show that the environmental degradation of the third world, the arming of America, and the loss of biodiversity are not just theoretical issues for high-minded debates. Instead, they are tangible, harmful actions that result in the loss of life and the wanton destruction of property, both public and private. In short, they are “legal crimes”. At least for now.

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