'DEATH TO THE CORPORATION': A MODEST PROPOSAL

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One of the things that is most often repeated about the US and UK response to the 2007-08 financial crisis is that nobody went to jail for the frauds and financial crises associated with the crash. Whilst there have been some limited prosecutions of middle ranking managers and individual traders, the people who knowingly developed and sold new forms of worthless derivatives – those bankers and traders that actively created the huge toxic debt – have been largely exonerated. President Obama and his officials argued that although 'greed and other moral lapses were evident in the run-up to the crisis, their conduct was not necessarily illegal'.[1] This is not quite true. As a number of commentators have argued, there was more than enough evidence of illegal practice to ensure that at least some at the top went down.[2] After all, critics of this apparent paralysis in US and European criminal justice systems point out, Iceland managed to set an example by jailing twenty-six of its top banking executives.[3]

Some banks have been forced to pay large-scale settlements with the US Department of Justice for their sales of financial products in the run-up to the financial crisis. In May 2018, the total imposed on the Royal Bank of Scotland (RBS) for those offences rose to over $10 billion. This came on the back of similarly large fines levied on US and European banks.[4] Despite the burden of the fines, each of the major banks has 'been aggressively returning money to shareholders through stock buybacks and dividends'. The fines are effectively dwarfed by the value of the bailout to those banks. Those North American, British and mainland European banks were, as the cliché goes, 'too big to fail'.[5]

Although we tend to argue for 'more punishment' in response to white collar and corporate offending, the form that regulation takes in capitalist societies almost always guarantees impunity to the property owning class. As this essay will argue, the impunity guaranteed to the most powerful

executives following the 2008 crash, when considered alongside the fines levied against the banks and financial institutions, reveals a set of tensions and contradictions in regulation that are normal in capitalist societies: they do not merely apply to the biggest banks, and they do not merely apply in times of acute crisis.

The purpose of all forms of regulation in capitalist states is to maintain the steady rate and function of the machinery of industry and commerce. As such, its purpose is to seek a stable and uninterrupted system of production, distribution and consumption. Its primary purpose is not to punish or to seek justice for wrongs that have been done. Of course, occasionally some powerful individuals and institutions may be punished, but the extent to which this occurs can never be allowed to seriously disrupt regimes of profit accumulation. Iceland is a good example. The response of the Icelandic state to the 2008 crash has enabled the economy to stabilize and grow at a rate that is not matched anywhere else.[6]

Therein lies a core contradiction: when regulation (and punishment) is effective, it has the effect of stabilizing the system. When regulation is most effective, it enhances the longevity of capitalism as a system. Yet as socialists, we know that this is not in the interests of everyone. When we demand effective regulation, and when we demand justice for a criminal ruling class in such moments, we are also demanding that capitalism corrects itself. This is why demanding punishment of corporations, or of their executives, as a panacea to such crises or to the problems caused by capitalism can only ever be a strategy of limited or modest reform.

This essay will explore how we can demand justice in ways that both seek to ameliorate the deadly harms produced by capitalism in the short term, but at the same time weaken capitalism as a system in the long run. The purpose of this essay, therefore, is to think how our demands for the punishment of corporate crime are targeted in ways that might usefully contribute to a transformative strategy.

THE DOUBLE MOVEMENT OF REGULATION

Marxist scholars have always been clear that the purpose of regulation is to ensure the reproduction of value.[7] In the most basic sense, regulation prevents capitalism from destroying itself. As Marx put it in the context of the nineteenth century Factory Acts, which imposed limits on the working hours of factory operatives:

> These Acts curb the passion of capital for a limitless draining of labour power, by forcibly limiting the working day by state regulations, made by

> a state that is ruled by capitalist and landlord. Apart from the working class movement which daily grew more threatening, the limiting of factory labour was dictated by the same necessity which spread guano over the English fields. The same blind eagerness for plunder that had in one case exhausted the soil, had, in the other, torn up by the roots the living force of the nation.[8]

The factory owning class, Marx argued, was precipitating 'the slow sacrifice of humanity' in its 'were-wolf hunger for surplus labour'.[9] This passage of *Capital* captures the double movement that arises in struggles for regulatory standards. The first arises from class struggle from below. When we demand and campaign for 'more' regulation we do it because we know this can have real, material effects that mitigate the human costs of capitalism. We know that whether we campaign as trade unionists demanding higher safety standards in our workplace, or as communities demanding tighter limits on emissions from industrial sites in our neighbourhoods, that regulatory standards can save lives. Yet the paradox is that regulation also makes capitalism more durable. The outcome of a more carefully regulated system is that workers will continue to be injured and killed (albeit it at a lower rate) and communities will still be polluted (albeit not quite so badly).

The second movement can be characterized as *system preserving*: as class struggle from above. Marx notes in the *Grundrisse* (in a passage dealing with the development of commodity markets) that capital cannot and does not recognize limits to expansion in the spheres of production and circulation. In the context of the expansion of global market, he notes that for capital, '[e]very limit appears as a barrier to be overcome'.[10] He was not talking about the dynamic of regulatory law here, but nonetheless this is precisely the same dynamic that regulation confronts. Capital must be controlled because in its 'blind eagerness' it perceives no limits to its own insatiable urge to accumulate. States must impose limits on the conditions of accumulation, since capital has a dominant instinct in relation to law: to see regulatory limits merely as barriers to be overcome. Having said this, the representatives of capital themselves often recognize that regulation is in their long-term interest, even where the immediate impulse is to reject state intervention. The managers of large firms in particular are generally unwilling to subordinate themselves to the vagaries of the market.[11]

Demands for 'more regulation' by the trade union movement and other social movements rarely contemplate the full implications of this double movement of class struggle. We rarely contemplate how our struggle for 'more regulation' or 'more punishment' from below might, in an

unintended sense, complement struggles for regulation from above. This means we rarely consider the struggle for regulation in more long term, strategic ways: how our struggles for regulation can enhance the prospect for social transformation.

THE RISE OF THE CORPORATE CRIMINAL

The legal and administrative structures that emerge to regulate capital, whether in the financial market or the factory, can be understood as 'unequal structures of representation' that absorb and dissipate conflicts between opposing interests. Paraphrasing Antonio Gramsci, regulatory agencies are not simply 'policemen' – that is, their relation to capital is not merely one of opposition and externality – but they play a much more general role in reproducing the social conditions necessary to sustain unequal class relations.[12]

The end of the nineteenth century saw the proliferation of forms of regulation aimed at social protection (food standards, pollution controls and so on) and rules to prevent the concentration of power in the economy across capitalist societies (anti-trust, banking regulation and so on). The first Factory Acts, for example, carried a sliding scale of fines to be imposed on factory masters. However, as Carson's history of the emergence of factory legislation shows, both the factories inspectors and the courts very quickly developed ways of ensuring those crimes went unpunished: the social power of the factory owners ensured that those crimes became 'conventionalized' and 'routinized' as normal business practice.[13] The legal device that was developed (a different form of criminal liability known as 'strict liability') was ideally suited to the prosecution of the *company*, not merely the factory owner. Because for a strict liability offence the court does not need to establish individual fault, *corporations* rather than individuals could be found guilty of those factory crimes.[14]

In the United Kingdom, the proportion of 'companies' (as opposed to real persons) prosecuted for breaches of the Factory Acts in the mid-nineteenth century varied between 30 and 40 per cent.[15] By the end of the nineteenth century, 50 per cent of prosecutions for such breaches were laid against corporate persons, rather than the factory masters themselves. Through the twentieth century although there has been an ongoing debate about the enforcement of the law against criminal individuals, illegal practices have generally been dealt with by imposing large fines against corporations in procedures that circumnavigate the courts. Indeed, towards the end of the twentieth century jurisdictions in Europe and in North America developed more explicit forms of corporate criminal liability. Fines

of several billion dollars levied on financial institutions for illegal practices are now commonplace in the US. And this practice is now spreading to European regulatory systems. In cases of environmental disasters and the killing of workers, it is generally the corporation that is prosecuted. In the case of breaches of safety law by employers against workers in the UK, for example, only around 3 per cent of prosecutions are laid against directors or senior managers; and it is normally only in the smallest companies that those individuals face punishment.[16]

In the rare moments the state actively campaigns to prevent corporate crime, the object is the *corporation*. The punishment of the *corporation* is the principal mechanism through which the double movement of regulation is achieved. By punishing the corporation, the system can claim it is intervening to protect the workers, the community, and so on, whilst at the same time maintain the steady rate of production, consumption, and financial transactions. We can call this a principle of regulatory tolerance, whereby the system upholds regulatory standards whilst at the same time tolerating corporate offending. It is not an effective mode of regulation. A recent in-depth study of a wood particleboard manufacturing plant operated by Sonae in Kirkby in the northwest of England illustrates how this principle of regulatory tolerance can play out.[17] Over a twelve-year period, the plant was prosecuted six times for offences against workers and the environment. The company was also the subject of constant safety inspections and formal notices issued by the two state regulators, the Health and Safety Executive and the Environment Agency. This did not appear to make any difference, as a litany of corporate offending culminated in the deaths of three workers in two separate incidents towards the end of this period, in 2010 and 2011. The remarkable feature of this case was that the corporation, Sonae, withstood an unprecedented level of prosecution and state intervention, and it did so without any interruption to or disruption of its accumulation of profit. It was effectively tolerated as a killer firm by the local and national states. Indeed, when the factory closed down in 2012, it was due to the global restructuring of the firm and declining global revenues, rather than anything the British criminal justice system had accomplished.

The key issue that the principle of punishing the *corporation* raises is: why would punishing an abstract entity produce results? We are often told that the threat of reputational damage is the mechanism that can force corporations to comply. But this assumption fundamentally misjudges the balance of class forces at work here. Even if the corporation does suffer reputational damage, it still acts as a shield behind which the reputations of real people are masked. If executives occasionally appear in court, owners and shareholders

are rarely even identified in such cases. We are beginning to reveal how the system of punishment applied to corporate and white-collar offending has an intrinsically class character. To grasp the precise nature of the class character of regulation in this sphere, we need to explore a little more deeply how the corporation acts as a proxy for accumulation strategies.

THE CORPORATE PERSON

The corporation was in many ways an ingenious invention for the property owning class. One of the earliest recognized advantages of incorporation was that the entity would not die – it remained immortal – so did not pay death duties that would otherwise have been owed by an individual owner or investor's estate.[18] Similarly, if a 'partner' or 'shareholder' became bankrupt, the entity's assets could not be used to pay the debts as the assets belonged to the entity rather than the individual shareholder. Thus, by creating a formally autonomous organization – a corporation – individuals could be protected from liability for any particular losses.

Since at least the end of the nineteenth century, the corporation has been the key institutional mechanism though which surplus value is accrued and then re-distributed and re-invested in capitalist social orders. The 'corporation' is always talked about as something that is abstracted from the real people and the real social relationships that make up the corporation: its managers, its owners, its workers, and so on. The corporation is thus abstracted from its core social purpose: the reproduction of class power through the accumulation of surplus value in the form of profits on behalf of its 'owners' or 'shareholders'. By virtue of its creation as an autonomous entity in law and in accounting practice, the corporation is able to claim that 'it', as a 'corporate person', is responsible and therefore liable for the consequences of 'its' actions.[19] Thus executives and directors are almost always guaranteed immunity. For individual shareholders, the abstract edifice of the corporation offers much grander advantages. When the corporation formally becomes the owner of the *corporation's* assets and the party responsible for the *corporation's*' liabilities, investors/shareholders in the corporation are thus able to 'limit' their liabilities to the value of the sum invested; the value of their 'share'. Shareholders are generally not held responsible for the debts or other liabilities of the company, or for the costs of any legal proceedings that may arise from its activities.[20] Corporate lawyers use the term 'corporate veil' to describe the protective shield that exists to protect the shareholders of the corporation from liability for the harms caused by the corporations.[21]

Other advantages enjoyed by investors are granted by proxy 'through' the corporation. Not least of these advantages is that the *corporate* person is

for legal purposes regarded as the employer, rather than any flesh and blood person. Thus, the owners of the company are not held directly responsible for any liabilities that arise from the labour relationship. Nor do they have any obligation to know about, far less do anything about, the labour conditions faced by workers in the companies that they own. In complex chains of ownership, the autonomy granted to each unit in the chain as a separate and autonomous employer makes it easy for both individual shareholders and executives to avoid responsibility for their subsidiaries' unfair labour practices or acts of employment discrimination. Supply chains and chains of ownership insulate primary owners and buyers from liability for violations of rights at the labour intensive end of the supply chain. The corporate veil in tort cases involving multinationals has, with a few scattered exceptions, prevented workers from seeking compensation.[22] Corporate subsidies and corporate welfare constitute other key privileges that are granted to investors by proxy through the corporation.[23]

We are often told that the corporation is given a central role in capitalist economies because it is an *efficient* producer of goods, employer of workers or provider of services. Yet when we consider that value accumulation is immeasurably enhanced by the series of privileges set out above, the corporation appears to be a wholly inefficient form of organization. All of the privileges and commercial advantages appear to accrue to the corporation itself (rather than its owners or shareholders). This is a deception largely because the corporation claims to benefit a range of stakeholders (workers, communities, customers) vicariously through the corporation. Yet if we consider the real social relationships encapsulated by the corporation, this is revealed as a sleight of hand. Those stakeholders (workers, communities, customers) actually generate value for the corporation, and therefore generate value for owners and shareholders. Stakeholders do not extract value from the corporation (in the form or share dividends of the rising value of shares) as owners and shareholders are able to do.

Very simply, then, the corporation is a device that simultaneously allows exceptional privileges to be accrued by the property owning class and at the same time masks those privileges in a process of abstraction.[24] The key point to grasp is that this process of abstraction is itself a *process of regulation*.

THE FAILURE OF 'EXTERNAL REGULATION'

If we return to the example of the 2008 financial crisis, the regulatory issues at stake are not *merely* that the state *failed* to regulate new speculative derivative products, or that it *failed* to bring the biggest institutions into line. Much more than this, at every single turn, the state creates the conditions

that permit particular forms of organization to accumulate profit in particular ways. From this perspective, regulation enabled the 2008 crash; it did not merely fail to prevent it.

Demands for regulation fail to recognize the *productive* capacity the state uses to give life to the corporation: the complex of rules and infrastructure, and the laws and practices that give corporations the permission to act in particular ways. In other words, when we demand 'more regulation' be used to control corporations, we fail to recognize that the state is *constantly* regulating, and the corporation depends upon the minutiae of those rules and practices for its very existence.

The productive capacities of state constitute a form of regulation in which the roles and the interests of state and capital are closely inter-woven. Corporations are given life in order to employ workers, to 'trade' in various forms of 'market' and to accumulate and distribute the profits that arise from its activities. Corporations are given life by the rules that govern labour and commodity markets, as well as by the laws that establish the social and economic obligations of corporations. In a *productive* sense, this regulatory framework in its entirety depends on the ongoing and ever-present integration of corporations into the economic and social fabric of the social order. The main legislative response in the UK to the 2008 crash was to ring fence 'retail banking' and 'investment banking'. Without entering into a debate about the merits or failings of the measures that were introduced, this form of regulation can be said to be *productive*, because it sets the rules of entry into and the conditions of participation, in markets.[25]

Yet public discussions about the regulation of corporations tends to view regulation only in a narrow controlling sense, whereby the relationship between the state and corporations or 'business' is one of *externality* – that is, the state stands as an institution or ensemble of institutions that are always seen in *oppositional* terms to capital. This logical turn allows the regulatory relationship to be represented as part of a heroic effort on the part of the state to control the excesses of capital. Even for the most progressive thinkers, adopting this *external* logic impulsively leads to a naïve demand for 'more regulation'. Yet, no matter how hard the heroic state has sought to regulate in an *external* sense, it has not solved the problem of capital's destructive tendencies. This is because the productive capacities of state regulation empower corporations to engage in socially destructive and harmful activities.[26]

Corporations kill people, steal, defraud, and engage in deception on a scale that quite simply dwarfs the toll of the same crimes and harms committed by individuals. If such a claim might appear to be rather extreme to those

who have not reflected on or studied the problem of 'corporate crime', it is a claim that is convincingly supported by a wealth of empirical studies that reveal the ubiquity of corporate law breaking.[27] In criminology today, the discipline that limits itself to studying 'crime', one would be hard-pushed to find any credible expert who would deny that corporate crime is an endemic and systematic feature of contemporary capitalist societies. Cases such as the Volkswagen emissions scandal revealed routine law breaking in the company going back to the 1980s – not only on the part of one German manufacturer, but also on the part of a very large number of household name automobile companies.[28] The routine nature of law breaking is revealed in detailed case studies across jurisdictions and across industrial sectors.[29] The point is that the toll of this offending is beyond the capacity of any criminal justice system. We simply do not have the resources to control a problem that is as endemic and everyday as corporate offending is.

Surveillance and prosecution aimed at controlling the crimes committed by corporations is dealt with by specialist agencies that are not given the same political priority as police forces. Different categories of law have been developed to ensure such crimes are regarded in the courts, and a wider cultural sense, as being less serious than other forms of theft or violence. In the neoliberal period, even token levels of inspection and enforcement in relation to corporate crime have been sharply eroded. British workers, for example, can expect a workplace safety inspector to call less than once every 50 years. Even when serious offences are investigated, the chance of a prosecution is negligible.[30]

The oil major BP presents a particularly stark example of how little even the largest fines can matter to refocusing executive decision-making. BP's Deepwater Horizon catastrophe in 2010 came after a series of very serious offences, including an explosion that killed 15 workers in their Texas refinery in 2005 (which led to a record $50.6 million fine), and a series of oil spills in Alaska in 2006 (which led to a $25 million fine). At a grand total of $65 billion, the compensation ordered by the courts for Deepwater Horizon dwarfed those earlier fines. Yet those fines failed to make any difference to BP's profit over safety approach to management. The earlier fines represented a very small fraction of BP's annual revenue. The Texas refinery fine represented 0.017 per cent of the BP Group's revenue for 2010, the year the fine was levied, and the Alaska fine amounted to around 0.007 per cent of the group's revenue for 2011, the year that the fine was levied. The bill for Deepwater Horizon has, as the financial press have enthusiastically noted, been absorbed largely by the recent sharp rise in oil prices.[31]

The fines imposed on corporations for breaching financial rules are

generally much higher relative to those for offences related to worker safety or environmental offending, and are rising. Yet, the huge fines imposed on them for designing the financial products that precipitated the crisis has not even dented their ability to accumulate.[32] When the largest part of the fine against RBS noted in the introduction to this essay was confirmed, Chief Executive Ross McEwan announced '[o]ur current shareholders will be very pleased this deal is done'. Indeed, on the day the fine was announced, RBS shares rose 5.5 per cent in early trading, and later traded nearly 3 per cent higher for the day.[33]

Of course, large fines may have an impact upon the reputation of the company, and the fines may dent profits. Yet because fines are generally levied on the 'corporation', rather than targeted at a particular group within it, the cost burden of even the largest fine can be absorbed and redistributed; those costs might be offset against a particular budget heading (they might result in cuts to wages or other operational costs), or they may be passed onto customers and clients in the form of price rises, or onto suppliers by reducing the market value of a product. Fines for violating safety laws and causing fatalities in the workplace may be absorbed by workers in the form of wage cuts and downsizing.[34]

Fines imposed on companies, for all of the reasons outlined here, have little more effect than perpetuating a structure of power that is ultimately designed to shield class interests. Little wonder then that studies on the impact of pecuniary penalties on the corporation generally find little correlation between the imposition of fines and a deterrent effect.[35] *External* regulation thus fails on its own terms; it does not solve the problem it sets out to solve, precisely because it confronts the immense social power of corporations. By focusing predominantly on the corporation, external regulation simply reproduces the reification of the *corporation* as the problem, rather than problematizing the class that stands behind it.[36] In such contexts, the state does not look particularly punitive. Thus, when we limit our demands for regulation to the representatives of capital (*executives*) and to the *corporation* itself, we are unlikely to achieve accountability, or to provide a basis for progressive social change. This raises a fundamental question: can this seemingly endless cycle of corporate crime be broken if we could target regulatory intervention more effectively? Are there ways to punish corporate and white-collar crime that can limit capital's 'werewolf' hunger?

A MODEST PROPOSAL

When we contemplate the full force of capital's capacity for social destruction, external forms of regulation as a panacea quickly appear redundant. This is obvious when we consider the role regulation has played in a wider sense, in

enabling the most harmful consequences of industrial development. When we regulate corporations, even in the moment that the state appears to be punitive, class interests are ultimately protected in ways that are often counterintuitive. Therefore, if we are to demand 'more regulation' and 'more prosecution' in the aftermath of capitalism's crises, then we need to be sure that we are not merely strengthening the institutional forms of power that created the crisis in the first place.

What, then, are the forms of regulatory response that we might propose in the aftermath of a crisis such as the 2008 crash (i.e. beyond a few prosecutions?). A significant radical demand has been that we should simply nationalize the banks. Indeed, in some jurisdictions this is effectively what happened. Yet the model of nationalization in most places where there was a bailout, was structured to protect the largest investors. As part of the bailout deal, the British government wholly acquired RBS, for example. This ownership has not altered the management of the bank substantially, and indeed the government has been ensuring its liquidity until the point it will be handed back to private investors at a net loss to taxpayers estimated at £26 billion.[37] The general principle of the bailout was to reinforce the controlling class interests in banking and finance.

Our argument as socialists should be that regulatory intervention that is aimed at finding a lasting solution to the crisis must ensure that the power structure that produced the crisis is not protected or strengthened. Otherwise, we will simply be reproducing the conditions that created the crisis in the first place. The punishment following the 2008 crash should therefore have been focused on weakening the class interests that stand behind the banking corporations.

One of the more radical strands of argument in the research dealing with corporate crime is a resurgence of the idea of the 'corporate death penalty'. It may seem like an extreme measure, and one that is a utopian aim, but this option is actually currently available to courts in a large number of jurisdictions that carry unlimited fines for serious corporate offences. A large enough fine can immediately divest a corporation of all of its assets, thus effectively putting it into liquidation.[38] A second scenario in which the corporate death penalty can be applied, though also rare, is when civil damages are imposed at a level which has the same effect. Ramirez and Ramirez propose that a version of 'three strikes and you're out', notoriously used by the US and other states from the 1980s onwards to deal with relatively low-level offending, could apply to corporations.[39] Instead of going to jail, the 'out' would be that the corporation would be 'put to death', or put into liquidation by the courts.

Yet in Ramirez and Ramirez's version of the corporate death penalty, justice is class-blind. When a company is forced into liquidation by the courts, of course the outcome is not class-neutral. Shareholders are likely to lose their investment. However, because of limited liability, the fall out for them stops at this point. Other creditors risk losing much more. This counts especially for workers who generally not only lose their livelihoods, but risk losing their pension, health care plans, and in some cases may suffer a series of knock-on effects (they may lose their home, in private education systems be unable to contribute to their children's education, and so on). Moreover, the wider community loses out if there are a large number of job losses. The corporate death penalty, therefore, may have exactly the same effect as large fines have: they may make victims of the most vulnerable. We therefore need to think about how to respond to such crises so as not to punish the most vulnerable by proxy through the corporation; punishments that do not simply shore up the class interests standing behind the corporation.

If the corporate death penalty is targeted not merely at 'killing' the abstract corporation, but is targeted at ending all existing class privileges and rights, senior executives, managers, *and* shareholders[40] could all be forced to forfeit their rights as they are inscribed in the corporation. If we are saving jobs, or maintaining a particular service in the community, we need a corporate death penalty to trigger forms of ownership that are both equitable and sustainable, such as democratic public ownership, or worker-led cooperatives. Of course, the ownership model would need to depend on the scale and nature of the enterprise. It is more feasible for example to envisage a chipboard factory to be solely worker-owned rather than a major bank. The bank might be forced into a democratic form of public ownership.

The point is that persistent behaviour on the part of the corporation can be taken as reason to forfeit the right to ownership and profit. After all, this is the logic that the criminal justice system applies to other forms of commercial criminals in the illicit markets. Drug dealers and fraudsters have their funds and assets sequestrated by the courts routinely. All we are doing here is applying the same logic.

We already have a developed methodology that, in theory at least, could be applied for this purpose. There is an important but little-known body of research that develops the concept of equity fines.[41] The basic idea of equity fines is that shareholders are forced to absorb punitive costs when the corporate activities they profit from break the law through the re-socialisation of part of the corporation. Equity fines reclaim value directly from shareholders through a process of share dilution.[42] The courts, or the administrative authority in this proposal, order the issue of a new batch of

shares worth a proportion of the corporation's existing equity. The shares could then be controlled by a defined set of fund-holders. The fund could be controlled by a state-appointed body, a collective of workers, or the local community. In cases where this is warranted, full ownership of the corporation could be transferred. Thus, we can envisage a form of the corporate death penalty in which what 'death' really means is the forfeiture of class entitlements. After this 'death', the corporation can be-reborn under new democratic forms of ownership.

CHALLENGING THE CLASS POWER BEHIND THE CORPORATION

Thinking through proposals such as this is a utopian exercise. I am certainly not claiming in this essay that the refined approaches to the punishment of corporate and white collar crime outlined above alone can transform the system. Moreover, there are a series of broader problems involved in conceptualizing a new ownership structure: should a new form of organization also enjoy corporate personhood, limited liability, and all the other attendant privileges; what use is a new form of common ownership if it is still conditioned by capitalist market forces? Having said this, the logical development of this argument for a corporate death penalty raises important questions about how, ultimately, a transformative strategy needs to involve a wholesale removal of the rights and privileges of corporate owners and shareholders. Such proposals need to be worked through in a strategic, rather than a merely tactical, approach[43] precisely because they address the material conditions of the social relationships that are abstracted by the corporation. These strategies can therefore only be a starting point in thinking through how regulatory demands and struggles can attack the source of corporate power in meaningful ways. Once we recognize the class character of how regulation works through the corporation, then we can be more clearly focused on struggles that meaningfully challenge the class power that stands behind the corporation.

Of course, we cannot abandon struggles that reinforce and restore social protections. After all, workers and other social groups had, and still have, a more immediate set of concerns about regulation: how can the law protect us from being killed at work? How can the law ensure our food doesn't poison us, or ensure that our communities are not exposed to toxic emissions? We cannot ignore the huge advances in the living conditions of ordinary people in the nations that have been forced to develop systems of social regulation. Neither can we fail to recognize that social regulation has been so easily dismantled in the neoliberal period.

Let us put it this way: if the corporation did not exist, and we were asked to create a form of institution that would accelerate inequality, hasten the global dominance of neoliberal capitalism, embed the financialization of social relations in everyday life, and produce climate change and other critical ecological crises, then we would be hard pressed to find a better design. It is time to turn our attention to how we can accelerate the end of the corporation and the class privileges that stand behind it.

NOTES

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31 Adam Vaughan, 'BP's Deepwater Horizon Bill Tops $65bn', *Guardian*, 16 January 2018.

32 One bank, Citigroup, calculated that in the first quarter of 2009, a fall by 0.25 per cent in the LIBOR rate would earn the bank $936 million in a quarter (see C. Snider and T. Youle, 'Does the LIBOR Reflect Banks' Borrowing Costs?' *SSRN*, 2010, available at: http://ssrn.com). This equates to around double the total fine the bank was made to pay for rate fixing.

33 Julia Kollewe, 'RBS settles US Department of Justice Investigation With $4.9bn Fine', *Guardian*, 10 May 2018.

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35 Jennifer Arlen, 'The Potentially Perverse Effects of Corporate Criminal Liability,' *The Journal of Legal Studies*, 23, 1994, pp. 833-67; Wallace Davidson III and Dan L. Worrell, 'The Impact of Announcements of Corporate Illegalities on Shareholder Returns', *Academy of Management Journal,* 31, 1988, pp. 195-200; John Coffee Jr., 'Corporate Crime and Punishment: A Non-Chicago View of the Economics of Criminal Sanctions', *Am. Crim. L. Rev.*, 17, 1980, pp. 419-78.

36 Glasbeek, *Class Privilege*; Grietja Baars, 'Its Not Me, It's the Corporation: the value of corporate accountability in the global political economy,*' London Review of International Law,* 2016 (4), pp. 127-63

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38 Michael Jefferson, 'Corporate Criminal Liability: The Problem of Sanctions', *Journal of Criminal Law*, 65, 2001, pp. 235-61.

39 Mary Kreiner Ramirez and Steven A. Ramirez, *The Case for the Corporate Death Penalty: Restoring Law and Order on Wall Street*, New York: NYU Press, 2017.

40 The composition of the ruling class makes it often difficult to distinguish between the two groups. See Maurice Zeitlin, 'Corporate Ownership and Control: The Large Corporation and the Capitalist Class', American Journal of Sociology, 79, 1974, pp. 1073-1119.

41 For example, support for the principle of equity fines features in the following works: John Coffee, ''No Soul to Damn: No Body to Kick': An Unscandalized Inquiry into the Problem of Corporate Punishment', *Michigan Law Review*, 79, 1981, p. 386; John Braithwaite, 'Penalties for White Collar Crime', AIC *Conference Proceedings*, 20-23 August 1991, Australian Government; Brent Fisse, 'Sentencing Options Against Corporations', *Criminal Law Forum*, 2, 1990; Harry J. Glasbeek, 'Why Corporate Deviance is Not Treated as a Crime: The Need to Make 'Profits' a Dirty Word', *Osgoode Hall Law Journal*, 22, 1984, pp. 393-439; James Gobert and Maurice Punch, *Rethinking Corporate Crime*, London: Butterworths, 2003; Neil Gunningham and Richard Johnstone, *Regulating Workplace Safety: Systems and Sanctions*, Oxford: Oxford University Press, 1999.

42 The New South Wales Law Reform Commission floated the process of share dilution in the 1980s, as did the Australian Law Reform Commission more recently. The idea was supported by the Scottish Executive Expert Group on Corporate Homicide in 2005 and debated – though rejected – by the Scottish Parliament in 2010 as the Criminal Sentencing (Equity Fines) (Scotland) Bill (SB 10-54).

43 Robert Knox, 'Strategy and Tactics', *Finnish Yearbook of International Law*, 2010 (21), pp. 195-229.