# Extracting Truths: State Regulation and the Canadian Ombudsperson for Responsible Enterprise

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## ABSTRACT

Taking the Canadian Ombudsperson for Responsible Enterprise (CORE) as its empirical focus, this study engages in a critical analysis of (capitalist) state regulation and corporate social responsibility as it relates to the Canadian extractive industry. Using a theoretical-analytical combination of Marx's ideology theory and critical discourse analysis, the study explores discourses pertaining to the introduction, creation, and role of the CORE – the Canadian state's most recent response to corporate harms and crimes within the industry – to uncover the factors that shaped this process. Further informed by critical criminological literature on corporate crime, the study found that dominant neoliberal capitalist narratives prevailed in determinations of which regulatory approach should be adopted by the state. Dominant voices sidetracked counter-hegemonic claims in debates about human rights and international development by prioritizing the economy, leaning on Canada's "good" global reputation, downplaying the violence of the industry, and redirecting blame. Ideological assumptions about the nature of state regulation, corporations, and capitalist law and politics further influenced which knowledge claims "won out." Despite the emergence of the CORE as a logical state response to corporate crime and impunity, however, debates about its role are ongoing. This not only reinforces the idea that (capitalist) dominance is never absolute but signals the ever-present nature of resistance and possibility for change.

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Finally, I want to dedicate this thesis to all the land and water defenders – past, present, and future – fighting to preserve the resources upon which all our lives depend. Thank you for your sacrifices, your courage, and your strength.

# ABBREVIATIONS

| | |
|---|---|
| ATI | Access to Information |
| CDA | critical discourse analysis |
| CIDA | Canadian International Development Agency |
| CNCA | Canadian Network on Corporate Accountability |
| COPINH | Civic Council of Popular and Indigenous Organizations of Honduras |
| CORE | Canadian Ombudsperson for Responsible Enterprise |
| CPC | Conservative Party of Canada |
| CSR | corporate social responsibility |
| DFATD | Department of Foreign Affairs, Trade and Development |
| FAAE | Standing Committee on<br>Foreign Affairs and International Development (*current Parliament*)<br>Foreign Affairs and International Trade (*previous Parliaments*) |
| GAC | Global Affairs Canada |
| GDP | gross domestic product |
| ICHRDD | International Centre for Human Rights and Democratic Development |
| JCAP | Justice and Corporate Accountability Project |
| MAC | Mining Association of Canada |
| MNC | multinational corporation |
| MP | Member of Parliament |
| NCP | National Contact Point |
| NDP | New Democratic Party |
| NGO | non-governmental organization |
| OECD | Organization for Economic Co-operation and Development |
| PDAC | Prospectors and Developers Association of Canada |
| SDEV | Subcommittee on Human Rights and International Development |
| SDIR | Subcommittee on International Human Rights |
| UN | United Nations |
| US | United States |

# Chapter 1: Introduction

"The idea, commonly accepted and shared, that development is a wonderful thing that is drawn from scientific progress and promises eternal growth is an absolute myth. Nonetheless, it is the most harmful evil that has been unleashed on humanity, because in fact, the planet and its resources are finite."

*– Francisco van der Hoff (2010, pp. 30-31)*

## 1.1. Contextualizing Canadian Extraction

The story of Goldcorp's Marlin mine in Guatemala illustrates many of the issues with corporate regulation under capitalism. While the mine became operational in 2005, controversy around it started much earlier (Gordon & Webber, 2016, p. 97; see Gordon, 2010, p. 222; Simons & Macklin, 2014, p. 235) because it was one of the first major extractive projects to operate in Guatemala following the country's bloody internal armed conflict (1960-1996), which killed over 200,000 people. It operates in Maya-Kiché territory, a region devastated by the conflict, further heightening controversy around its operations (Gordon & Webber, 2016, p. 97; see Gordon, 2010, p. 222) – especially since Goldcorp obtained access to land in the region fraudulently and by exploiting the local Indigenous population's vulnerability and poverty.[1] Worse, local communities were not properly consulted about the mine by original owner Glamis Gold, despite company claims that hundreds of consultations were organized between 2003 and 2004 (Gordon & Webber, 2016, p. 98; see Gordon, 2010, p. 222; Simons & Macklin, 2014, p. 111). In 2010, Goldcorp commissioned an independent assessment of the human rights impact of the mine in response to shareholder pressure (Simons & Macklin, 2014, pp. 76-77), which corroborated Indigenous claims that their rights were not respected but, regardless, legitimated the company's operations (Gordon & Webber, 2016, pp. 98, 314).

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[1] I use the term *Indigenous* throughout to reference peoples native to a particular territory; however, I recognize that many Indigenous peoples "prefer to identify with their particular nation or heritage" (Comack, 2018, p. 456).

In addition to these human rights violations, the mine's operations have been linked to serious environmental and health concerns. Researchers from Ghent University, for instance, noted significant increases in concentrations of arsenic in groundwater near the Marlin mine that surpassed World Health Organization, North American, and Canadian health standards for drinking water (Gordon & Webber, 2016, p. 98; see Deneault & Sacher, 2012, pp. 6-7; Simons & Macklin, 2014, pp. 111, 236). Relatedly, Guatemala's Environmental Management Unit charged the company with discharging cyanide into a nearby river without authorization. In response, mine representatives took out paid advertisements "declaring that the discharge was supervised by public regulatory agencies" (Gordon & Webber, 2016, p. 99), a claim disputed by local residents and international non-governmental organizations (NGOs). As well, researchers from the Global Development and Environmental Institute at Tuffs University argue that the environmental costs of the mine will far exceed its economic benefits. Despite all this, Goldcorp's behaviour has not changed, and no authoritative body has intervened to either mandate its regulatory compliance or sanction the company for its crimes (p. 99).

At the time of writing, a case before the Federal Court of Canada alleges the Canadian state improperly withheld information regarding its diplomatic support of Goldcorp. The lawsuit concerns 20 pages redacted from documents released via an Access to Information (ATI) request. Shin Imai,[2] who filed the case, claims these pages contain "details about Canadian officials' communications with Goldcorp, the Guatemalan government and the Inter-American Commission on Human Rights" following a Commission order to shut down the Marlin mine in 2010 (Canadian Network on Corporate Accountability [CNCA], 2021a, para. 3; see Simons &

[2] Shin Imai is a law professor at York University and co-founder of the Justice and Corporate Accountability Project (JCAP; CNCA, 2021a, para. 2), a "volunteer-driven transnational, collaborative, community-based legal clinic" that offers legal support to communities impacted by corporate extractivism (JCAP, n.d., para. 1).

Macklin, 2014, p. 236). According to Imai, there is evidence that Global Affairs Canada (GAC) lobbied on behalf of Goldcorp with Guatemalan and Commission officials, undermining Indigenous communities' wishes to halt operations (CNCA, 2021a, para. 3). Information within the redacted pages would therefore help in establishing whether the Canadian state influenced the Guatemalan government's decision to reopen the mine in 2011 (see CNCA, 2021b for a timeline of the mine's operations). Rather than simply disclose the information, the Canadian government decided to take the matter to court; for Imai, this decision raises the important question, "what else did it do to support Goldcorp?" (CNCA, 2021a, para. 6).

The events around Goldcorp's Marlin mine in Guatemala paint a troubling picture of the kinds of harmful activities Canadian extractive corporations engage in abroad, as well as the nature of their relations with the Canadian state. Unfortunately, this case is no exception: the Canadian extractive industry continues to spur controversy around the globe and neither the corporations involved nor the Canadian state are doing much, if anything, to address and remedy the harms they perpetuate (Gordon, 2010; Gordon & Webber, 2016; Kuyek, 2019; Moore, 2016; Simons, 2017; Tombs & Whyte, 2015; Wonders & Danner, 2001).

**1.2. Capitalistic Tendencies, Ideological Effects**

Following in the footsteps of those who settled Canada, powerful Canadian elites today continue to exploit peoples and territories, especially those located near "valuable" natural resources (Gordon & Webber, 2016, p. 4; see Deneault & Sacher, 2012, p. 9). Oftentimes, these resources are located on Indigenous lands – both at home and abroad – which is convenient for the powerful because Indigenous populations do not share in the capitalist tradition of commodifying natural resources (Comack, 2018, p. 261; Kuyek, 2019, pp. 55, 61; Robyn, 2001, p. 88; see Carroll & Sapinski, 2018, p. 24; Harvey, 2004, p. 75). As such, they can be cast as naïve and backwards-thinking, a discursive tactic used to suppress resistance to capitalist "development" projects (Gordon & Webber, 2016, p. 10; see Deneault & Sacher, 2012, p. 68).[3]

Government and industry suppression of resistance to such projects is important within the Canadian context because the extractive industry accounts for a large portion of Canadian capital and foreign investment.[4] In fact, the majority of the world's mining companies are headquartered in Canada and more than half are registered on the Toronto Stock Exchange (Deneault & Sacher, 2012, p. 16; see Gordon, 2010, p. 13; Gordon & Webber, 2016, p. 17). This alone, however, does not explain the Canadian state's active and open support of the extractive industry, including efforts to suppress resistance to it; for example, by defunding environmental research, preventing transparency between Government scientists and the public (Snider, 2015, pp. 39-40), and taking legal action against industry critics (Deneault & Sacher, 2012, p. 47). Thus, the relationship between Canada's extractive industry and the state – and their mutual desire for rapid financial growth and global expansion – demands further critical scrutiny. In so doing, it is possible to conceive of the Canadian state and extractive industry as part of a series of complex, and often symbiotic, social relations.

Pearce and Tombs (2001) describe the relationship between corporations, governments, and organized crime in the United States (US) in structuring an environment amenable to corporate capital. On the role of the state they suggest that:

> The American state may be formally democratic but it is so constrained and beholden to corporate capital that it is very narrow in the interests it pursues and often cruelly indifferent to the well-being of most citizens at home and abroad. Sometimes this

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[3] Other tactics include criminalization, dispossession, and displacement (Comack, 2018, p. 458; Kuyek, 2019, pp. 127-128; Moore, 2016; see Carroll & Sapinski, 2018, pp. 23-24 and Gordon, 2010, p. 11 on dispossession, and Snider, 2015, p. 39 on the criminalization of Canadian environmental activists).

[4] *Canadian capital* is "capital that has a clear and identifiable Canadian owner" (Gordon & Webber, 2016, p. 4).

> involves illegal activities, often it means creating a legal framework which allows and, indeed, encourages the destructive activities of corporate capital. (pp. 185-186)

Hence, in capitalist states such as the US and Canada, corporate and state power converge around capital creating an environment within which its pursuit and accumulation are not only assisted by the law but equally as valued as citizens' well-being, whose "best interest" is often equated to that of capital (Moore, 2016, para. 25; see Heinrich, 2004b, p. 206). As such, many corporate transgressions fall "beyond the purview of the law" (Snider, 1990, p. 376).

In the Canadian context, this phenomenon – or *ideological effect* (Purvis & Hunt, 1993, p. 490)[5] – is especially visible within the extractive industry. "The Canadian government has structured Canadian laws and regulations to channel investment capital toward the mining industry" (Deneault & Sacher, 2012, p. 37), which provides just one example of the Canadian state's involvement in fostering an environment amenable to corporate capital, and helps explain why Canada is a favourable location to headquarter the world's mining industry (Deneault & Sacher, 2012, p. 2; Weisbart, 2018, p. 476). Based on these, and other examples highlighted throughout, I argue that the Canadian state plays a key, *active* role in the reproduction of capitalist relations through its development of regulatory frameworks (see Pearce & Tombs, 2001, p. 202) which, like in the US case above, encourage "the destructive activities of corporate capital" (p. 186) and contribute to the maintenance of the status quo.

Canada's seemingly unconditional support for the extractive industry is doled out despite the state's knowledge of its many abuses around the world (Deneault & Sacher, 2012, p. 11; Kamphuis, 2018, p. 2; Keenan, 2020, p. 137; Weisbart, 2018, p. 476), implicating the state in the numerous crimes linked to extractive industry corporations domiciled in Canada. For example,

[5] *Ideological effects* are "the results or consequences of discourses for social practice in general and oppositional struggles in particular" (Purvis & Hunt, 1993, p. 490).

Canadian mining companies are increasingly associated with human and environmental rights abuses, especially in Latin America. In Guatemala, Canadian mining companies have been implicated in violent land evictions, gang rapes, the criminalization and repression of peaceful protestors, and land degradation to name a few (Gordon & Webber, 2008, pp. 68-70; Imai, Maheandiran, & Crystal, 2014, pp. 289-290; Simons, 2017, pp. 417-418). Yet, the Canadian state has done little to provide either access to justice or remedy to victims, which serves to reinforce and maintain systems of oppression and impunity (Pearce & Tombs, 1990, p. 425; Simons, 2017, p. 421; Tombs & Whyte, 2015, p. 53; Wonders & Danner, 2001, p. 106).

Frustratingly, and not by accident, it remains difficult to determine responsibility for such crimes much less hold perpetrators accountable (Glasbeek, 2002, p. vii). As a result, many victims of corporate crime go uncounted, masking its true dangerousness and perpetuating myths that paint corporations as inherently good, law-abiding, positive contributors to society (Pearce & Tombs, 1990, pp. 424, 432; Snider, 2000, p. 183; Spencer, 2004, p. 20; Tombs & Whyte, 2015, p. 26). It is largely for these reasons that I am interested in the Canadian state's role in regulating extractive corporations, including its most recent corporate social responsibility (CSR)-style approach: the Canadian Ombudsperson for Responsible Enterprise (CORE).

**1.3. Zeroing in on the Canadian Ombudsperson for Responsible Enterprise**

The CORE emerged in 2018 after a decades-long struggle initiated by non-state actors to ensure Canadian extractive industry corporations be held accountable for human and environmental harms associated with their overseas operations,[6] like those of Goldcorp's Marlin mine in Guatemala. A "groundbreaking" (Coumans, 2012, p. 668; Keenan, 2010, p. 31) report

[6] I use the term *non-state actors* to refer to both non-state and non-corporate persons or organizations involved in these issues, such as local and international activists, victims and their allies, labour unions, NGOs, not-for-profit organizations, Latin American organizations, and other Canadian, Latin American, and international networks.

issued in 2005 by the 38th Parliament's Standing Committee on Foreign Affairs and International Trade (FAAE) called on the Canadian federal government to address and strengthen existing CSR policies affecting the industry and create new ones where necessary (Seck, 2012, p. 51). In response, Paul Martin's Liberal Government initiated a multi-stakeholder process (Keenan, 2010, p. 32) – the "National Roundtables on [CSR] and the Canadian Extractive Sector in Developing Countries ('The Roundtables')" (Andrews, 2007, p. 1) – which took place from June to November 2006 (Janda, 2010, p. 98) during the subsequent Parliament under Stephen Harper's Conservative Government (Andrews, 2007, p. 1).

The Roundtables Advisory Committee issued a final report that recommended the Government create a "Canadian CSR Framework" (Janda, 2010, p. 98), including an independent extractive-sector ombudsperson (Andrews, 2007, p. 23; Coumans, 2012, p. 671). When Harper's Conservative Government ignored this recommendation and created within its framework the CSR Counsellor instead, non-state actors highlighted the role's deficiencies (e.g., lack of independence [from government] and powers to investigate; Keenan, 2010, p. 33; Seck, 2012, pp. 84-85) and continued to advocate for the creation of an *independent* extractive-sector ombudsperson on behalf of those located in regions most impacted by corporate extractivism (Keenan, 2020, p. 138).

In response to continued calls to action, the Liberal Party, under the leadership of Justin Trudeau, made a 2015 election campaign promise to create such a position. However, it was not until January 2018 that it officially announced the position and April 2019 that it finally instated Sheri Meyerhoffer, breaking its campaign promise. The CORE, like its predecessor, lacks "the independence and powers needed to ensure its success" (Keenan, 2020, p. 138). In other words, despite the Liberal Party's claims that it would improve upon the previous Conservative

Government's efforts to regulate the extractive industry's overseas operations, and initial hope and excitement in the possibilities of an ombudsperson position, many are disappointed at what has become another voluntary grievance mechanism that lacks the "teeth" necessary to do its job. At present, Parliament is undergoing a study of the role of the CORE, still a topic of debate some six years after the Liberal Party's initial promise to create it.

## 1.4. Methodology

### *1.4.1. Research Questions and Objectives*

CSR is thus a popular research topic for those concerned with "crimes of the powerful." To date, findings suggest that the current regulatory framework, including CSR strategies, does not effectively ensure corporations act in a socially responsible manner, especially those of the Canadian extractive industry (Bittle, 2015, p. 134; Bittle & Snider, 2013, p. 187; Coumans, 2012, p. 685; Imai, Maheandiran, & Crystal, 2014, p. 299; Simons & Macklin, 2014, p. 271). For this reason, my research seeks to uncover the factors that shaped the introduction and eventual creation of the CORE. Using the CORE as my empirical focus, my project seeks to understand and explain how corporate crime is perpetuated and legitimated through certain ideological discourses. To do so, I examine debates about the CORE's introduction, creation, and role through a critical criminological lens by combining Marx's ideology theory and critical discourse analysis (CDA) to form my theoretical-analytical framework. To account for both the wider (social-political-economic) context and discursive/ideological factors influencing this process, the following questions, which reflect the objectives outlined above, guide my research:

1. What factors (e.g., social, political, economic) influenced the introduction and eventual creation of the CORE?
2. Why did the CORE emerge as a logical state response to corporate transgressions within the Canadian extractive industry?

3. To what extent does the CORE reinforce and/or reproduce the conditions that make it possible for the extractive industry to commit harms and crimes with relative impunity?

It is therefore not my aim to determine or make judgements about what constitutes the "best" or most appropriate state response to corporate crime (though I do provide an overview of the forms they have taken within Canada and beyond in Chapters 2 and 3). I wish merely to understand how the CORE emerged within the current context, who were considered the "authorized" knowers within debates leading up to its creation and which knowledge claims prevailed, and how the CORE is mutually constitutive of the broader context. Through my research I also seek to highlight the importance of recognizing that these struggles are never complete; that no form of dominance is absolute (Fairclough et al., 1997, p. 3) and that resistance persists despite, and indeed in light of, its instability – as is evident in this particular case, given the ongoing nature of Parliamentary debates regarding the CORE's role.

***1.4.2. Sources***

Evidently, how best to regulate the Canadian extractive industry has and continues to be a controversial topic of debate (Gordon & Webber, 2008, pp. 68-70; Imai, Maheandiran, & Crystal, 2014, p. 299; Seck, 2012, pp. 85-86; Simons, 2017, pp. 427-428). To critically examine the introduction and creation of the CORE, a contemporary manifestation of such debates, I analyzed five sources to highlight the range of (competing) perspectives on the topic. These sources, detailed more fully in Chapter 4, include three sets of verbatim transcripts from Parliamentary debates, 60 web-based publications (see Appendix A), and Government documents obtained via an informal ATI request (see Appendix B).[7] Parliamentary debates

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[7] *Informal* ATI requests are those for full ATI requests previously submitted and filed. Received via email or regular mail, they are made by searching online ATI Act databases, selecting desired records, and writing a request for receipt of the full record. Unlike formal requests, no fees or deadlines are associated with informal ATI requests.

include those of the Subcommittee on Human Rights and International Development (SDEV) of the Standing Committee on Foreign Affairs and International Trade (FAAE) and the Subcommittee on International Human Rights (SDIR) of the Standing Committee on Foreign Affairs and International Development (FAAE) regarding the Canadian extractive industry's overseas activities. Both Subcommittees (SDEV and its successor SDIR) specialize(d) in international development and human rights, making their work relevant and important to the current study which seeks to examine the Canadian state's response to extractive industry harms and crimes. Supplementing Parliamentary transcripts with web-based and Government documents allowed me to better represent the range of voices on the topic. To satisfy my research questions and objectives I employed the theoretical-analytical combination of Marx's ideology theory and CDA to examine discourses surrounding the development of the CORE.

#### *1.4.3. Theoretical-Analytical Framework*

Ideology refers to particular perceptions and interpretations of the world around us (Fairclough, 2010, p. 46; Purvis & Hunt, 1993, p. 474; Stråth, 2013, p. 17). Within critical Marxist approaches, ideology theory is a lens through which to examine how consciousness conditions people's lived experiences in ways that help reproduce existing social relations (Hunt, 2004, p. 606). Theoretically, ideology helps to explain why certain phenomena are more likely to occur within some societies including, and most importantly to the current study, why some forms of state regulation are more probable within capitalist societies. Utilizing this framework, I argue that neoliberal capitalism is an *ideological discourse*, based on its "connection with systems of domination" (Purvis & Hunt, 1993, p. 497; see Fairclough, 2010, p. 27; Fairclough, 2012, p. 15), and my research seeks to uncover how this connection influences the Canadian state's response to corporate crime within the Canadian extractive industry.

Analytically, CDA is relevant to the study of ideology because, unlike descriptive discourse analysis whose goals are not explanatory, CDA aims to uncover the role discourses play in reproducing “macro structures” (Fairclough, 2010, pp. 45, 50). Essentially, CDA involves evaluating the connections between discourse and power relations and how the former shapes, reifies, and reproduces the latter. Indeed, “[p]articular discourses become privileged because of the strategies that certain (powerful) agents or groups employ in the process of reproducing social relations” (Bittle, 2012, p. 9). Thus, the current study analyzes discourses within the sources outlined above to uncover how they might be connected to systems of domination and/or involved in the reproduction of capitalist social relations.

### 1.5. Chapter Outline

The thesis proceeds as follows: Chapter 2 chronicles the (violent) history of the Canadian extractive industry and that of CSR to justify my extractive focus and begin to explain the origins of voluntary mechanisms of self-regulation. Chapter 3 situates the present study within existing critical criminological and corporate crime literature. Chapter 4 elaborates on my theoretical-analytical framework and its usefulness in satisfying the research questions and objectives noted above. Here, I describe my sources, the process through which I methodologically read the data, and my particular application of Marx’s ideology theory and CDA. In Chapter 5, I present and discuss my findings, which center around four main discourses uncovered within the data that coalesce in the reification of corporate capitalist power. Finally, in Chapter 6, I present the study’s material and theoretical implications. Though dominant capitalist discourses predominantly shaped the outcome of deliberations over the CORE, the presence of counter-hegemonic claims represents the vulnerability of capitalism’s dominance and ever-present existence of alternatives.

## Chapter 2: A History of Canadian Extraction and Corporate Social Responsibility

The extractive industry consists of the mining, oil and gas sectors and holds a prominent place within Canada's history (Bittle, 2015, p. 141) rife with violence and oppression. Keeping true to the critical Marxist "commitment to historical specificity and to the contingency of history" (Hunt, 2004, p. 605; see Marx, 1991, p. 15), I begin my project by weaving together the history of the Canadian extractive industry and that of CSR. The goal is to develop a better understanding of the current situation; to explain why voluntary mechanisms of (self-)regulation are the norm for regulating extractive industry corporations. Using a critical criminological lens to explore the intersection of these histories, I draw out key power relations involved in perpetuating systems of domination and social injustices (see Comack, 2018, p. 468).

In the remainder of this chapter I elaborate on Canada's characterization as a self-proclaimed extractive state, highlighting why this reputation is important to the reproduction of capitalism within Canada. Second, I explicate the concept of CSR including its relevance to the Canadian extractive industry, particularly regarding its operations abroad. Finally, I end with a brief explanation of how this history has led us to the current juncture, namely the current federal Liberal Government's creation of the CORE.

### 2.1. Canada as an Extractive State

Arguably, Canada has always been an extractive state. Much of Canada's socio-economic history is bound up with the commodification and exploitation of natural resources, and the peoples located in proximity;[8] a fixation that positioned Canada within international trade relations (Deneault & Sacher, 2012, pp. 183-185). Thus, the two are inextricably linked and it would be difficult to chronicle the history of this industry without drawing attention to the state.

[8] Likewise, the emergence of capitalist production was accompanied by "[t]he discovery of gold and silver in America" and the oppression of Indigenous populations located there (Marx, 1976/1990, p. 915).

Historically, one motivation for the Canadian state to support the extractive industry was to ensure land and resource access important for the construction of the transcontinental railroad (Comack, 2018, p. 460; see Deneault & Sacher, 2012, pp. 179-180). Since, elites have bolstered the commonsense belief in the extractive industry's importance to Canada's economic success (see Bittle, 2015, pp. 140-141). Moore (2016) suggests that Canadian capital and the state are enmeshed; so much so, that corporate profit accumulation is equated to satisfying Canadian interests (para. 25; see Gunster, 2019, para. 4). This capitalist narrative is important because it provides the state a "legitimate" reason to support the industry and suppress resistance to it.

Deneault and Sacher (2012) point out that "every Canadian government to date has supported the mining industry" (p. 8), suggesting the existence of a complex history of symbiosis and interdependence between the state and extractive corporations. They list two main reasons for this. First, the Canadian stock exchange is, and was built upon, financial speculation, "primarily on natural resources" (p. 9), a practice that allows investors to base their dealings on real or imagined resources. In the context of the extractive industry, speculation makes it easier for companies to raise funds for "discoveries or promising exploitation prospects" (p. 33) and burden investors with financial losses if they yield no results.[9] Second, Canada's British colonial origins promote the amassment of wealth by colonial elites and foreign investors via the exploitation of natural resources located in what is now called Canada (p. 9). This historic connection between the Canadian state, capital, and natural resource extraction is important to understanding the nature of corporate regulation within this industry today.

[9] e.g., in 1997 Bre-X, a Canadian-owned company on the Calgary Stock Exchange, was accused of fraud for reporting "resources" (gross estimates) versus "reserves" (precise estimates) of extractable minerals, driving up the company's share value by making their projects seem more profitable to investors (Deneault & Sacher, 2012, p. 18).

The Canadian government has a history of providing support to extractive corporations to secure the industry's "success" both at home and abroad (CNCA, 2007, p. 1; Deneault & Sacher, 2012, p. 11; Kamphuis, 2018, p. 2; Weisbart, 2018, p. 476). The industry's importance to the Canadian economy is cited to justify state support. In reality, 75 per cent of the world's mining companies are based in Canada (GAC, 2021), accounting for 31 per cent of global exploration budgets and $48 billion in mineral production in 2019 (Natural Resources Canada, 2020).

According to the Mining Association of Canada (MAC), an association that both represents and advocates for the Canadian mining industry (Kuyek, 2019, p. 158), the industry contributed $109 billion (five per cent) of Canada's total nominal gross domestic product (GDP); 37 per cent of global mining equity was raised on the Toronto Stock Exchange between 2015 and 2020; globally, Canada remains ranked among the top countries in the production of minerals with mineral exports accounting for 19 per cent (valued at $106 billion) of Canada's goods exports; and, as of 2020, the mining industry supported approximately 719,000 jobs across the country, 16,500 of which they report are filled by Indigenous community members (Marshall, 2020, pp. 6-7; see MAC, n.d.; Natural Resources Canada, 2020).

According to the Canadian Association of Petroleum Producers (n.d.), "Canadian oil and natural gas provided $105 billion to Canada's [GDP] in 2020, supported more than 500,000 jobs across the country in 2019 and provided $10 billion in average annual revenue to governments for the period 2017 to 2019" (para. 2). As per the above argument, these sources would have us believe that Canada's extractive industry is extremely important to the Canadian economy; in this case, for its role in sustaining, legitimating, and globalizing Canadian capital.

## 2.2. Globalization and Canadian Extraction Overseas

According to Jessop (2008), globalization is both temporal and territorial.[10] It is a complex and multifaceted concept that abstracts more than it clarifies about recent social-political-economic-cultural shifts (p. 178). There is no one form of globalization and no one cause; instead, it "is the complex, emergent product of many different forces operating on many scales" (p. 179). From Jessop's (2008) strategic-relational perspective, we can assert that globalization has both structural and strategic moments. Structural moments involve "objective" processes that create increasing global interdependence within functional systems like law, education, and politics and the reality that exists beyond them. Strategic moments, on the other hand, involve the active, mindful promotion of global collaboration on projects within functional subsystems and/or the reality beyond them (p. 179; see Fairclough, 2006, pp. 17-18). Focusing on its territorial facet, Scherer and Polazzo (2009) define globalization "as the *process* [emphasis added] of intensification of cross-area and cross-border social relations between actors from very distant locations, and of growing transnational interdependence of economic and social activities" (p. 415; see Fairclough, 2002, p. 163).

Though theorizing globalization is beyond the scope of this project, it is important to understand how it influences the Canadian extractive industry, its overseas operations, and the (supportive) role of the Canadian state. In the context of this research, I, like Jessop (2008), conceptualize globalization as a spatio-temporal process influenced by state actions including but not limited to "deregulating, liberalizing, and shaping the institutional architecture of finance, facilitating thereby its accelerating internationalization and its global acceleration" (p. 192). In

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[10] Marx also noted the importance of space *and* time within his theory of capital, though there is disagreement among Marxist commentators as to their relative weight. In some ways, this points to inherent contradictions within the capitalist relation (Jessop, 2008, pp. 183, 186; see Marx, 1981/1991, p. 357), a topic I return to in later chapters.

other words, within the complex process that is globalization, some capitalist states seek to assert their class processes on others, as well as the necessary conditions for their global (re)production. As I will address, the neoliberal project is especially useful in this endeavour (Jessop, 2008, pp. 192-193). Of note, though the state has long played a part in the creation and management of the complex spatio-temporal relations characteristic of social life, its role – like the nature of these relations – is not fixed (pp. 196-197).

### *2.2.1. A Shared Interest in Extractive Capital*

In the context of the Canadian extractive industry, critical scholars argue that the state plays an active role in globally promoting Canadian capitalism by ensuring the necessary conditions exist for capitalist profit accumulation (Gordon & Webber, 2016, pp. 2-4; Moore, 2016, para. 10). This implicates the state in processes of resource extraction which contribute to the oppression of communities – Indigenous, more often than not – both at home and abroad (Comack, 2018, p. 467). Thus, extractivism preserves the harmful legacy of colonialism by further displacing, oppressing, and assimilating Indigenous peoples around the globe.

To describe contemporary Canadian society, Comack (2018) uses the term “corporate colonialism” to highlight its capitalist *and* colonial roots, which share many commonalities (pp. 456-457). For one, they are both concerned with upholding the dominant social structure. To maintain the (“corporate colonial”) status quo, the Canadian state prioritizes (trade, aid, diplomatic) relations with countries whose economic interests parallel its own (Moore, 2016, para. 10; see Harvey, 2004, p. 70 regarding credit manipulation and debt management practices). Consequently, extraction, which brings economic growth, is promoted as “beneficial” by the state while resistance is labelled “deviant” (Robyn, 2001, p. 86). The result is that Eurocentric forms of development are framed as morally superior to advance corporate capitalist interests at the expense of society and the environment.

To assert its form of capitalism globally, the Canadian state offers the extractive industry various forms of support (CNCA, 2007, p. 1; Deneault & Sacher, 2012; Keenan, 2010, p. 30; Robyn, 2001, p. 96).[11] For example, the Canadian state promotes economic forms of development as superior and intervenes around the world to develop mining codes favourable to Canadian capital (Deneault & Sacher, 2012, p. 11). These codes facilitate "negligible taxes, full socialization of costs, disregard for customary and native rights, contempt for environmental issues, absence of regulations governing corporate behaviour, and the list goes on" (p. 39). Take the Democratic Republic of Congo where the mining code stipulates that a mere four per cent royalty be awarded to the Government, amounting to half the rate of nearby countries whose royalties are also extremely low (p. 41). Or Guatemala, where in 1977 a new mining law was adopted that weakened social and environmental standards making it easier for corporations to obtain operating licences, lifted concessions limits, and reduced royalty rates to one per cent (Gordon & Webber, 2016, p. 93).

These, and many other,[12] examples highlight how corporate capitalist ideology influences Canadian laws and policies pertaining to the extractive industry, ultimately facilitating the economic success of its corporations and the (re)production of capitalist social relations by prioritizing certain interests over others. How this plays out internationally (e.g., through the

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[11] e.g., financing; insurance; political and financial support (through embassies); diplomatic intervention in legal cases; mining code reforms; favourable trade rules (CNCA, 2007, p. 1); "unlimited speculation on world resources" (on Canadian stock exchanges; Deneault & Sacher, 2012, p. 17); promoting investment in mining through tax incentives (p. 35); legal protection (p. 45) and action (against critics; p. 57); "intervention in the education system to engender support for mining" (p. 64); and "diplomatic support overseas" (p. 70).

[12] e.g., the Canadian state's (a) initial opposition of the UN Declaration on the Rights of Indigenous Peoples, which requires companies to obtain free, prior, and informed consent before operating in Indigenous territories (Gordon & Webber, 2008, p. 70); and (b) funneling of Canadian capital into the industry by legally forcing most working Canadians to contribute to the Canada Pension Plan, which holds investments in the industry (Keenan, 2010, p. 31).

state's involvement in shaping other countries' mining codes) is relevant to the current study because, as Snider and Pearce (1995) note, national and transnational institutions are important to the functioning of the global economy (p. 30).

### *2.2.2. The Emergence (and Consequence) of Multinational Corporations*

The corporation is touted as an important tool in the global expansion of capital. In fact, colonial corporations were among the first to be "chartered for commercial purposes" (Whyte, 2014, p. 242; see Marx, 1976/1990, p. 917; Whyte, 2020, pp. 71. 75). During colonial ventures, the corporation emerged as a vehicle of capitalist expansion that allowed elites to shield themselves from the social and financial risks that accompanied rapid expansion while still reaping its benefits (Whyte, 2020, p. 85). Whyte (2020) argues that this is why the limited liability corporation was created: to protect the Crown's finances by transferring risk to private investors (p. 85).[13] Since, corporations have continued to play the dual role of protecting the interests of a small group of elites while at the same time obscuring the inequity that makes this possible (Whyte, 2018, pp. 90, 95-96). Colonial corporations, integral to the establishment and maintenance of capitalism, led to the emergence of the multinational corporation (MNC),[14] which continues to reinforce the "power of private capital" (Snider & Pearce, 1995, p. 19) today.

Globalization has therefore extended the reach of MNCs and, as a result, the "negative consequences of business" (Scherer & Polazzo, 2009, p. 414). Citizens in the Global South are increasingly impacted by corporations based in the Global North, whose behaviour they have

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[13] More recent developments in corporate law (e.g., legal personhood) are based in the same capitalist principle: facilitate capital accumulation while minimizing the elite capitalist's risks (Whyte, 2018, p. 99).

[14] Michalowski and Kramer (1987) argue that the term *transnational* corporation is more appropriate for two reasons: (1) it rightly implies that such corporations *trans*cend the nation state (whereas the term multinational only implies that they operate in more than one country) and (2) this terminology is more consistent within "[UN] documents regarding business across borders" (p. 34). I use the term *multinational* throughout because I distinguish between extractive corporations' home and host states, implying that they have centralized control in one country but operate in others. I also hesitate to agree that corporations transcend the nation-state as this conclusion insinuates, in some senses, that states and corporations are autonomous, a point I argue against in later chapters.

little part in controlling (Simons & Macklin, 2014, p. 418). With respect to the extractive industry, affected communities are not only omitted from key decision-making processes surrounding extractive projects in their territories but denied benefits and access to justice when crimes occur in connection with these operations (Banerjee, 2008, pp. 70-71; Keenan, 2010, p. 30). Talisman Energy, for example, was implicated in grave human rights violations while operating in Sudan between 1998 and 2003 amidst the country's civil war. During those years, Talisman's oil fields became a key site of struggle between the Sudanese government, rebel forces, and local citizens. To protect oil sites and infrastructure from rebel attacks, the Sudanese government allegedly carried out scorched earth campaigns in and around the oil fields, causing egregious harm to the local population (Simons & Macklin, 2014, p. 1).

Due to the serious nature of allegations involving the Canadian-based company's Sudanese operations, a Canadian Assessment Mission ("the Harker Mission") was sent by the Canadian Minister of Foreign Affairs and International Trade to investigate the situation in Sudan. The Harker Mission's final report found that Greater Nile Petroleum Operating Company operations (of which Talisman was a 25 per cent partner) were intensifying the conflict (Simons & Macklin, 2014, p. 42), as oil infrastructure "was being used for offensive bombing and gunship raids against civilian populations" (thereby implicating Talisman in these crimes; p. 1). A correlation between oil revenue and Government military spending further suggested profits from Talisman projects were funding the Sudanese government's civil war efforts (p. 48). The report also corroborated the UN Special Rapporteur's assessment of a ten-day military attack on civilian populations in 1999 that reported scorched earth campaigns around the oil sites, causing mass displacement and leading to a 50 per cent population decline in the affected region, Ruweng county, between April and July of that same year (p. 43).

This example showcases how the presence of Canadian extractive companies in conflict regions can compound human suffering, which, in this case, was further exacerbated by the (in)action of the Canadian state. The state claimed that it lacked the legal means to prevent, sanction, or hold accountable Canadian corporations in such situations (Simons & Macklin, 2014, pp. 1-2) and took no action against Talisman, even after being presented with the Harker Mission's findings (p. 68). Though Talisman eventually withdrew from Sudan, it sold its oil field interests for profit, ignoring the egregious claims above and leaving its victims wanting (p. 2).

While the negative effects of the Canadian extractive industry are as far reaching as Sudan, they are most prominent and detrimental in Latin America due to large Canadian investments in the region (Keenan, 2010, p. 30; see Gordon, 2010, p. 11; Gordon & Webber, 2016, p. 2). For example, Tahoe Resources, a Canadian-incorporated mining company, was implicated in the April 2013 shootings of around 20 peaceful protestors by mine security at its Escobal Project in San Rafael Las Flores, Guatemala, which "is operated by Tahoe's Guatemalan subsidiary, Minera San Rafael" (Weisbart, 2018, p. 473). After the violent shootings, the Canadian Embassy continued collaborating with the company despite knowledge of its involvement in the (at the time) alleged human rights abuses.[15] Embassy support was evidenced in email communications gathered via ATI requests which referenced in person and virtual interactions between Embassy staff and Tahoe representatives (p. 474).

Embassy representatives' response to the allegations fit within dominant discourses which tout the benefits of capitalist development and gloss over its social and environmental consequences, often reducing them to "externalities" (Tombs & Whyte, 2015, pp. 14-15; see

[15] July 30, 2019 marked the conclusion of the precedent-setting lawsuit between four Guatemalan members of the peaceful resistance to the Escobal mine and Canadian-owned Tahoe Resources. Because the case was settled out of court, however, it neither addressed nor remedied the root issues surrounding the mine's operations and local resistance continues today (Breaking the Silence et al., n.d.).

Banerjee, 2008, p. 54; Snider, 2000, p. 172).[16] Even more concerning is evidence of Embassy assistance in "losing" incriminating information to minimize its role in the company's crimes (Weisbart, 2018, pp. 480-481). This example highlights how Canadian state support for economic development projects manifests despite awareness of their negative effects on local communities, a common and recurrent phenomenon (Gordon & Webber, 2016, p. 94).

In both of the above examples, maintaining the capitalist status quo appears to have been the primary concern of the state. In Sudan, the Canadian state's decision *not to* sanction Talisman provides one example of how capitalist states assist in the (re)production of capitalist social relations. In Guatemala, the Canadian Embassy's (as a representative of the state) decision *to* support Tahoe Resources – via active, continued communication and collaboration with the company despite allegations brought forward by local citizens – indicates another. So, then, what is it about corporations that facilitates their evasion of responsibility? And how does the wider social-political-economic context factor into this culture of impunity?

### *2.2.3. Corporate "De"regulation*

Some argue that despite the global expansion of capitalism (and harm) via MNCs, regulatory frameworks have not expanded in parallel (Simons & Macklin, 2014, p. xi). For one, while MNCs continue to expand their operations to and within foreign regions, states are (conveniently) restricted to enforcing regulation only within their territory (Scherer & Polazzo, 2009, p. 415). As such, corporate regulation becomes the responsibility of host states because home states tend to use this restriction to shirk responsibility, arguing that they do not have jurisdiction. However, and unfortunately, for many reasons host states often lack the resources to

[16] *Externalities* account for the environmental and social costs of business typically omitted from corporate balance sheets (because corporations are rarely required to pay for them). Examples include environmental damage, and its associated toll on local communities, and industrial injuries or diseases, like the long-term health effects of asbestos exposure (Whyte, 2018, pp. 96-97).

effectively regulate foreign multinationals. Moreover, when they do attempt to enact "better" legislation, the process is either obstructed by intense corporate lobbying (e.g., on behalf of Canadian mining interests) or halted due to perceived legal-financial risks (e.g., host states' fear of being sued by MNCs for losses via free trade agreements;[17] Keenan, 2010, p. 30). In other words, MNCs headquartered in "advanced" capitalist states with operations in "developing" states often benefit from what Michalowski and Kramer (1987) term the "space between laws," wherein corporations commit acts that are illegal in their home states with impunity because those same acts are legal in the host states where they operate (p. 36). However, jurisdiction is not the only obstacle to determining corporate responsibility.

The corporate form, which I argue is criminogenic in the next chapter, also contributes to corporate impunity. Most notable for the purpose of this discussion is the *corporate veil*, which, in legal terms, refers to "an invisible barrier that effectively separates the real people who own the corporation from the corporation itself" (Tombs & Whyte, 2015, p. 85). This makes legal determinations of responsibility difficult if not impossible in cases of corporate crime. For instance, there were no convictions for the deaths of 26 Plymouth, Nova Scotia miners killed in a notorious underground mine explosion in May 1992 despite a provincial inquiry and resulting report that deemed the fatal explosion "foreseeable and preventable." Only the company involved, Curragh Resources, was eventually criminally charged, although it was never convicted (Bittle, 2012, pp. 4-5; Bittle & Snider, 2006, p. 474).

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[17] Substantiating this fear are documented incidents in which corporations have sued or threatened to sue countries via the North American Free Trade Agreement. Canadian company Blackfire Exploration, for instance, threatened to sue the Mexican government for losses under this agreement after a Government-mandated shut down of the company's Payback mine following the murder of local activist and community organizer Mariano Abarca Roblero outside his home. His murder was connected with Blackfire employees (Keenan, 2010, p. 29).

The complex structure of large MNCs adds to the legal cover provided by the corporate veil. Canadian mining companies use the corporate structure "to avoid taxes and responsibility" and "[m]ines in other countries are held through a dizzying array of private subsidiaries, often incorporated in known tax havens such as the British Virgin Islands, the Cayman Islands, or Luxembourg" (Kuyek, 2019, p. 132). The use of multiple subsidiaries (often domiciled in different states) is therefore a legal tactic used to protect parent companies and other powerful stakeholders from assuming liability for their crimes. As a result, it is difficult for victims to even seek let alone receive remedy for corporate abuse (Simons & Macklin, 2014, pp. 252-253). In cases where it *might* be possible to hold a parent company liable, Canadian courts are unlikely to "pierce the corporate veil" (p. 253). Even if they were willing, powerful MNCs are notorious for engaging in preventative tactics designed to steer court decisions in their favour (i.e., away from any kind of judicial enforcement; p. 256), which includes arguing for cases to be heard in host (versus home) states.[18] In the case of Talisman Energy, for example, Canadian courts ruled in favour of Talisman by granting the company's motion to dismiss. This decision was based on the court's reasoning that the plaintiff had failed to make a case for piercing the corporate veil; that the court could not reasonably hold Talisman liable for crimes committed by members of the oil consortium operating in Sudan (p. 253).

In addition to the legal environment, it is important to consider the role of Canada's social-political-economic context in maintaining conditions that allow corporations to commit crimes with relative impunity. Though I address this context more fully in the next chapter, it is worth mentioning here that in the early 1980s neoliberalism changed Canada's political and

[18] Although cases involving foreign plaintiffs and Canadian MNCs can be heard in Canadian courts, this is uncommon (Kuyek, 2019, pp. 134-135) and requires much sacrifice on the part of plaintiffs due to the costly and time-consuming nature of pursuing legal remedy, which often requires frequent international travel to attend court proceedings as well as barriers to retaining an adequate lawyer (Imai, Maheandiran, & Crystal, 2014, p. 293).

economic landscape, increasing corporate power via the state. Neoliberalism's economic roots in minimal government interference (Snider, 2015, p. 17) provide one explanation for the disappearance of "corporate crime" from the vernacular of law enforcement agencies via decriminalization (criminal law), deregulation (state law), and downsizing (of "the state's enforcement capability"; Snider, 2000, p. 172; see Snider, 2015, p. 18).[19] When compounded with (a) the privileges of corporate personhood and limited liability and (b) liberal influences on the law (i.e., individualism and *mens rea*; Spencer, 2004, p. 9; Tombs & Whyte, 2015, p. 82) this context begins to shed light on why a culture of corporate impunity persists in the 21st century. The social consequence is that corporations are rarely, if ever, made to pay for their crimes – financially or otherwise (Tombs & Whyte, 2015, p. 14; see Carroll & Sapinski, 2018, p. 2; Glasbeek, 2002, p. 118). Instead, that burden falls on the most vulnerable members of society, including victims of corporate crime (Snider, 2015, pp. 15-16).

CSR emerged in the 1990s in response to the types of regulatory voids that opened up under neoliberalism, "most notably the shift from state to private regulation" (Bittle, 2015, p. 140). It was during this time that consumer and activist groups began to voice their expectations of corporations, vis-à-vis CSR, particularly in relation to their overseas operations in developing countries (Kuyek, 2019, p. 269; Shamir, 2011, p. 313). In the years to follow, the practice of CSR became a popular response to public outcry denouncing the harmful behaviour of corporations, readily perceived as *the* solution to the mounting human and environmental toll of corporations' insatiable drive to accumulate profits (Spencer, 2004, p. 15).

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[19] As I argue elsewhere, despite what this dominant neoliberal discourse implies, these state transformations did not reduce the state's importance but merely restructured its form (Picciotto, 2010, p. 89), which "led to increasingly formalized regulatory arrangements" (i.e., *re*regulation as opposed to *de*regulation; p. 92).

**2.3. So, what exactly is CSR?**

On paper, CSR promotes conscious decision-making by corporations when it comes to the environment and society (Spencer, 2004, p. 15), casting corporations as both the problem *and* solution to corporate wrongdoing (Scherer & Polazzo, 2009, p. 414; see Whyte, 2020, p. 149). Functionally, CSR is used when considering and evaluating business effects on society that go beyond profit maximization (Crane et al., 2009a, p. 569; Snider, 2015, p. 104). That said, there remains no singular, agreed-upon definition of CSR (Andrews, 2007, p. 1; Crane et al., 2009a, p. 569; Soederberg, 2007, p. 505) and its practical effects are unclear.

How CSR is defined also depends on motivation. For example, corporations might employ CSR language to avoid making meaningful changes to their policies and operations (Snider, 2015, pp. 105-106), utilizing CSR as a business strategy to avoid strict regulation and increase profits (Crane et al., 2009a, p. 569; Moon & Vogel, 2009, p. 308). It is even argued that corporations' primary motive for engaging in CSR is to gain public trust (Moon & Vogel, 2009, p. 306). But CSR is about more than just describing corporate actions within a given society, it also involves discerning what their responsibilities should be (Crane et al., 2009b, p. 6).

Although generally considered an alternative to government regulation, CSR developed alongside public policy. Many governments, international bodies, and NGOs actively encourage corporations to engage in voluntary CSR strategies to better monitor their environmental and social impacts (Moon & Vogel, 2009, pp. 312, 316). Governments also use CSR to compliment existing policies and regulations (p. 320). Corporations, on the other hand, tend to use CSR to respond to increasing global pressures to respect human and environmental rights. This not only blurs the line between public and private responsibility for controlling business behaviour but reinforces the idea that self-regulation is a legitimate solution to "gaps" in global governance

(Scherer & Polazzo, 2009, p. 425). As such, CSR is now the corporate sector's preferred approach to regulation (Snider, 2015, p. 104) because it allows for "business as usual" by appeasing corporate critics without imposing strict regulations on their activities (Moon & Vogel, 2009, pp. 310-312; see Bittle, 2015, p. 140).

The business case for CSR suggests that it "incentivizes corporations to self-regulate" because it improves key relationships with stakeholders and consumers, making them more competitive within the market (Shamir, 2011, p. 331). CSR is thus important to corporations' struggle against the development and enactment of government regulation. In other words, CSR is transformed "from a device that is imposed *on* the market into one that becomes an element *of* the market" (p. 331); it becomes a strategy deemed good for business, which is a far cry from its roots in consumer and activist resistance to big business. More broadly, CSR represents a shift in not only *who* is considered authorized to govern but *how* that governance might occur (p. 332).

We see this same transition on the global stage through various efforts to set and define global business standards. Such efforts surrounded CSR's rise to prominence in the late 1990s and early 2000s (Banerjee, 2008, p. 60; Bittle & Snider, 2013, p. 178; Crane et al., 2009b, p. 3) and include but are not limited to: (1) the Organization for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises, released in 1976 and amended five times since (Khoury & Whyte, 2017, p. 66; see Moon & Vogel, 2009, p. 311), and National Contact Point (NCP; see Coumans, 2012, p. 669; Simons & Macklin, 2014, p. 102); (2) the UN Global Compact signed in 1999 (see Soederberg, 2007); (3) the Voluntary Principles on Security and Human Rights, developed in 2000 (see Andrews, 2007, p. 12; Simons & Macklin, 2014, p. 122); (4) the UN *Protect, Respect and Remedy* policy framework ("Ruggie Report"), tabled in 2008 (see Bittle & Snider, 2013; Coumans, 2012, p. 662); and (5) the UN Guiding Principles on

Business and Human Rights ("Guiding Principles"), unanimously adopted by the UN Human Rights Council in 2011 (see Coumans, 2012, p. 664; Simons & Macklin, 2014, p. 93).

Initiatives like these normally follow a major crisis or public outcry (Spencer, 2004, p. 15; see Bittle & Snider, 2006, p. 474; Jessop, 1990, p. 156). As Marx (1976/1990) suggests, capital is not concerned with the health and well-being of the worker "unless society forces it to do so" (p. 381). The Ruggie Report and Guiding Principles, for example, followed the global credit crisis of 2008 (Bittle & Snider, 2013, p. 177); in part, to calm public outrage regarding big bank bailouts by governments. Critics judge earlier CSR initiatives like this one for their vague wording, lack of teeth, and voluntariness, whereas newer ones seem to blur the line between mandatory and voluntary forms of regulation (Simons & Macklin, 2014, pp. 80-81). In either case, the material and practical effects of CSR strategies remain unclear and unsatisfactory, justifying further critical analysis – including the examination of strategies specific to the Canadian extractive industry, like the CSR-style approach of the CORE.

**2.4. Setting Canadian Business Standards**

Part of the CORE's mandate is to "[p]romote the implementation of the UN Guiding Principles and the OECD Guidelines" (Government of Canada, 2019), making these global initiatives relevant to the current study. While it would be ideal to discuss each of these in detail, I must limit the following discussion to Canadian-specific initiatives. That said, it is important to note that, first, the OECD Guidelines are non-binding and "entirely voluntary" (Moon & Vogel, 2009, p. 311; see Coumans, 2012, p. 676; Khoury & Whyte, 2017, p. 66) and, second, though the UN Guiding Principles do include a combination of mandatory and voluntary norms (Simons & Macklin, 2014, p. 93), those pertaining to business actors (versus states) are non-binding (pp. 97-98; see Khoury & Whyte, 2017, p. 129). In other words, both initiatives perpetuate the status quo by reinforcing and legitimating voluntary mechanisms of self-regulation (Khoury & Whyte, 2017, pp. 56, 67; Simons & Macklin, 2014, p. 98).

Their effectiveness is also critiqued. OECD NCPs are criticized for not being credible or effective "due to potential conflicts of interest, lack of resources, uncertain time frames, and lack of transparent outcomes" (Seck, 2012, p. 91; see Coumans, 2012, pp. 678-679), along with their lack of binding sanctions and enforcement strategies (Khoury & Whyte, 2017, p. 72). In their global study of OECD NCPs, Khoury and Whyte (2017) found that only a handful of cases (one in eight) brought before them each year are resolved (p. 71), concluding that instead of providing access to remedy and justice "the OECD system much more commonly enables corporations simply to walk away or refuse to engage" (p. 76). Likewise, the UN Guiding Principles are critiqued for failing to challenge the status quo (p. 56) or change corporate behaviour (Bittle & Snider, 2013, p. 186; Khoury & Whyte, 2017, p. 61). Such track records leave many disillusioned with CSR strategies (Khoury & Whyte, 2017, p. 62), including those that pertain to the Canadian extractive industry, to which I now turn.

#### *2.4.1. The National Roundtables on CSR and the Canadian Extractive Industry in Developing Countries*

Paul Martin's Liberal Government instituted the Roundtables in response to a 2005 FAAE report (Coumans, 2012, p. 668; Keenan, 2010, p. 31; Seck, 2012, p. 51) initiated and tabled in response to concerns brought before Parliament regarding Canada's international mining projects (Seck, 2012, p. 55). The report summarized the SDEV's study of international human rights and sustainable development and called on the Canadian government to institute measures capable of holding corporations accountable for human and environmental rights violations (Coumans, 2012, pp. 669-670; Janda, 2010, p. 98; Keenan, 2010, pp. 31-32; Seck, 2012, p. 55; Simons & Macklin, 2014, p. 261).

Though initiated by the Martin Liberals during Canada's 38th Parliament (October 4, 2004 to November 29, 2005), the Roundtables took place from June to November 2006 (Andrews, 2007, p. 1; Janda, 2010, p. 98; Seck, 2012, p. 59) during Canada's 39th Parliament (April 3, 2006 to September 7, 2008) under Stephen Harper's Conservative Government (Janda, 2010, p. 99). Hosted by the Department of Foreign Affairs and International Trade (now GAC) and led by a multi-stakeholder advisory group (Keenan, 2010, p. 32), the Roundtables brought together a range of voices with the goal to develop CSR standards built upon existing "domestic and international norms and best practices" (Andrews, 2007, p. 10). A consensual final report was released in March 2007 (Coumans, 2012, p. 671; Janda, 2010, p. 98; Keenan, 2010, p. 33; Seck, 2012, p. 59; Simons & Macklin, 2014, p. 261), which identified the need to develop a Canadian CSR framework and included, among others, the recommendation to create an *independent* extractive-sector ombudsperson office (Coumans, 2012, p. 671; Janda, 2010, pp. 98-99; Keenan, 2010, p. 33; Keenan, 2020, p. 137) and accompanying tri-partite compliance review committee (Simons & Macklin, 2014, p. 261).

During the Roundtables process, participants debated whether the outcome should be mandatory or voluntary (Coumans, 2012, p. 669; Seck, 2012, pp. 60-61). Although the industry publicly supported the Roundtables process, representatives vocalized their concerns with binding recommendations (Coumans, 2012, p. 670; Janda, 2010, p. 99) in private conversations with decision-makers (Keenan, 2020, p. 138), thereby indicating their preference for voluntary approaches to corporate regulation. In the end, the Harper Conservative Government's response, a CSR Strategy tabled two years later,[20] rejected calls to create CSR initiatives with investigative

[20] This being the more accepted of two competing visions regarding how to proceed following the Roundtables process; the other being private member's Bill C-300 (*An Act Respecting Corporate Accountability for the Activities of Mining, Oil or Gas in Developing Countries*) tabled by Liberal Member of Parliament John McKay on February 9, 2009 (Coumans, 2012, pp. 671-672; Janda, 2010, p. 97; Keenan, 2010, p. 34). Bill C-300 was designed to ensure

or quasi-judicial functions (Seck, 2012, p. 57). It did not include legally binding corporate regulations or mechanisms through which foreign plaintiffs could seek legal redress in Canada. Worse, it neglected most of the advisory report's key recommendations (Keenan, 2010, p. 33; Keenan, 2020, p. 138; Seck, 2012, p. 51; Simons & Macklin, 2014, p. 261), focusing instead on how best to support Canadian extractive corporations (e.g., "by enhancing their ability to manage social and environmental risks"; Natural Resources Canada, 2017, para. 4; see GAC, 2017; Seck, 2012, p. 75; Seck, 2018, p. 274).

Perhaps most disappointing for advocates of Canadian CSR standards in line with those proposed in the Roundtables' final report was the Harper Government's creation of the Office of the Extractive Sector CSR Counsellor ("CSR Counsellor"), a pared-down, barely recognizable version of the report's recommended independent ombudsperson office (Coumans, 2012, pp. 672-673; Keenan, 2010, p. 33; Simons & Macklin, 2014, p. 261).

***2.4.2. The Office of the Extractive Sector CSR Counsellor***

The CSR Counsellor was created through an order-in-council as part of the Government of Canada's first CSR strategy for the extractive sector (GAC, 2018, para. 7; Seck, 2012, p. 79) and acted "as a special advisor to the Minister of International Trade" (GAC, 2018, para. 1; see GAC, 2017; Seck, 2012, p. 80). The appointee reported to and worked directly with the Minister while performing their duties in the public interest (GAC, 2018, paras. 1-2). The position's dual mandate included *advising* stakeholders on proper implementation of Canada's CSR standards and *reviewing* extractive corporations' compliance with regards to their overseas operations (Davidson, 2018, p. 4; GAC, 2014, pp. 4-5; GAC, 2016, para. 43; Janda, 2010, p. 101; Seck,

Canadian extractive companies receiving Canadian state support upheld international human and environmental rights standards. Under it, the Minister of Foreign Affairs and Minister of International Trade could each have received complaints, assess compliance, issue reports, and revoke economic support (Seck, 2012, pp. 66-68).

2012, p. 81).[21] According to the order-in-council, the CSR Counsellor could not "make binding recommendations," "make policy or legislative recommendations," "create new performance standards," or "apply standards other than the performance guidelines" (Janda, 2010, p. 101; Seck, 2012, p. 82); its emphasis on reviewing and advising (versus investigating and sanctioning) highlighting some of the position's weaknesses (Seck, 2012, pp. 84-85).

To fulfil its mandate, the CSR Counsellor could engage in a review process to resolve disputes in connection with endorsed standards. Predicated on collaboration and voluntary participation, this dispute resolution process placed the CSR Counsellor in the impartial role of advisor-facilitator (GAC, 2017). Critics labelled the review process problematic based on two fundamental issues: (1) involved parties could leave the process at any time, preventing meaningful resolutions and perpetuating the capitalist idea that respect for human rights comes secondary to the economy (Coumans, 2012, p. 654) and (2) consequently, it forced victims to rely on their abusers to provide remedy, since the position had no authority to mandate corporate participation or provision of remedies (p. 655). Alarmingly, the CSR Counsellor could also choose to review cases brought forward by extractive companies claiming to be the victims of unfounded allegations (Seck, 2012, p. 82).[22]

According to GAC (2017) the CSR Counsellor represented just one aspect of the Conservative Government's 2009 CSR Strategy,[23] which was "enhanced" in 2014;[24] in part, to address some of the critiques against it (Seck, 2018, p. 274). The new and "improved" strategy

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[21] An updated version of the CSR Counsellor's mandate, posted to the Government of Canada website, states that it was to *promote* responsible business conduct abroad and *resolve* disputes in connection with the Government's CSR strategy "through constructive dialogue" (GAC, 2017, para. 39).

[22] As I will discuss, anthropomorphizing the corporation not only reinforces dominant knowledge claims regarding its autonomy from the state but naturalizes and normalizes its existence within capitalist societies like Canada.

[23] Canada's 2009 CSR Strategy: "Building the Canadian Advantage: A [CSR] Strategy for the Canadian International Extractive Sector" (GAC, 2016).

[24] Canada's "Enhanced" 2014 CSR Strategy: "Doing Business the Canadian Way: A Strategy to Advance [CSR] in Canada's Extractive Sector Abroad" (GAC, 2014).

identified the human rights standards expected of Canadian companies and stipulated that those who failed to meet them would be denied Government assistance via economic diplomacy (GAC, 2014, p. 12; Kamphuis, 2018, pp. 4-5; Seck, 2018, p. 276; Torrance & Burns, 2018, p. 8). Under the new strategy, the CSR Counsellor's role was also refocused, and its mandate strengthened (GAC, 2014, p. 4; GAC, 2018, paras. 9-10), though its role still largely focused on promoting CSR and advising corporations on best practices (GAC, 2018, para. 10).

As with the OECD Guidelines, NCPs, and the UN Guiding Principles, these Canadian CSR strategies are critiqued for their ineffectiveness (Torrance & Burns, 2018, p. 8). The Office of the CSR Counsellor itself wrote in its final report to Parliament that it was understaffed and under resourced, which made it difficult to fulfil its mandate (Davidson, 2018, p. 23). Due to noted deficiencies in the Harper Conservative Government's CSR strategies and unabated human and environmental rights issues surrounding Canadian extractive projects, the nearly decades-long struggle to establish a Canadian extractive-sector ombudsperson continued. There was much hope that Justin Trudeau's Liberal Government would at last deliver: first, in 2015 when it made an electoral promise to create such a position (Keenan, 2020, p. 137) and again in January 2018 when it finally announced its intention to do so (Kamphuis, 2018, p. 4; Keenan, 2020, p. 140; Seck, 2018, pp. 276-277). Following the 2018 announcement, however, it remained unclear whether the CORE would function differently than the Conservative's CSR Counsellor (Torrance & Burns, 2018, p. 8).

***2.4.3. The Office of the Canadian Ombudsperson for Responsible Enterprise***

While the CORE was officially announced by Trudeau's Liberal Government on January 17, 2018, it was not until April 8, 2019 that Sheri Meyerhoffer was appointed to the position. Democratically, Canadian non-state actors worked with the Government to develop the office

(Keenan, 2020, p. 140). To ensure the ombudsperson would have the tools necessary to do its job well (i.e., "robust powers to investigate, including the power to compel documents and testimony from companies under investigation"; Dwyer, 2020, p. 1), they recommended that the Government employ the *Inquiries Act* to create the CORE, which, under an order-in-council, would designate it a commissioner (Keenan, 2020, p. 140). In response, members of the extractive industry lobbied against this quasi-judicial approach, arguing instead for a position "grounded in collaborative dispute resolution and joint fact-finding" (p. 141), like the previous Harper Government's CSR Counsellor. A memo submitted to the Canadian federal government on behalf of the industry questioned its constitutional authority to award said powers, related issues concerning the *Canadian Charter of Rights and Freedoms*, conflict of laws issues, and the unprecedented nature of using the *Inquiries Act* in such a way (pp. 140-141).

As with the previous Government's CSR strategies, non-state actors were let down by the CORE created, which turned out to be little different from the Conservative Government's CSR Counsellor, except by name: it is neither independent from the Government nor does it possess investigatory powers (Keenan, 2020, p. 141). Like its predecessor's, the CORE's current mandate focuses on *advising* Canadian companies and *reviewing* complaints. As well, it is mandated to promote existing CSR guidelines (e.g., the UN Guiding Principles and OECD Guidelines), "offer informal mediation services," and advise the Minister for International Trade (Government of Canada, 2019, paras. 21-30). The CORE's work centers on the mining, oil and gas, and garment sectors' overseas activities (para. 3),[25] wherein it partners with private (i.e., industry), plural (i.e., non-state actors), and public (i.e., government) stakeholders, the latter including the Canadian NCP and Export Development Canada (CORE, 2021). Regarding its

[25] The addition of the garment sector to the scope of the CORE's mandate – expected to expand even further – represents one tangible change from the previous Government's CSR Counsellor (Torrance & Burns, 2018, pp. 8-9).

approach, the CORE affirms its belief that "human rights are best realized through collaborative approaches such as information sharing, mediation, and joint fact-finding" (para. 1). In other words, its belief in the kinds of non-judicial, voluntary approaches to regulation favoured by the industry (Coumans, 2012, p. 686).

**2.5. Conclusion: How did we get here?**

Throughout this chapter I discussed the violent history of the Canadian extractive industry and that of CSR, pointing to how CSR-style approaches facilitate the maintenance of regulatory status quo rather than the strengthening of counter-hegemonic alternatives (Khoury & Whyte, 2017, pp. 56, 67; Simons & Macklin, 2014, p. 98). When corporations can promote themselves through CSR policies as "ethical" or "responsible," it may be easier for home-state representatives to justify working with them publicly, despite human and environmental allegations against them. It also means that the Canadian government, like corporations, uses CSR to its benefit. Hence, CSR policies can be problematized as laying the foundation for state-corporate collaboration on extractive projects in developing countries, which supports critical perspectives that suggest states and corporations exist within symbiotic power relations (Tombs & Whyte, 2015, p. 159). State-corporate symbiosis can implicate the state in the perpetuation of human rights abuses through omission, as evidenced in the Talisman Energy case, and commission, as in the Tahoe Resources case. In the next chapter, I address how concepts like omission and commission factor into conceptual debates about corporate crime and regulation, including the role of the state.

## Chapter 3: Literature Review

Neither the criminological study nor the incidence of corporate crime is novel, suggesting the importance of considering both historic and current accounts. Marxist scholars critique idealist methods and modes of analysis focused on independent objects of inquiry, arguing that it is impossible to legitimately study a phenomenon when isolated from its broader social context (Parekh, 1982/2015, pp. 5-7). For instance, Pearce and Tombs (2001) maintain that to understand corporate crime one must also understand the broader political-economic context (p. 214). On the state, Jessop (2008) makes the same claim noting that any adequate theory of the state must be rooted in a theory of society (pp. 1, 7). Aglietta (1979), too, stresses that the study of capitalist regulation cannot be reduced to abstract economic laws, arguing instead that it is about social relations and their transformation (p. 16). My approach to explaining the nature of regulating corporations within modern capitalist societies proceeds from the same perspective: that it cannot be understood in isolation. As such, this chapter situates my research within critical criminological literature, drawing attention to the wider social-political-economic context within which the Canadian state regulates extractive industry corporations.

In Section 3.1, I explore this social-political-economic context, arguing that neoliberalism is a phase in the transformation of capitalism. In Section 3.2, I turn my attention to the nature of regulation within capitalist societies, highlighting the influence of various ideologies on its current form and function, including CSR-style approaches. In Section 3.3, I explicate the nature of state-corporate relations, illustrating the modern corporation's role in both expanding and reproducing capitalist social relations. Building on Section 3.2, I point to the interdependency of states and corporations within capitalist societies and its role in maintaining (market) environments that encourage and/or permit corporate transgressions (Tombs, 2012, p. 177).

## 3.1. The Wider Context

### *3.1.1. Capitalism*

In Marxist terms, *capitalism* can be understood as "a class-based political-economic regime" which employs the market as an economic tool for its legitimation and reproduction (Glasbeek, 2002, p. 23). It describes the current mode of production that (re)creates a stratified, class-based society (Fadakinte, 2015, p. 29) within which class conflicts render it unstable and force its proponents to continually seek its legitimation (Glasbeek, 2002, pp. 20-21; see Snider & Pearce, 1995, p. 31). For Marxists, class conflicts are rooted in struggles over competing interests and signal the ever-present existence and possibility of alternatives (Parekh, 1982/2015, p. 91).

Although *capital* is commonly referred to as "a particular sum of value" (Heinrich, 2004a, p. 16), it is important to note that Marx argued against defining capital as a "thing." Instead, he described capital as a dynamic social relation of production corresponding to "a particular historical and social formation, which simply takes the form of a thing" (Rehmann, 2013, p. 46; see Carroll & Sapinski, 2018, pp. 3, 6; Marx, 1976/1990, p. 953).

According to Glasbeek (2007), contemporary capitalism's goals revolve around "the private accumulation of socially produced wealth by means of competition" (p. 249; see Glasbeek, 2002, p. 87). Because there exists an unequal division of wealth within capitalist societies, however, the majority are disadvantaged when participating in market competition (Glasbeek, 2007, p. 249). At the national level, this unequal division of wealth may be represented in class struggles between capitalists and labourers competing within particular state and local markets (e.g., over the length of the workday; Marx, 1976/1990, pp. 344, 382). At the international level, it may be represented in struggles between "strong" and "weak" states competing within what some call a global or world market (Heinrich, 2004b, p. 217; see Eagleton-Pierce, 2016, p. 21 and Marx, 1981/1991, p. 205 on “world market”). In either case, those who possess wealth exercise economic power in the name of profit maximization, usually at the expense of and/or through the labour-efforts of the majority (Glasbeek, 2002, p. 7; Glasbeek, 2007, p. 250; see Carroll, 2021b, p. 11; Carroll & Sapinski, 2018, p. 2).

Struggles over economic dominance at the international level contribute to major geopolitical conflicts (Osuoka & Zalik, 2016, p. 442) often associated with *imperialism* (p. 446), the (hegemonic) process whereby one state imposes its social formation on others to secure its dominance (Aglietta, 1979, p. 32). To achieve a higher level of valorization, therefore, capital has evolved with mobility (Heinrich, 2004b, p. 213). This demonstrates not only the capitalist “logic of expansion” (Gordon, 2010, p. 10; see Eagleton-Pierce, 2016, p. 21; Harvey, 2004, p. 76) but also the capitalist system’s ability to renew itself (Fairclough, 2002, p. 163; see Marx, 1978/1992, pp. 427-428) despite its inherent contradictions (Eagleton-Pierce, 2016, p. 18).

Due to its instability, capitalism must seek ways to reproduce and reassert its dominance (Snider & Pearce, 1995, p. 31; see Marx, 1976/1990, p. 711; Sau, 2020, pp. 15-16). Consequently, neutralizing its inherent contradictions becomes imperative to safeguarding its long-term viability. Such contradictions include oligopolistic and monopolistic control of market resources, which contradicts classic capitalist ideology cautioning against concentration (Pearce & Tombs, 2001, pp. 192-193; see Marx, 1981/1991, p. 569) due to its anticompetitive nature (Glasbeek, 2007, p. 255). Though, contrary to what is described as the “ideal market,” contemporary “market order” is comprised of the concentrated (corporate) control of resources rather than open competition (Gordon & Webber, 2016, p. 71), a phenomenon especially prevalent in Canada (Glasbeek, 2002, p. 30; Gordon, 2010, p. 19; see Carroll, 2004, p. 201).

Specifically, the 1984 *Corporate and Labour Union Reporting Act Report* found that within the Canadian mining sector approximately five per cent of corporations controlled over 90 per cent of assets and equity, and the same corporations made over 90 per cent of total sales and nearly 99 per cent of total profits (Glasbeek, 2002, pp. 30-31). More recently, Carroll (2021a) documented that within the carbon-extractive sector 15 companies (6.3 per cent) accounted for 63.5 per cent total revenue (p. 146), 71 per cent of firms are “controlled by Canadian interests” who enjoy 67 per cent of total profits (p. 148), and “firms invested in western Canada make up 76.9 percent of the entire fossil fuel sector but account for 92.5 percent of revenue” (p. 147). Despite this, neoliberal claims to efficiency continue to be used to justify concentration (Tombs & Whyte, 2015, p. 13).

Establishing new (re)investment opportunities through diversification and overseas expansion is used to neutralize potential crises (Eagleton-Pierce, 2016, p. 21), like concentration. To correct for issues of overaccumulation, for example, capitalist social formations use “quasi-imperialist practices” to deliver “spatio-temporal” solutions (Harvey, 2004, p. 76). Business leaders and politicians alike stress the need to expand globally to remain competitive, claiming that corporations cannot grow to their full potential by relying solely on national markets (Gordon, 2010, p. 138). In line with this thinking, capitalist elites tend to oppose policies and legislation that place limits on capital while endorsing those that remove such limits. In Canada, for example, capitalists opposed the Foreign Investment Review Agency in the 1980s because it would place limits on foreign investment in Canada (pp. 136-137). At the same time, the state – vocal about the value in growing Canadian capital on a global scale (p. 138) – promoted foreign policy that would increase Canadian corporations’ economic and social power internationally. State actions like these ultimately maintain permissive regulatory environments (p. 142), emphasizing how state-corporate symbiosis factors into the creation and implementation of state policies (p. 141) that justify and normalize capitalist class processes.

Another capitalist contradiction is its destructive tendency to overexploit the human and environmental resources upon whom profit accumulation depends (Osuoka & Zalik, 2016, p. 457; see Marx, 1981/1991, pp. 179-180). For example, from the 18th through the 20th centuries in the United Kingdom, unsafe work conditions and extreme exploitation were literally killing workers. A combination of humanitarian efforts and realization among employers of the effect on their ability to generate profits (Snider, 2015, p. 11) led to the creation of some of the first corporate regulations: the Factory Acts (pp. 11-12; see Marx, 1976/1990, p. 392).[26] Thus, from the beginning, regulation served to maintain the status quo; in this case, elites' political and economic dominance over the working class (Snider, 2015, p. 11).

What becomes clear from the above examples is that capitalism's ability to transform and renew itself (e.g., through global expansion and regulatory reforms) has contributed to its continued existence. In the following section, I argue that neoliberalism represents a phase in the transformation of capitalism (see Fine & Saad-Filho, 2017, p. 686; Gordon & Webber, 2008, pp. 15, 65; Whyte & Wiegratz, 2016, p. 3),[27] further sustaining its existence and dominance.

#### ***3.1.2. Neoliberalism***

Efforts to better comprehend neoliberalism have produced four prominent understandings of the concept: neoliberalism as an ideological hegemonic project,[28] a policy and program, a state

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[26] For a broader analysis of the legal establishment and enforcement of the Factory Acts see Norrie (2014b), who critically argues that "[i]ndustrial capitalism established a system of social classes that required different forms of regulation on different sides of the social divide" (p. 108).

[27] Fine and Saad-Filho (2017) justify this classification based on their observation that *financialization* – "the increasing role of globalized finance in ever more areas of economic and social life" – is neoliberalism's most prominent feature (p. 687).

[28] For a more in-depth discussion on neoliberalism as a hegemonic project, see: Hall, 2011, p. 705, Hall, 2015, p. 30, and Hall & Massey, 2015, p. 67.

form, and governmentality (Brown, 2011, pp. 130, 138; Springer, 2012, pp. 136-137). While these understandings are often considered mutually exclusive – i.e., neoliberalism can *either* be a form of Foucauldian governmentality (bottom-up phenomena) *or* a Marxist hegemonic project (top-down phenomena) – for the purpose of this project, neoliberalism is better understood as an ideological discourse (see Purvis & Hunt, 1993, p. 497; Springer, 2012, p. 133). As Fine and Saad-Filho (2017) state:

> Neoliberalism by its nature is highly diversified in its features, impact and outcomes, reflecting specific combinations of scholarship, ideology, policy and practice. In turn, these are attached to distinctive material cultures giving rise to the (variegated) neoliberalization of everyday life and, at a further remove, to specific modalities of economic growth, volatility and crisis. (p. 685)

In other words, though neoliberalism manifests differently across time and space it is undergirded by common features (Fine & Saad-Filho, 2017, pp. 687, 695; see Peck, 2010, p. 21) that become normalized within everyday life.

To secure the long-term viability of capitalism by neutralizing its inherent contradictions (e.g., its facilitation rather than inhibition of anticompetitive concentration) neoliberalism has most notably catalyzed state transformation, a variegated process resulting in diverse sociospatially-dependent outcomes (Fine & Saad-Filho, 2017, pp. 695-696; Peck, 2010, p. 6; Picciotto, 2010, p. 93). Picciotto (2010) argues that recent transformations in capitalism have led to a fragmentation (versus reduction) of the state (pp. 88-89; see Fine & Saad-Filho, 2017, p. 690), resulting in the dispersion (versus weakening) of state regulation. Privatization, for instance, is commonly associated with the neoliberal form of governance; however, it is not synonymous with a weakening of the state. Privatization simply led to a transformation in the state's form: rather than administering goods and services directly, under neoliberalism the state is responsible for the "indirect provision of services within a regulatory framework" (Picciotto, 2010, p. 89; see Bittle, 2015, p. 137; Tombs & Whyte, 2015, p. 23).

Processes of privatization also led to the private sphere's adoption of various forms of self-regulation, like CSR strategies and business codes of conduct. While this shift meant corporations took on regulatory roles more typically associated with the public sphere (Picciotto, 2010, p. 88), it did not mean the state was diminished. Rather, this fragmentation of the state resulted in a decentralization of state regulation, contradicting popular characterizations of this period as one of state *de*regulation. Hence *re*regulation – the formalization of regulation (p. 87) – more aptly describes state transformations that occurred under neoliberalism, a process central to capitalist states' long-standing tradition of protecting the interests of capital through regulatory intervention (Fine & Saad-Filho, 2017, pp. 695-696; Peck, 2010, p. 7; Picciotto, 2010, p. 89; Tombs & Whyte, 2015, p. 23).

The (neoliberal) "deregulation" rhetoric has several important ideological consequences. First, it reinforces the idea that states are weak in the face of private corporations, merely beholden to or captured by them, which serves to strengthen the "structural power of capital" (Snider & Pearce, 1995, p. 26). The 1970s material and ideological transformation of the role of the state, for example, was accompanied by a rise in the belief that private corporations are necessary for the provision of goods and services responsible for maintaining social wealth and well-being. As the rhetoric goes, the *neoliberal* capitalist state, at least in appearance, relies on private corporations to provide social goods and services (e.g., healthcare, education, security), a role previously performed by the (welfare) state. As Tombs (2012) notes, since neoliberalism's ascendence in the 1970s, it has become nearly impossible to single out "any market in goods and services in which private capital does not now have a significant if not dominant presence" (p. 187). In short, neoliberal-influenced state transformations shifted the social role of the corporation, which, in turn, impacted commonsense understandings about the corporation itself, now considered a natural and necessary fixture in modern society.

A second ideological effect manifests in popular characterizations of government regulation as "red tape": an impediment to innovation and economic growth and a burden on business (Snider & Pearce, 1995, p. 26; Spencer, 2004, p. 15; Tombs, 2012, p. 180). Proponents of neoliberalism argue that government interference in the market is unnecessary because the market can self-regulate (Snider, 2015, p. 17; see Fairclough, 2012, p. 15 regarding the "efficient market hypothesis"). Such advocates argue that the state's role should revolve around upholding capitalist market values, such as the primacy of private property, rather than the development and implementation of regulatory interventions (Snider, 2015, p. 17). Essentially, within dominant neoliberal discourse, state regulation is framed as unnecessary, and even detrimental, which serves to legitimize "free" markets and mechanisms of self-regulation.

What many neoliberal supporters and commentators fail to mention, however, is the state's role in both creating and maintaining the "free" market (Tombs, 2012, p. 181). For instance, the Canadian state's structural adjustment and aid policies, often supported and enforced by multilateral lending institutions like the International Monetary Fund and World Bank, have and continue to play an essential role in liberalizing the market. Bound by conditions attached to loans distributed by these institutions, countries in the Global South are forced to commit to eliminating trade barriers, deregulation, and upholding private property rights, among other Western, neoliberal, market ideals that benefit Canadian corporations at the expense of local communities (Gordon & Webber, 2016, p. 13). As Harvey (2004) aptly states, "[f]ree trade does not mean fair trade" (p. 71).

Likewise, bilateral investment by the Canadian state (e.g., through the former Canadian International Development Agency [CIDA]) is used to help foreign countries "improve" their administrations (read: reform mining laws in favour of Canadian corporations; Gordon, 2010, p. 168). From 1997 to 2002, for example, CIDA spent $11 million in Colombia on a project formally designed to strengthen the institutional operations of their Ministry of Mines and Energy and Ministry of the Environment; however, a major aspect of this project concerned the development of a controversial mining code that not only granted international capital free access to Indigenous regions rich in mineral deposits but weakened environmental regulation, reduced royalties, and limited labour rights (Gordon, 2010, p. 168; see Deneault & Sacher, 2012, p. 40). In short, the ideological rendering of state regulation as protective (which is sometimes purely symbolic) masks its equally important role in maintaining capitalist social relations (Tombs, 2012, p. 173; Whyte, 2020, pp. 112, 143), thereby uncovering an inherent contradiction within capitalist state regulation (Tombs, 2012, pp. 172-173; see Whyte, 2014, p. 241). As a capitalist state, Canada is not immune to these issues.

### ***3.1.3. The Canadian State***

Though formally classified as a liberal democratic state, Canada is more aptly labelled a capitalist state (Glasbeek, 2002, pp. 1-2).[29] Comack (2018) goes further by describing Canada as both capitalist *and* colonial (i.e., "corporate colonialism"; p. 456), which better accounts for the racial component of colonialism and its enduring influence on the nature of corporate

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[29] Tombs (2012) characterizes a *capitalist state* as "one that is necessarily if complexly committed to prioritizing the practices and values of profit accumulation above 'social' values" (p. 172). Capitalist ideology works to conflate capitalist and "social" interests (see Heinrich, 2004b, p. 206; Moore, 2016, para. 25).

extractivism. For Marxists, the state plays an important role in mitigating class conflicts and legitimating capitalism in all its forms. According to critical regulation frameworks it does so through enacting certain forms of regulation which (re)produce and regularize the capitalist status quo (Aglietta, 1979, p. 22; Bittle, 2015, p. 144; Glasbeek, 2007, p. 250; Mahon, 1979, p. 166; Pearce & Tombs, 2001, p. 203; Whyte, 2004, p. 144; Whyte, 2020, p. 109). Generally emerging after crises or sustained periods of conflict (Bittle, 2012, p. 4; Jessop, 1990, p. 156; Khoury & Whyte, 2017, p. 75; see Bittle & Snider, 2006, p. 474), regulatory reform neutralizes said struggles by appeasing pro-regulatory groups while maintaining the existing mode of production (Khoury & Whyte, 2017, p. 75). Thus, "regulatory agencies emerge as a compromise borne out of social conflict, so that the nature of the regulatory body and its formal mission reflect the balances of forces between *and within* states" (Tombs, 2012, p. 173).

By presenting itself (and by extension its regulatory agencies) as a neutral third party capable of mediating conflicts and arriving at compromise (Mahon, 1979, pp. 175-176), the state reifies its autonomy and creates the necessary conditions for the maintenance of capitalist relations and inequity (Heinrich, 2004b, p. 205). Hence, the state – including its legal branch – represents a site of unequal representation where certain social power relations manifest (Carroll & Sapinski, 2018, p. 18; Jessop, 2008, p. 8; Mahon, 1979, pp. 169-170; Tombs, 2012, p. 172). In other words, capitalist states like Canada are influenced by the logics of capital to help maintain corporate accumulation. To encourage a broader, systemic examination of corporate regulation I echo Snider and Pearce (1995) in asking, "what mechanisms account for the continued survival and development of the capitalist mode of production?" (pp. 31-32). In the following section, I argue that ideology accounts for one of them.

## 3.2. Ideology and Regulation

### *3.2.1. Conceptualizing Regulation*

Within the literature, there are various conceptualizations of regulation. For example, consensus scholars describe regulation as the outcome of a collaborative process involving relevant stakeholders, where compromise can be reached between regulators and regulatees (Hawkins, 1990, pp. 451-452; Whyte, 2004, p. 139). They – and other members of the compliance school of regulation – belie strict corporate regulation (Whyte, 2004, p. 139; see Bittle & Snider, 2011, p. 380; Hawkins, 1990, pp. 457-459; Hawkins, 1991, p. 429; Pearce & Tombs, 1990, pp. 427-429) in favour of "soft," voluntary mechanisms (Simons, 2017, p. 430). This includes models of self-regulation, which entrust corporations to monitor and enforce their own legal compliance (Whyte, 2004, p. 139). Therefore, what compliance school conceptualizations of regulation imply is that corporate crime can be considered a low threat which is manageable through dialogue and cooperation.

Neoliberal proponents characterize (over-)regulation as an unnecessary and unjustified impediment to corporations' ability to function within the market economy; as a mechanism which "obstruct[s] economic efficiency and individual freedoms" (Whyte, 2004, p. 140; see Bittle & Snider, 2011, p. 377; Pearce & Tombs, 1990, p. 431; Snider, 2000, p. 170). Conceptualizing regulation as unnecessary and unjustified implicitly communicates that formal policing is not required to address corporate crime, the purported incidents of which are minimal.

Capture theorists distinguish regulation as facilitating problematic state-corporate relationships plagued by the "revolving door phenomenon."[30] This, they posit, along with corporate lobbying and a convergence of interest, makes states vulnerable to "corporate

[30] A phenomenon which "often facilitates the movement of personnel between public and private sectors and provides the social networks that are ultimately used to concentrate power in social elites" (Whyte, 2014, p. 239).

manipulation" (Whyte, 2004, p. 142), implying that regulation facilitates collusion between public and private capitalist elites (p. 142; see Gordon & Webber, 2008, pp. 69, 80; Pearce & Tombs, 1991, p. 419; Scherer, 2018, p. 390; Spencer, 2004, pp. 11, 14). Critical scholars, on the other hand, argue that states are not captured by industry but benefit from symbiotic relations with corporations (Bittle & Snider, 2013, p. 187; Fleming & Jones, 2013, p. 7; Friedrichs, 2001, pp. 54-55; Tombs & Whyte, 2015, p. 69; Weisbart, 2018, p. 473; Wonders & Danner, 2001, p. 98). For them, (permissive) regulation is mutually beneficial for corporations and states alike.

According to Marxist economists within the regulation school, regulation is ideological: its primary purpose within capitalist societies is "to govern and normalise the way that society is hierarchically ordered" (Whyte, 2020, p. 109). It facilitates the continued existence of the current mode of production (p. 114) by preventing capitalism from destroying itself (p. 116; see Marx, 1976/1990, p. 392; Snider, 2015, p. 11). Due to the nature of capitalist states, therefore, and because perpetual class struggles mean capitalism's dominance is not absolute, from a Marxist perspective regulation performs contradictory functions within capitalist societies. On one hand it disciplines in the name of the majority while on the other it helps advance certain interests over others (Mahon, 1979, p. 171; see Soederberg, 2010, p. 46).

In accordance with Marxist traditions, I also argue that regulation within capitalist societies has a dual function: to control the harmful actions of corporations (i.e., legal persons) while at the same time (re)produce and maintain the conditions necessary for them to survive and thrive (Tombs, 2012, p. 174; see Khoury & Whyte, 2017, p. 75; Whyte, 2004, p. 144; Whyte, 2014, p. 240). Regulators in capitalist societies fulfil this role by promoting a "political economy of speed"[31] that prioritizes economic growth while concurrently developing policies and

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[31] *Political economy of speed*, according to Whyte (2020), is "a concept that describes how political strategies interact with economic conditions in a way that shape the speed and intensity of production regimes" (p. 123).

legislation designed to control harmful corporate activities (Whyte, 2020, p. 143). In sum, regulation within capitalist societies is designed to reproduce the existing social formation by neutralizing potential conflict (Whyte, 2014, p. 241). How we think about and conceptualize corporate regulation thus impacts how we respond to and make sense of corporate crime itself. This is why, throughout the remainder of this section, I outline several ideological discourses involved in shaping commonsense understandings of corporate regulation.

#### *3.2.2. Political-Economic Ideology (Neoliberal Influences)*

Returning to the Marxist idea that nothing can be legitimately studied in isolation from its broader social context, I seek to evaluate the influence of dominant political-economic ideology on the nature of regulation within capitalist societies. To do so, I explore both the doctrine of individualism and the argument that neoliberalism is a moral project, wherein I discuss imperial processes of neoliberalization overseas.

Canada's status as a neoliberal capitalist state means its social relations are shaped by and (re)produce market logic and individualism, and that ontological priority is given to the individual (see Eagleton-Pierce, 2016, p. 19; Woodiwiss, 2009, p. 104). However, such individualist accounts inhibit our understanding of human nature because they fail to adequately account for the fact that all individuals exist within particular social contexts that both enable and constrain their behaviour (Parekh, 1982/2015, p. 6). In particular, under neoliberalism

> [t]he ideology of self-responsibility has been especially significant since it deprives the citizens of their collective capacities, agency and culture, appears to value consumption above all else, places the merit of success and the burden of failure on isolated individuals, and suggests that the resolution of every social problem requires the further

individualization and financialization of social provision and intercourse. (Fine & Saad-Filho, 2017, p. 697)

Derived from Adam Smith's work, the ideal market model is underpinned by the idea that individuals' self-interested, profit-seeking behaviour will lead to "widespread social benefit" (Bittle, 2015, p. 137). This belief fosters the assumption that individuals are fundamentally rational and invested in the overall well-being of society, which presumably can be improved via participation in market competition. Modern corporations – which enjoy legal personhoods – are viewed in the same light: as rational entities who can and will behave responsibly to ensure their economic success as participants in the market. Based on this logic, those that do not act responsibly (i.e., "bad apples") are the exception rather than the rule (p. 137).

Idealist accounts of human nature also suggest that individual humans think and act of their own will, choosing their best option from a selection of alternatives. "The ideal individual surfaces here as a calculating animal who is or, more prescriptively, should be, attentive to his or her material efficiency" (Eagleton-Pierce, 2016, p. 20). By extension, it is believed that individuals can be held solely responsible for their beliefs and actions, treated accordingly (Parekh, 1982/2015, pp. 5-6), and that social institutions can only be explained in relation to individual social practices (Eagleton-Pierce, 2016, p. 20). As a result, corporate crime remains understudied and under investigated in comparison to "street" crime and its harmful impacts go largely unchecked (Bittle & Snider, 2013, p. 179; see Norrie, 2014b, p. 117). Apart from masking the true dangerousness and pervasiveness of corporate crime in modern society, this reinforces the myth that interpersonal violence is more immoral – and therefore more punishable – than its structural counterpart (Spencer, 2004, p. 20; see Whyte, 2004, p. 145).

Giving ontological priority to the individual impacts our collective understanding of crime and deviance by, for example, reinforcing the "ideologically based distinction between 'true' (street) crime and corporate offences" (Bittle, 2015, p. 137). The myth that corporate crime is not "real" crime is reinforced by regulation discourse that masks contemporary "regimes of permission" (Whyte, 2014, p. 244; see Whyte, 2004, p. 145). In this way, individualism legitimates the current nature of corporate regulation. That is, voluntary, non-judicial mechanisms of self-regulation, including CSR-style frameworks (Geis, 2001, p. 39). Some go as far as arguing that the existing form of corporate regulation is the most effective option (Webb, 1995, p. 339). The rationale? When properly and consistently enforced, it is believed that voluntary, CSR-style regulation better encourages corporations to adopt proactive and preventative strategies. As well, because corporate crime typically involves multiple perpetrators and victims spread across time and space, the argument follows that creating a new criminal approach to determine corporate responsibility within the current legal framework would be too complicated; that it is more fruitful to strengthen existing regulations (pp. 344-346).

When it comes to corporate crime and its regulation, control methods deemed acceptable in the Global North are often applied to situations in the Global South without cultural or social consideration. This assumption – that regulatory mechanisms that "work" in the Global North will work anywhere – is an example of universalism wherein the belief in neoliberal regulation's superiority to other forms is normalized, justifying its widespread application and reifying its dominance.

In the context of the Canadian extractive industry, the (positivist) notion of universalism has several implications. In particular, it justifies the expansionary nature of neoliberal capitalism and capitalist states' attempts to create and define a "world market" (Eagleton-Pierce, 2016, p.

19). It also legitimates the capitalist classification and hierarchization of states, including attempts to reform supposedly "weak" states in the image of "strong," capitalist ones, and reinforces the myth that capitalist economic development is superior to other forms. The influence of this myth is especially evident in discourse which promotes economic development in the name of improved human rights (see Gordon & Webber, 2008, p. 69; Khoury & Whyte, 2017, p. 37). Neoliberal ideology thus helps to obscure (capitalist) development in the language of international aid; facilitate elite, corporate access to resources in the Global South; and justify the (often harmful) profit-seeking activities of capitalist corporations (Gordon, 2010, p. 142) – ultimately reinforcing the ideological belief that corporate crime is the exception.

It does so, for example, by framing accumulation as altruistic, or beneficial to the entire population (Heinrich, 2004b, p. 212). Within capitalist societies, virtually any profit-generating activity is morally legitimated (Pearce & Tombs, 2001, p. 212), reinforcing the myth that corporations are inherently good, law abiding, positive contributors to society; a "truth" created and maintained by powerful elites who benefit most from their existence (Spencer, 2004, pp. 15-16). Consequently, knowledge claims supporting neoliberal capitalism are more readily taken up and acted upon by dominant groups because they align with their interests (Snider, 2000, p. 171). One ideological effect being that capitalist states and corporations in the Global North – and, by extension, neoliberal (economic) development, policies, and regulations (Bittle, 2015, p. 142) – are believed morally superior to "developing" countries in the Global South, often portrayed as corrupt and fraudulent (Felices-Luna, 2016, p. 130).

Further, "developed" states associate "underdevelopment" with "corruption" (Felices-Luna, 2016, p. 130) to legitimate, and even necessitate, their intervention in "developing" states' political, economic, and social structures (p. 132). These types of beliefs pave the way for the

Global North to set universal human rights standards – and regulations – in their image (Whyte & Wiegratz, 2016, p. 4; see Bartholomew & Breakspear, 2004). By assuming only economic development can lead to “true” democracy and freedom, elites in the Global North may blame “backwards” or “corrupt” countries in the Global South when issues arise (Bittle, 2015, p. 142). Moreover, because most “valid” knowledge originates in the Global North, such forces continue to unilaterally decide what is best for everyone (Felices-Luna, 2016, pp. 130) – often justified in the name of human rights (Bartholomew & Breakspear, 2004). When this manifests in the blanket application of legal categories, we may understand capitalist social relations as both regulated and mutually constituted by (capitalist) legal systems (Snider & Pearce, 1995, p. 30).

#### *3.2.3. Legal Ideology (Western Law Influences)*

Marxist analyses of law seek to uncover how it is involved in the subordination of some to uphold the interests of a small minority (Cotterrell, 1992, pp. 106-107). Through the lens of ideology theory, Western law may be deemed ideological for its association with power relations which facilitate processes of capitalist legitimation.

> Marx’s own writings suggest that in modern capitalism the ideological functions of law are … important to the maintenance of the social order. Indeed, state power and ideology are mutually reinforcing. Thus it is vital to the ideological basis of capitalism that worker and capitalist alike are, as legal subjects, equal before the law. (Cotterrell, 1992, p. 109)

In reality, however, class power ensures this is not the case (Gramsci, 1977, pp. 73-74). The propertyless, for instance, has long been unrecognized before the law: though technically entering into free and equal contractual agreements, subordinate classes are forced to sell their labour-power to survive within the current system (Gramsci, 1977, p. 189), which the dominating class then uses to create profit (Marx, 1976/1990, p. 874; Rehmann, 2013, p. 46; see

Carroll & Sapinski, 2018, p. 6).[32] Class power has also influenced conceptual debates about corporate crime and regulation. Struggles between the corporate sector and counter-hegemonic forces are consistent and ongoing, whose outcome influences the nature of corporate regulation and the kinds of difficulties faced by those tasked with enforcing it (Snider, 1990, p. 384). Like the capitalist state, then, I argue that Western law is a site of unequal representation which reproduces the status quo.

Law in general is tasked with "enforcing the shared morality of society" (Cotterrell, 1992, p. 101), which institutionalizes certain forms of action and responsibility (Curran, 2018, p. 331). As with other forms of regulation, the law creates the conditions of existence necessary for capitalist relations to prevail (Glasbeek, 2007, p. 250). Specifically, it creates a false sense of unity, despite individual and collective differences within societies (Cotterrell, 1992, p. 102), by using such vague language that all members can agree with at least some aspect or interpretation of legal doctrine (p. 103). Legal ideology therefore consists not only of the law itself but also social consciousness, as it influences moral discourses and assumptions reflected in and through legal doctrine (p. 115).

The longstanding conceptual debate over corporate crime represents an ideological struggle within legal discursive formations. How corporate crime is conceptualized – i.e., as not "real" crime – within corporate law produces ideological effects that facilitate capitalism's (re)legitimation by enabling corporations to evade the types of legal responsibility imposed on individuals who commit interpersonal crime (Bittle & Snider, 2006, p. 481; Pearce & Tombs, 1990). In the 19th century, for instance, to prosecute a "factory crime" no longer required a test for *mens rea*, which was replaced by a new legal principle called *strict liability* (Whyte, 2014, p.

[32] According to Marx (1976/1990), "[t]he whole system of capitalist production is based on the worker's sale of his labour-power as a commodity" (p. 557).

243; see Norrie, 2014b, pp. 102-103). Consequently, such crimes became normalized and commonly understood as different from "real" crime (Whyte, 2014, p. 243). This normalization of factory crimes as routine business practice meant factory inspectors and the courts were neither legally encouraged nor required to criminally punish those responsible; generally, fines were issued instead (Whyte, 2018, p. 101). During this time, it became much more common to associate liability with corporations rather than the people who owned and controlled them (Whyte, 2014, p. 244), and by the late 1900s it was predominantly corporate persons, rather than human individuals, who were prosecuted (Whyte, 2018, p. 102). The principle of strict liability thus established the legal basis to find corporate persons responsible for transgressions, forming a *de facto* corporate veil that, within criminal law, legally protects owners and directors from prosecution (Whyte, 2014, p. 244).

In addition, because Western law focuses on individual intentionality, structural and institutional contexts get ignored in cases of corporate crime (Curran, 2018, pp. 324, 328; Tombs, 2012, p. 186). "Organized irresponsibility" (Curran, 2018, p. 328) refers to the contemporary situation in which collective actors (i.e., corporations) are joined and directed by individuals who can separate from the collective when it no longer serves their interests, or in cases of liability (p. 330). This, I argue, is an ideological effect of corporate capitalism. As Curran (2018) notes,

> [i]t is the dysfunctional combination of the highly flexible ability of individual agents to combine to create collective agency in terms of corporations, but then to disassociate from this collective agency when damages arise, that creates a systematic gap between the power to produce risk and the power to assign culpability for risk that constitutes contemporary organized irresponsibility. (p. 331)

The separation of ownership and control creates issues in connection with addressing and remedying corporate crime (Glasbeek, 2007, pp. 267-268; Whyte, 2018, pp. 95-96). Often, these deficiencies are associated with "failed" legislation rather than the systemic issue of organized irresponsibility. But the term "failed" implies that states are only guilty by omission, a false assumption. While the state *is* often guilty of omission when it comes to regulating corporate crime, it is also actively involved in creating and maintaining environments amenable to corporate capital (Tombs, 2012, pp. 177-178; Whyte, 2014, p. 244). Due to the corporation's role in this process (Whyte, 2014, p. 241), I turn now to corporate ideology.

#### ***3.2.4. Corporate Ideology (Corporate Capitalist Influences)***

At the heart of debates about regulation lies a fundamental disagreement about the nature of the corporation. Namely, whether corporations are inherently rational or criminogenic. Hence, different views of the corporation add to explanations outlining why certain regulatory responses are more likely than others (Pearce & Tombs, 1990, p. 424). If corporations are believed to be rational entities (e.g., by members of the compliance school), it stands to reason that they can be trusted with acting in a socially responsible manner without strict regulatory interference (Hawkins, 1990, p. 451; Whyte, 2004, p. 139). On the other hand, if they are believed to be inherently criminogenic (e.g., by members of the deterrence or critical school), it would be unreasonable to assume that they can (or ever will) act in a socially responsible manner. Instead, their actions are presumed bound by their primary objective to maximize profits for shareholders; an objective built into – and reified by – their structure (Bittle & Snider, 2013, p. 188; Pearce & Tombs, 1990, p. 425; Pearce & Tombs, 1991, p. 418; Snider, 2000, p. 183; Spencer, 2004, p. 8; Whyte, 2004, p. 137).

Corporate ideology would have us believe that corporations are intrinsically concerned with human and environmental well-being and that they can satisfy their drive to accumulate profits without engaging in socially and environmentally harmful behaviour. Shamir (2011) suggests that, within the world-capitalism paradigm,[33] "the rationalization of CSR deradicalizes counterhegemonic pressures and legitimates corporations as morally responsible actors" (p. 317), indicating that we should be weary of corporations that promote CSR strategies as a legitimate method to ensure their engagement in ethical business practices. However, corporations can and do promote CSR as a way to legitimately satisfy pressures to fulfil a "triple bottom line" (Spencer, 2004, p. 15; see Shamir, 2011, p. 325) – one that measures not only financial but also social and environmental performance – and to argue that they be judged solely on these laurels. In reality, corporations are only legally responsible to their shareholders and are judged almost exclusively from a financial standpoint by the market. Comparatively, while financial reporting has been developed and refined over hundreds of years, social and environmental reporting is in infancy, critiqued as more useful for improving corporations' public image than setting clear operating standards (Spencer, 2004, p. 15). Thus, it is perhaps their ability "to colonise our thinking" that makes corporations – and those that control them – so dangerous (p. 5).

In sum, corporate ideology reflects a positivist ontological belief in one singular, "true" reality; it is an "ideology [that] draws its strength from pretending to be objective, pragmatic truth, which cannot be disagreed with" (Spencer, 2004, p. 26). According to this ideology, corporations are natural, inevitable, and no different from any other rational entity capable of behaving responsibly. But, although they present themselves as much, corporations are really

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[33] This paradigm "holds that globalization is not only about the expansion of markets beyond national borders but also about the expansive representation of markets as an optimal organizational principle for state and society as a whole" (Shamir, 2011, p. 315).

just legal and ideological constructs created to benefit a select few at the expense of the majority (Pearce & Tombs, 1990, p. 431; Spencer, 2004, p. 26). To further explore the nature of contemporary capitalism, I now turn to the nature of state-corporate relations.

## 3.3. The Nature of State-Corporate Relations

A key ideological effect of neoliberal capitalist discourse is that the corporation has been accepted as the best tool for “economic success” (Tombs, 2012, p. 187; see Bittle, 2015, p. 147; Tombs & Whyte, 2015, p. 3), establishing “market-rule” as natural and inevitable to everyday life (Soederberg, 2010, p. 7). Because neoliberal capitalist states employ various (re)regulatory interventions to maintain the long-term viability of capital, it is unsurprising that regulation is often referred to as a place where modern states and corporations intersect (Tombs & Whyte, 2015, pp. 21-22). As state-corporate relations are characterized as *symbiotic* in critical corporate crime literature (see Bittle & Snider, 2013, p. 187; Tombs & Whyte, 2015, p. 69; Weisbart, 2018, p. 473), I argue that they reflect key power relations within capitalist societies, generally, and the Canadian extractive industry, specifically. To explore this idea more fully, I first describe the structure and function of the modern corporation.

### *3.3.1. The Modern Corporation*

Corporations are not only the technical perpetrators of corporate crime but created in and through the law (Spencer, 2004, p. 5). Without corporate law, the corporation would not be such a dominating, inevitable force in modern society (p. 5; Tombs & Whyte, 2015, p. 1), or taken for granted as the most efficient method for producing and distributing goods and services (Tombs & Whyte, 2015, p. 3). The contemporary corporation’s primary objective, capital accumulation – i.e., profit maximization for its shareholders (Bittle & Snider, 2013, p. 188; Glasbeek, 2002, p. 76; Glasbeek, 2007, p. 249; Pearce & Tombs, 1990, p. 425; Snider, 2000, p. 183; Snider, 2015,

p. 18; Spencer, 2004, p. 8; Whyte, 2004, p. 137) – perpetuates this assumption. According to Pearce and Tombs (2001), it is impossible to tease apart corporations' profit-oriented objective from acts of corporate crime (p. 214). To better understand how and why such acts are committed with relative impunity thus necessitates an examination of the corporate structure, including its objectives.

Tombs and Whyte (2015) define modern corporations as "institutions that are created for the mobilisation, utilisation and protection of capital within recent socio-historical state formations" whose survival relies on the state (p. 54). They further describe corporations as entities that exist both within and beyond state rules and institutions (p. 25), and as "systematically criminal" (p. 180). Likewise, I argue that corporations are, and always have been, inherently criminogenic (see Bittle, 2015, p. 147; Glasbeek, 2002, p. 142; Glasbeek, 2007, p. 249). Indeed, the first corporation became so by breaking the law.[34] The East India Company is well-known for making the first transition from trade association to commercial company through the use of "joint stock" ventures that enabled individual shareholders to invest personal stock in the company for trade in its own name. Even though this transition was against the law it went unchallenged, paving the way for other trade associations to do the same (Spencer, 2004, p. 6) and setting the enduring legal precedent for "regimes of permission" (Whyte, 2014, p. 244).

The continued existence and maintenance of the corporation is dependent upon legal privileges provided by the state. The modern corporation, in particular, has four legal characteristics worth noting (Glasbeek, 2002, p. 11; see Spencer, 2004, p. 6): (1) instant maturity, which means that as soon as incorporated, a corporation "has all the legal capacities it

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[34] Originally, incorporation was only granted to public "not-for-profit" organizations (Spencer, 2004, p. 6). It was not until 1855 that English law granted companies the privilege of limited liability (Snider, 2015, p. 1; Spencer, 2004, p. 7).

is ever going to have" (Glasbeek, 2002, p. 8); (2) equal legal rights to adult humans, with the added benefit of never aging, which means that a corporation can enforce these rights forever; (3) a legal personality, which affords the corporation "freedom of decision-making and action" (p. 8); and (4) limited liability, which separates the corporation from its investors (p. 9). These legal characteristics enable corporations to enjoy all the benefits of personhood without experiencing any of the drawbacks. Since corporations are not "real" people but "legal persons," these benefits are transferred to those actively (i.e., directors) and financially (i.e., shareholders) controlling them (Spencer, 2004, p. 9).

The legal principle of separate identities, (i.e., the corporate veil; Tombs & Whyte, 2015, p. 85; see Spencer, 2004, p. 9), enables the human individuals behind corporations to avoid liability for corporate crimes, often committed (and forgiven) in the name of profit maximization (Glasbeek, 2002, pp. 6, 38, 177; see Kuyek, 2019, p. 134). Determining responsibility is further complicated by developments in company law and practice (Spencer, 2004, p. 18), which result in a perpetual cycle of cat-and-mouse. On one hand, directors are legally bound by fiduciary duties, interpreted as acting in favour of shareholders' interests (often equated to company interests; p. 8). On the other hand, shareholders (assumed to be individuals)[35] legally own the company but are not involved in its daily control, which is left to directors (pp. 17-18; see Whyte, 2018, p. 95). The result? Neither group is forced to critically consider the corporation's impact, apart from its ability to maximize profits, which creates a "power vacuum" (Spencer, 2004, pp. 17-18) and transforms the corporation into the most ideal capitalist money-making machine (p. 22).

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[35] The tendency to assume shareholders are individuals (versus institutions) is criticized because it neglects the impacts of institutional investments, which add to the issue of corporate power (Soederberg, 2010, p. 6).

In light of all this, I argue that the corporation is criminogenic by design; that its form and function are rooted in its primary objective, profit maximization, making the modern corporation not only a tool for wealth accumulation but a mechanism to globally advance capitalist interests (Whyte, 2020, p. 75). Worse, to achieve its primary objective, the corporation can and will ignore the well-being of people and the environment to maximize profits (Bittle, 2015, p. 147; Tombs & Whyte, p. 110; Whyte, 2020, p. 65). Consider the case of the infamous East India Company. Despite the company's transgressions (e.g., bribery, illegal trade, collusion in military oppression), the British government never took legal action because its interests were bound up with the company's (Whyte, 2014, pp. 242-243; Whyte, 2020, pp. 83-84).

Like the East India Company, the modern corporation continues to engage in activities that satisfy mutual state-corporate interests at the expense of the majority. Similar to the state, its presentation as neutral masks the fact that those interests are biased towards achieving certain (capitalist) political and economic goals (Glasbeek, 2002, p. 4; Glasbeek, 2007, p. 250; Soederberg, 2010, p. 51; Spencer, 2004, p. 26), reinforcing the dominant view that states and corporations are autonomous (Tombs & Whyte, 2015, pp. 25-26). CSR further reifies the perceived autonomy of the corporation – and thus obscures the power relations inscribed within it (Whyte, 2018, pp. 94, 109) – by inferring that the corporation has its own identity apart from the people who own and control it. As a result, the corporation is anthropomorphized, making us believe that it thinks and acts of its own will (p. 93). By reinforcing the idea that states and corporations are autonomous, corporate capitalist ideology masks state-corporate symbiosis, which is important to the reproduction of capitalism.

### *3.3.2. Symbiosis and Interdependence*

Whyte (2020) suggests that regulation and the role of capitalist states cannot be understood without considering the nature of state-corporate relations (p. 109). Much of existing research tends to focus on collaboration between states and corporations, based on the assumption that when corporate power and influence increase, state power decreases (Tombs, 2012, p. 175). However, corporate crime cannot be relegated to something that occurs only when states are not vigilant or strict enough, or, worse, as a natural cost of business. Instead, the interdependence and symbiotic nature of state-corporate relations must be critically examined to better explain the production and intensification of corporate crime within capitalist societies (Whyte, 2014, p. 237). From this perspective, states are not passive observers but active participants in this process and, rather than autonomous entities, states and corporations are interdependent, existing within symbiotic relations (Tombs, 2012, p. 176; Whyte, 2014, p. 245).

Characterizing state-corporate relations as symbiotic highlights the interdependence of modern states and corporations (Wonders & Danner, 2001, p. 101), whose roles and relations are influenced by the neoliberal capitalist context (Moon & Vogel, 2009, p. 303). *De*regulation narratives, which represent the dominant view, inaccurately describe states and corporations as autonomous entities and fail to account for the complex, symbiotic nature of state-corporate relations within the current context (Tombs & Whyte, 2015, pp. 25-26). Since the neoliberal capitalist state is ultimately concerned with ensuring the long-term viability of capitalism, examining how it regulates harmful corporate activity – even if only symbolically – is of utmost importance if we are to understand to what extent state mechanisms, like the CORE, reinforce and/or reproduce the status quo.

### 3.4. Summary and Conclusions

What should now be clear is that corporations are unnatural legal creations (Glasbeek, 2002, p. 3; Spencer, 2004, p. 5), despite what corporate capitalist ideology promotes (Tombs & Whyte, 2015, pp. 1-2). It should also be clear that, in the current context, state rules and institutions create an environment amenable to capital that corporations' existence and legitimation depend on (Tombs & Whyte, 2015, p. 54; see Spencer, 2004, p. 5). Without corporate law, which both represents and (re)produces corporate capitalist ideology, the corporation would not be the dominating social force it is today (Tombs & Whyte, 2015, p. 1). Because it is perceived as the most efficient tool for the creation and distribution of goods and services (Bittle, 2015, p. 147; Tombs & Whyte, 2015, p. 3), the corporation is deemed legitimate and promoted as natural and inevitable, and its activities are judged acceptable and desirable even when they result in harm. In essence, corporations have an "underlying capitalist nature" (Soederberg, 2010, p. 7), which is both facilitated and favoured by corporate law (Glasbeek, 2002, p. 68). As Pearce and Tombs (1991) note, the ideological, legal, and regulatory environment within which corporations operate inevitably shapes their (criminogenic) behaviour (p. 419), pointing to how the mode of production – in this case, capitalism – shapes corporate behaviour and its regulation.

In addition, neoliberal capitalism has increased the "structural power" and "social credibility" of capital, which has changed the nature of corporate regulation (Pearce & Tombs, 2001, p. 212). The privileges of corporate personhood and limited liability, in combination with liberal influences on the law, like individualism and *mens rea* (Spencer, 2004, p. 9; Tombs & Whyte, 2015, p. 82), mean that corporations are free to commit crimes with relative impunity. State-corporate symbiosis adds to this issue by enabling and permitting corporate wrongdoing via state negligence (i.e., omission) *and* collusion (i.e., commission; Tombs & Whyte, 2015, pp. 164-165; Whyte, 2014, p. 239; Whyte & Wiegratz, 2016, p. 246). The social consequence is that the harmful effects of corporate crime are borne by the most vulnerable members of society (Tombs & Whyte, 2015, pp. 14-15), including its victims (Snider, 2015, p. 16). Moreover, powerful elites' use of neoliberal capitalist discourses to frame commonsense understandings of political economy, regulation, and the corporation illustrates how discourse is connected to social institutions and that "power is inscribed within [it]" (Purvis & Hunt, 1993, p. 488; see Springer, 2012, p. 141). Powerful state and industry elites benefit from legitimating narratives, which promote the industry as integral to the social-political-economic stability of Canada, as well as the democratic efforts of the Global South. Because counter-hegemonic discourses – which draw attention to the countless communities destroyed, environments degraded, and people killed – threaten the legitimacy of capital, they are stifled. However, they also represent the possibility of alternatives (Whyte & Wiegratz, 2016, p. 247).

Canadian extraction provides a useful point of departure to analyze capitalism's continued dominance, especially as it relates to corporate regulation. I used Marxist ideology theory and CDA, both of which I address in the following chapter, to uncover the factors (e.g., social, political, economic) that shaped the introduction and eventual creation of the CORE, examine why the CORE emerged as a logical state response to extractive industry corporate crime, and explore to what extent the CORE contributes to the reproduction of capitalist power relations. Utilizing this theoretical-analytical framework, I argue that neoliberal capitalism is an *ideological discourse* because it is "connect[ed] with systems of domination" (Purvis & Hunt, 1993, p. 497). My research seeks to uncover how this connection influences the Canadian state's response to corporate crime within the Canadian extractive industry.

## Chapter 4: Theoretical-Analytical Framework

Ideology refers to particular perceptions and interpretations of the world around us (Fairclough, 2010, p. 46; Purvis & Hunt, 1993, p. 474; Stråth, 2013, p. 17). Within critical Marxist approaches, ideology theory is used as a lens through which to examine how consciousness conditions people's lived experiences in ways that help reproduce existing social relations (Hunt, 2004, p. 606). It helps explain why some phenomena are more likely to occur within certain societies or, more specifically, why some forms of state regulation are more probable within capitalist societies. What my research seeks to uncover is to what extent certain (e.g., political-economic, legal, corporate capitalist) ideologies influence the nature of regulation within capitalist societies like Canada. Using ideology theory and CDA, my research addresses this objective by critically examining discourses appearing within debates leading up to the Canadian state's introduction and eventual creation of the CORE, as well as ongoing debates regarding its role.

In the remainder of this chapter I build from the concepts addressed in the previous three chapters to elaborate on Marx's theory of ideology and CDA in the context of my research. Specifically, I explore the relevance of Marx's class theory to my analysis; provide a brief theorization of the capitalist state; highlight important Marxist influences on the approach to ideology theory I employ herein; underline the compatibility of Marx's ideology theory and CDA to justify my theoretical-analytical combination; outline the particular approach to CDA chosen for the purpose of this research; detail my sources and describe how I methodologically read the data; and, finally, present my approach to ideology theory.

### 4.1. Marx's Class Theory

According to Marx, a society's *mode of production* – "the combination of the economic base of relations of production and the institutions and social practices that support the relations of production" – shapes its social relations and constitutes the various classes within it (Cotterrell, 1992, p. 108; see Marx 1981/1991, p. 117). In other words, a society is made up of a complex web of relations, within which each position has its own point of view and conditions of existence (Parekh, 1982/2015, p. 32). The standpoint from which we analyze society therefore inevitably impacts our perceptions, interpretations, and assumptions about its nature. As a people, we are free to resist or struggle against the dominant relations of the society we live in, assimilate, or feign ignorance, but we cannot escape being shaped by our class positions (Holt, 2014b, p. 18; see Beetz & Schwab, 2018, p. 340; Çoban, 2018, p. 104). Importantly, these positions are not fixed (Holt, 2014a, p. 2), meaning that class describes a process itself amenable to change and that class relations do not (and will not) behave or appear the same across space or time.

"For Marx, class referred to specific economic (not political or cultural) processes: producing, appropriating, and distributing the surplus. Class was primarily an adjective distinguishing these surplus processes from all other social processes" (Resnick & Wolff, 2006, p. 2; see Marx, 1976/1990, p. 1021). Marxian class theory is thus concerned with who owns (and in what quantity) a society's productive forces (Holt, 2014a, p. 2), which makes it both structural and materialist. Structural, because it is concerned with ownership relations which, rather than individual awareness, determine class position. Materialist, because class positions are formed around individuals' ability to satisfy their basic needs via access to the material resources necessary to sustain life (Resnick & Wolff, 2006, pp. 3-5). Because human development frequently creates new human "needs," however, class relations are "neither natural nor timeless" (Holt, 2014b, p. 16). Any number of class processes may (co)exist and interact within a given society, especially since individuals tend to frequent multiple social sites, like work, home, or school, throughout their daily lives. For example, Resnick and Wolff (2006) found that while enterprises were predominantly organized as capitalist class structures within US society, non-capitalist class structures were also present, such as self-employing and feudal class structures, the latter predominantly evidenced within the home (p. 3). To conceive of class as an adjective thus necessitates evaluating how a society's wider social context (i.e., culture, religion, education, law) both shapes and is shaped by class processes; it means more closely evaluating the multiple positions an individual can hold within dynamic class structures and the multiple sites of production, appropriation, and distribution of surplus (pp. 2-3).

Marx's theory of historical materialism attempts to illustrate that class relations are (re)formed in and through human development; that they are in a constant state of flux. He argues that human history can be adequately explained by examining transformations in the *material* (versus ideational) aspects of societies (Cotterrell, 1992, p. 107; Fairclough & Graham, 2002, pp. 9-10; Hawkes, 2003, p. 89; Marx & Engels, 1964/1968, pp. 50-53). As such, a central feature of Marx's class theory is capitalism's internal contradictions, especially those between the dominant and subordinated classes (which produce class struggle). Within this theory, ideology is important to fettering the development of class consciousness, realized when individuals become aware of class antagonisms (an intrinsic feature of capitalist societies; Holt, 2014c, p. 8). To oversimplify, then, ideology maintains the status quo by masking class antagonisms and preventing the realization of class consciousness.[36] This makes class revolution

[36] Likewise, Gramsci (1977) likened a proletariat without class consciousness to "Puppets dancing on a string!" (p. 47).

seem both unnecessary and impossible by framing the existing mode of production as natural, inevitable, and just (p. 7); as "the only possible social structure" (p. 2). Based on this reasoning, *ideology* can be understood as "a set of ideas and beliefs that explain, sanction, and justify the current social structure of positions, outcomes, and authority" (Holt, 2014a, p. 11).

For Marx, ideology features in all class-divided societies, including capitalism (Leopold, 2013, p. 22); however, there is much variation in how ideology manifests within different societies, largely based on the form social relations and struggle take within them (Fairclough, 1989, p. 87). With regard to class-divided societies, ideology is particularly useful in explaining their relative stability or, put differently, "the absence of overt and serious conflict between social classes" (Leopold, 2013, p. 22). Hence, class processes are to Marx's class theory what the obfuscation of contradictions within capitalism is to ideology theory. Marx's dialectic focus means that neither of these objects can be studied apart from their wider (social-political-economic) context, necessitating consideration of the state.

**4.2. Theorizing the Capitalist State**

Traditionally, in Western democracies, the state is tasked with controlling corporations; there is no comparable institution, despite its alleged "inadequacies" (Pearce & Snider, 1995, p. 19). But what makes a state capitalist? The state is but one of many social relations which factor into the (re)production of capitalism (Bittle, 2015, p. 135). Keeping in mind both concentrated and dispersed forms of power, I argue that the state is not "a unitary set of apparatuses governed and directed from some central command centre" (Hunt, 2004, p. 607). Instead, drawing on the work of Poulantzas, I argue that the state is a (complex) social relation (Jessop, 2008, pp. 118-119; Mahon, 1979, pp. 169-170; see Jessop, 1990, p. 200). Conceiving of the state in this way means rejecting its status as autonomous to understand that it is influenced – not determined – by other structures within capitalist societies, including discourse. In other words, the capitalist state is both shaped by dominant, ideological discourses *and* an active agent in their (re)production, complicit in their effects. It is not vulnerable to capture by corporate elites, merely an instrument to be controlled, but rather a *relation* through which different interests are represented and (re)combined (Pearce & Tombs, 2001, p. 197; see Gramsci, 1971, pp. 262-263; Jessop, 2008, p. 135; Mahon, 1979, p. 163; Soederberg, 2010, p. 15). Its composition is always-already in flux.

To avoid overlooking the state's capitalist orientation and complex commitment to profit accumulation, it is important to consider both its positive and negative roles (Tombs, 2012, p. 172). According to critical corporate crime scholars, state regulation is about more than "policing" – its negative role – it is also about creating the necessary conditions for the ongoing maintenance of "a capitalist social order" – its positive role (pp. 172-173; see Carroll & Sapinski, 2018, p. 17; Jessop, 1990, p. 205; Mahon, 1979, p. 166; Whyte, 2014, p. 241). Marxist regulation theorists argue that this occurs through the process of regularization, wherein the dominant mode of production, along with its forces and relations, are normalized and taken for granted as natural and inevitable (Holt, 2014c, pp. 2, 7; see Whyte, 2014, pp. 240-241). Shifting our gaze from the negative, controlling role of the capitalist state therefore creates space to analyze its positive, facilitative role, and to expand our analysis of regulation (Whyte, 2014, p. 241).

The capitalist state's internal contradiction – controlling versus facilitating capitalism – begins to explain why the CORE emerged as a logical state response to the harms and crimes of the extractive industry. By creating a voluntary, CSR-style position, the Canadian (capitalist) state could fulfil its negative role as "policeman," while not infringing too much on the "free" market to fulfil its contradictory positive role of maintaining capitalist class structures. Ideology theory helps to explain the cyclical reproduction of this ideological effect.

**4.3. Ideology: A Marxist Evolution**

Conceptually, ideology has undergone a contested evolution (Stråth, 2013, p. 15) characterized by “contingency, openness, and outcome rather than cause” (p. 16; see Fairclough, 1989, pp. 93-94). Originally coined by the French ideologues circa the French Revolution in reference to a new social science of ideas (Stråth, 2013, p. 3; see Fairclough & Graham, 2002, p. 14; Rehmann, 2013, pp. 124-125), ideology was soon recontextualized to refer to “a political concept of conflict” (Stråth, 2013, p. 5). Reimagined several more times between then and now, ideology’s conceptual history represents an ideological struggle in and of itself, with accepted versions throughout representing the victors’ point of view.

Ideological struggles both exist within language and occur over it, which means that language is both “a *stake* [and] *site* of social struggle” (Fairclough, 1989, p. 88). In jeopardy is the ability to designate one’s own view as the dominant discourse or common sense (p. 90). As such, and in line with critical Marxist approaches, I further conceptualize *ideology* as a term referring to “ideas born out of certain material interests within struggles for power” (p. 94).

Leopold (2013) lists three ways of interpreting ideology within Marxism: (1) *descriptively*, which involves the study of beliefs and rituals attributed to certain social groups throughout history; (2) *positively*, which involves accounting for a “world view” that provides members of social groups a “sense of meaning and identity”; and (3) *critically*, which involves a campaign to liberate people from their “false consciousness” (p. 21). In the following sections, I provide more detail on those aspects of Marx and Engels’s and Gramsci’s work which have informed my particular application of ideology theory.

### *4.3.1. Karl Marx and Friedrich Engels*

*The German Ideology* is often cited as Marx and Engels's most notable contribution to the conceptual debate over "ideology." Representing a seminal moment in Marx's work, proponents argue that it was here, with Engels, that he "firstly critique[d] ideological conceptions of the relationship between language, consciousness, [and] social life" (Fairclough & Graham, 2002, p. 16; see Purvis & Hunt, 1993, p. 480). One interpretation of this text suggests that the ruling class used ideology as a tool to assert its ideas as the ruling ideas within class-divided societies. Based on this interpretation, ideology reifies class power by distorting reality and preventing the realization of class consciousness (Hawkes, 2003, p. 95; Stråth, 2013, pp. 8-9; see Marx & Engels, 1964/1968, pp. 62-63).

The most common critique of Marx and Engels's work on ideology concerns this "false consciousness" interpretation, which arose from their *camera obscura* metaphor wherein they compared a camera lens to ideology, allegedly arguing that they both produce distorted or inverted representations of reality (Rehmann, 2013, pp. 22-23; see Marx & Engels, 1964/1968, p. 37; Purvis & Hunt, 1993, p. 478). This passage is criticized for its empiricist implication that reality does not exist without some form of interpretation (Rehmann, 2013, p. 23). What most critiques fail to acknowledge, however, is that directly preceding this famous passage, Marx and Engels (1964/1968) write that consciousness is our relation to the world around us and that, in combination with material activity, it forms "the language of real life" (p. 37; Rehman, 2013, p. 25; see Fairclough & Graham, 2002, pp. 18-19; Purvis & Hunt, 1993, p. 477; Stråth, 2013, p. 8). Reducing ideology to pure illusions or false consciousness is thus an oversimplified understanding of their work (Rehmann, 2013, pp. 29-30, 42; see Hawkes, 2003, p. 91). To add depth would require examining ideology through the material, or as it appears in the structuring and maintenance of social relations of domination, including discourse (Rehmann, 2013, pp. 31-32).

For Marx and Engels, ideology is a "superstructure" that simultaneously represents and renders transparent "the real material interests of the basis" (Stråth, 2013, p. 9; see Marx & Engels, 1964/1968, p. 62). Marx further argued that ideologies and *ideologists* – "people who create, disseminate, or use the set of ideas and beliefs that form an ideology"[37] (Holt, 2014c, p. 2; see Holt, 2014a, p. 11) – feature in class-divided societies due to their inherent contradictions. For example, the division of labour creates space for groups of people to engage in the professional, intellectual work of creating and disseminating ideologies. This means that those who own a larger share of a society's productive forces can finance research which (re)produces ideas representative of their view of the world (Holt, 2014c, p. 4; see Marx & Engels, 1964/1968, pp. 61-62). Consequently, such ruling classes become rulers of the material and intellectual forces influencing a society and its relations (Rehmann, 2013, p. 32).

Let us return to the idea that capitalism's reproduction, unlike previous class structures like feudalism, is sustained by covert mechanisms of control rather than brute force. Marx (1976/1990) characterized capitalist domination as "silent," operating effectively without force to (re)assert capitalism as "self-evident natural laws" (p. 899; see Rehmann, 2013, p. 48). In this way, the positive and critical Marxist interpretations of ideology noted above interact: the world view of the dominant social group is taken up as the "ideal" thus influencing individuals' (false) consciousness. Antonio Gramsci's work – a valuable contribution to Marxism (Çoban, 2018, p. 91) – helps explain how this hierarchical ordering of capitalist social relations is sustained (Leopold, 2013, p. 28).

[37] What Gramsci (1971) termed "'pure' intellectuals" (p. 390).

### *4.3.2. Antonio Gramsci*

Within Gramsci's work, *hegemony* refers to the intellectual (and moral) aspect of ruling class dominance. It explains how subordinate classes become constituted within dominant conceptions, and thus ordering, of the world (Leopold, 2013, p. 28; see Çoban, 2018, pp. 90, 94; Fairclough, 1989, p. 84; Gramsci, 1971, p. 259; Langman, 2015, p. 420), or, put differently, how the dominant mode of production (i.e., capitalism) becomes naturalized, even by members of society with alternative lived experiences.

Gramsci termed "natural, transparent, and unquestioned" forms of knowledge *common sense* (Purvis & Hunt, 1993, p. 479), which influence both material (e.g., social interactions) and ideational (e.g., meaning-making processes) aspects of social life (Fairclough, 1989, p. 98). An ideological form of common sense is one associated with maintaining unequal power relations. Importantly, ideological common sense is not binary (i.e., either ideological or not), but more fruitfully understood as contributing to this maintenance process "in varying degrees" (p. 84). Put simply, ideologies are not necessarily commonsensical but may become so if victorious in ideological struggles (p. 107).

Within ideology theory, *naturalization* denotes the key process through which certain discourses become commonsensical and taken up as natural; sometimes, even being regarded as the only way to legitimately think and exist. Ideological struggles explain why only some discourses attain this status, wherein those that "win out" are for the most part endorsed by the hegemonic class (Fairclough, 1989, pp. 91-92). In other words, hegemonic power influences the outcome of struggles over which social meanings and behaviours become naturalized, self-evident truths (p. 95). The ideological effect being the continued reproduction and acceptance of dominant discourses as common sense, which further constrains and silences alternatives (p.

105). Hence, naturalization provides one explanation for the sustained dominance of the powerful (Fairclough, 2010, pp. 43-44), which may utilize ideology to achieve this end. Gramsci's work is therefore important to understanding the continued (re)constitution and (re)production of (dominant) social relations through discourse (p. 64).

Within critical corporate crime literature, Gramscian notions of hegemony and common sense are useful for understanding such topics as corporate crime and regulation. Carroll and Sapinski (2018), for example, employed these concepts to make sense of how corporate power works, suggesting that when capitalist ideas and values "become 'common sense,' corporate power achieves a strong hegemony" (p. 99). However, they also noted the prevalence of "counter-narratives" (p. 99), which threaten the status quo and force the powerful to constantly reassert dominance; for example, through processes of naturalization (pp. 99-100). The authors further highlighted the importance of "discourses of legitimation" to this process (p. 112), concluding that change from below is imperative if we are to achieve a paradigmatic shift in our social-political-economic-cultural organization (p. 137).

Likewise, Soederberg (2007) drew on Gramsci's work to argue that the Global Compact, an international CSR strategy, normalizes and reproduces dominant development and regulation paradigms rooted in neoliberal ideology (p. 500). To do so, they outlined several commonsense beliefs (e.g., the inherent value of capital and self-regulatory capacity of the market) that shaped depictions of voluntary regulatory mechanisms as "better" than alternatives (p. 502). Soederberg (2007) concluded that the Global Compact was a capitalist strategy – or, in Gramscian terms, "a passive revolution" (p. 503)[38] – and that the broader CSR movement has been coopted (i.e., recontextualized) to subvert resistance to dominant (neoliberal) norms (pp. 507-508).

[38] "Passive revolution refers to a top-down strategy aimed at preventing the development of a revolutionary adversary" (Soederberg, 2007, p. 509; see Gramsci, 1971, p. 106).

Bittle and Snider (2006) also utilized a Gramscian notion of hegemony to argue that the Westray Bill (*Bill C-45: An Act to Amend the Criminal Code [criminal liability of corporations]*) was formed in the likeness of "a particular legislative perspective" (p. 486). Because this perspective is rooted in corporate capitalist ideology, they found that it reflected the interests of the hegemonic, "historical bloc"[39] by prioritizing corporate protection rather than confronting corporate power or sanctioning corporate harm (p. 486). They further concluded that assumptions about the natural, necessary, and inevitable nature of corporate capitalism influenced common conceptions of corporate crime "as different from 'criminal' offences" (p. 488), but paid particular attention to alternative discourses and forms of resistance, noting that the law must be understood as "a site where different discourses struggle" (p. 488). At stake? The ability to frame existing social processes in one's image thereby amassing social, economic, and structural power (pp. 489-490).

Like these scholars, I employed concepts from Gramsci's work to make sense of Canadian state regulation within a broader Marxist theory of ideology. However, though complementary, hegemony and ideology are not interchangeable but distinct concepts (Çoban, 2018, pp. 97-98; Rehmann, 2013, p. 145). Perhaps the simplest description of their difference can be made by distinguishing hegemony as an ideological effect. Remembering that *ideological effects* are "the results or consequences of discourses for social practice in general and oppositional struggles in particular" (Purvis & Hunt, 1993, p. 490), hegemony becomes the outcome of the naturalization of dominant discourses and recontextualization of alternative ones.[40] According to Rehmann (2013), ideological mechanisms reinforce hegemony by ensuring

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[39] *Historical blocs* are "temporary and unstable alliances built on combinations of ideology and self-interest that can be both created and destroyed through political struggle" (Lipsitz, 1988, p. 146).

[40] *Recontextualization* refers to the colonization, cooptation, or subsumption of a discourse by a field within which it did not originate (Fairclough, 2012, p. 12). For example, in the context of extraction, sustainable development

dominant ideas are accepted by the majority (p. 145; see Çoban, 2018, pp. 97-98). In other words, hegemony denotes an ideology's *directionality* or, which social group it favours (see Hunt, 2004, p. 606; Purvis & Hunt, 1993, p. 479). In sum, "[h]egemony can be defined as rule with the consent of the ruled[;] hegemonic power [as] how that consent is secured, organized, and maintained" (Carroll, 2021b, p. 12; see Çoban, 2018, pp. 90, 96; Gramsci, 1971, p. 259); and ideology as but one tactic used to secure such widespread consent (Çoban, 2018, p. 92).[41]

Despite key differences between Marx and Engels's and Gramsci's critical approaches – namely, Gramsci's departure from strict materialism to examine how revolutions are fought and won in the realm of ideologies (Hawkes, 2003, p. 113) – I draw a common thread between them: "ideologies are a significant element of processes through which relations of power are established, maintained, enacted and transformed" (Fairclough, 2010, pp. 25-26). Hence, a major advantage to using ideology theory versus discourse theory for this work lies in its inclusion of the notion of directionality, which presumes that ideologies always benefit some and "disadvantage others" (Purvis & Hunt, 1993, p. 479; see Hunt, 2004, p. 606).

*Critical* discourse analysis is concerned with uncovering the role of discourse in (re)producing macro social structures and is thus relevant to the study of ideology (Fairclough, 2010, p. 26). Rather than simply describe discourse (e.g., as a reflection of material conditions), as in descriptive discourse analysis, CDA evaluates the performative nature of language (Fairclough, 2010, pp. 45, 50; see Beetz & Schwab, 2018, p. 344), focuses on relations of power, and seeks to address and remedy social issues (Fairclough et al., 2004, p. 1; see Fairclough,

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discourses have been recontextualized from environmental and activist fields to that of the industry. As a process, recontextualization should thus be considered in the context of struggle (Fairclough et al., 2004, pp. 2-3).

[41] Indeed, Hawkes (2003) suggests that hegemony refers to "the nexus of material *and* ideological instruments through which the ruling class maintains its power" (p. 114).

2002, p. 165; McKenna, 2004, pp. 10, 15, 21). For these reasons, CDA, in combination with ideology theory, makes a logical choice for this project.

**4.4. Ideology and Critical Discourse Analysis**

Drawing from critical social research generally and critical language studies in particular, CDA offers an approach to studying the connection between language, discourse, and social life (McKenna, 2004, p. 10) that merges critical social and language studies through its emphasis on the relationships between discursive (e.g., language) and extra-discursive (e.g., power relations, identity) aspects of social life (Fairclough, 2012, p. 9). Marxist approaches, including and importantly those discussed above, played an important role in the emergence and early work of critical discourse studies (McKenna, 2004, p. 10; see Beetz & Schwab, 2018, p. 339), which speaks to the compatibility of Marxism and CDA (Fairclough & Graham, 2002, p. 6).

Within CDA, *language* is described as "an irreducible part of social life, dialectically interconnected with other elements of social life" (Fairclough, 2003, p. 11; see Fairclough, 2010, p. 3); *discourse* as "a particular way of representing some part of the (physical, social, psychological) world" (Fairclough, 2003, p. 17; see Fairclough, 2012, p. 11; Fairclough & Graham, 2002, p. 5); and an *order of discourse* as "the relatively durable structuring and networking of social practices" (Fairclough, 2003, p. 12), including meaning-making processes (Fairclough, 2012, p. 11). Therefore, while discourse can refer to an entity in itself, I view it as a complex set of relations (see Fairclough, 2003, p. 3).

For Fairclough (2010), CDA includes three key elements: (1) analysis of discourse, along with a transdisciplinary, systematic analysis of the social world; (2) the systematic analysis of texts; and (3) critique, with an orientation towards the elimination or mitigation of social harms (pp. 10-11). With regard to the latter, ideological critique, which "focuses on the effects of semiosis on social relations of power," has been the most common approach within CDA (Fairclough et al., 1997, p. 8). Similarly, ideology theory is concerned with how social structures maintain dominance, noting that discourses become ideological when associated with relations of power (Fairclough, 2010, p. 27; Fairclough, 2012, p. 15; Purvis & Hunt, 1993, p. 497) and that ideological discourses become commonsensical through processes of naturalization. When accepted as common sense, the origins of ideological discourses become unrecognizable, making them appear as "consensus" (Fairclough, 2010, p. 37). As in these cases, ideology is most powerful when it ceases to be recognized as such (Fairclough, 1989, p. 107; Fairclough, 2010, pp. 43-44; Hunt, 2004, p. 606; McKenna, 2004, p. 13).

An important theoretical assumption underpinning ideology theory is therefore that "verbal interaction is a mode of social action" (Fairclough, 2006, p. 20). Ideology theorists believe that "[d]iscourse is constitutive, but not in a determinative sense" (p. 20). What this means is that social institutions, consciousness, and behaviour are believed to be constituted in and through discourse without being reducible to language (p. 20); that our thoughts and actions are both constructed and constrained by (orders of) discourse, as a system of organization itself (Fairclough, 1989, p. 40; see Beetz & Schwab, 2018, p. 339; Fairclough et al., 1997, p. 1; McKenna, 2004, p. 12). Put more simply, in learning to communicate within particular discoursal systems, we become (subconsciously) accustomed to thinking and behaving in certain ways (i.e., "ideological norms;" Fairclough, 2010, p. 42). However, this is not a "mechanically deterministic process" (p. 42): both discourse and ideology are pluralistic in that they always constitute a range of alternatives and norms, which give rise to conflict and (ideological) struggle. From a Marxist perspective, ideological struggle is bound up with and has a stake in class struggles, the outcomes of which influence the direction of ideology (pp. 42-44) therefore illustrating the mutually constitutive nature of discourse and aspects of social life (p. 40).[42]

### 4.5. A Combined Theoretical-Analytical Approach

While discourse analysis on its own does provide a viable method to identify discourses, discursive relations, their connections with the extra-discursive, and their recontextualization, it is necessary to consider broader social contexts to identify ideologies, including “relations of power, domination, struggle, and resistance – the ‘external’ dialectics of discourse” (Fairclough, 2010, p. 79). For this reason, I employed the theoretical-analytical combination justified in the following sections.

#### *4.5.1. Merging Theory and Method*

As noted by Fairclough and Graham (2002), the relationship between one’s research object, theory, and method is dynamic and ever evolving. It is “not a matter of pre-existing theory and method being ‘applied’ to a new object” (p. 6), but of the (re)intersection and (re)configuration of methodological elements throughout the entire research process (p. 6; Fairclough, 2012, p. 13). Fairclough (2012) also indicates a preference for “methodology” versus “method” to account, accordingly, for the interdisciplinary nature of the research process; a process which includes both the theoretical construction of the object and careful selection of methods but forgoes the traditional tendency to draw a “sharp” line between the two (p. 13). It is from this perspective that I formed my theoretical-analytical framework.

I used a dialectic approach based on Marx’s tendency to do the same (Hawkes, 2003, p. 89), wherein he started from social life to challenge taken-for-granted assumptions within and

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[42] This mutually constitutive reasoning is echoed by Marx and Engels (1964/1968) who state that “circumstances make men just as much as men make circumstances” (p. 51).

about it (Fairclough & Graham, 2002, p. 19). Indeed, language critique features notably in Marx's work:

> Critical language analysis is central to Marx's method precisely because language is the only way we have of grasping the diachronics of changing social circumstances – not language as an abstract system of signs, but as a mutually determining product and substance of changing material circumstances and practices; not as the abstract representative of externalised ideas, but as both product, producer, and reproducer of social consciousness, which in turn is in a reciprocally causal relationship with the whole of the human experience. *In these very important respects, Marx's method and the methods of CDA are identical* [emphasis added]. (Fairclough & Graham, 2002, p. 19)

Hence, Marx's critique of political economy has always been bound up with a critique of language in the performative sense; of the role texts play in the reification of a society's mode of production (Fairclough & Graham, 2002, p. 32; see Hawkes, 2003, p. 90). In *The German Ideology*, for instance, Marx and Engels (1964/1968) point out that we are both constituted and confined by language, or consciousness (pp. 42-43; see Fairclough & Graham, 2002, p. 34), which factors into who can say what with legitimacy. Given the clear compatibility of, and interconnected history between, Marx's approach and CDA, I felt it appropriate to employ such a combination for the purpose of this analysis. The following sections articulate how I did so.

#### ***4.5.2. Goals and Approach***

Through CDA, Fairclough (2003) attempts to bridge the gap between the concrete and the abstract (e.g., between specific texts and social life; p. 12), arguing against the study of verbal interactions in isolation of broader social structures (Fairclough, 2003, p. 15; Fairclough, 2010, p. 39; Fairclough & Graham, 2002, p. 5). Discourse thus represents more than just a reflection of social processes: the two are mutually constitutive yet discrete elements of social life (Fairclough, 2010, p. 59). This reasoning justifies my decision not to engage solely in a line-by-line textual analysis of my sources but take a more holistic approach to account for their dialectic interconnection with other elements of social life. “The classical formulation of dialectical method is a relational, socially grounded approach to analysing assertions. Its methods and categories are derived from language in use [and] its objective is to challenge ‘common sense’” (Fairclough & Graham, 2002, p. 10) by flushing out its inconsistencies, uncovering counter claims, and situating it within the wider context (p. 13). Rooted in this approach, my goal was not to uncover one, singular truth about the CORE but to extract the multiple, coexisting, and competing assumptions that shaped it. I used the following five sources to do so.

#### *4.5.3. Sources*

1. Parliamentary meetings (38th Parliament, 1st Session: October 4, 2004 – November 29, 2005) of the SDEV of the FAAE involving their study of mining in developing countries and CSR and resulting report (number 14), titled “Mining in Developing Countries – [CSR].” The SDEV initiated the study pursuant to Standing Order 108(2) and a motion adopted by the Subcommittee on April 20, 2005 (House of Commons Canada, n.d.-a). Meetings produced six transcripts detailing eight hours of verbatim meeting evidence. The SDEV’s then seven members (see Appendix C) represented four of Canada’s six parties: Bloc Québécois (1), Conservative Party of Canada (CPC; 2), Liberal (3), and New Democratic Party (NDP; 1). Witnesses included Government officials from the Department of International Trade (5) and the Department of Natural Resources (4), individuals (5), industry representatives (2), representatives from NGOs (2), and a university professor (1; see Appendix D). The final report was adopted by the FAAE on June 20, 2005, whose then 12 members were affiliated with the following parties: Bloc Québécois (2), CPC (4), Liberal (5), and NDP (1). It was presented to the House on June 22,

2005 and received a Government response on October 17 of that same year. I included the final report and Government response in my analysis.[43]

2. Parliamentary meetings (42nd Parliament, 1st Session: December 3, 2015 – September 11, 2019) of the SDIR of the FAAE involving their study of human rights surrounding natural resource extraction within Latin America and resulting report (number 22), titled "Race to the Top: Improving Canada's Extractive Sector [CSR] Strategy to Safeguard Human Rights in Latin America." The SDIR initiated the study pursuant to a motion adopted by the FAAE on Thursday, February 4, 2016 and the SDIR on Thursday, May 18, 2017 (House of Commons Canada, n.d.-b). Debates produced 11 transcripts detailing 11 hours of verbatim meeting evidence. The final report was based on SDIR meetings, whose then seven members (see Appendix E) represented only three of Canada's six parties: CPC (2), Liberal (4), and NDP (1). Witnesses included Government officials from the Department of Foreign Affairs, Trade and Development (DFATD; 7), individuals from Latin America (1), university professors (3), and representatives from the extractive industry (3), international bodies (e.g., the UN; 4), Latin American organizations (8), NGOs (1), and non-profit organizations (3; see Appendix F). The report was adopted by the FAAE on December 10, 2018, whose then 13 members represented the following parties: CPC (3), Liberal (9), and NDP (1). It was presented to the House on January 30, 2019 and received a Government response on May 28 of that same year. Again, I included both the final report and Government response in my analysis.[44]

3. Parliamentary meetings (43rd Parliament, 2nd Session: September 23, 2020 – Present) of the SDIR of the FAAE involving their ongoing study of the role of the CORE. The SDIR

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[43] Respectively located at: https://www.ourcommons.ca/DocumentViewer/en/38-1/FAAE/report-14 and https://www.ourcommons.ca/DocumentViewer/en/38-1/FAAE/report-14/response-8512-381-179

[44] Respectively located at: https://www.ourcommons.ca/DocumentViewer/en/42-1/FAAE/report-22 and https://www.ourcommons.ca/DocumentViewer/en/42-1/FAAE/report-22/response-8512-421-508

initiated the study pursuant to Standing Order 108(2) and a motion adopted by the Subcommittee on Tuesday, October 27, 2020 (House of Commons Canada, n.d.-c). At the time of writing, debates produced three transcripts detailing approximately 6.5 hours of verbatim meeting evidence. Meeting evidence unavailable at the time of writing was not included as part of this study's data or analysis, although the ongoing nature of this Parliamentary study was noted within overall research conclusions. The SDIR's current eight members (see Appendix E) represent four of Canada's six parties: Bloc Québécois (1), CPC (2), Liberal (4), and NDP (1). Witnesses, as of April 27, 2021, include Government officials from the Office of the CORE (1), the DFATD (2), and Export Development Canada (2), the Minister of International Trade (1), a university professor (1), and representatives from the Canadian Chamber of Commerce (1), extractive industry (4), advocacy networks (1), coalitions (1) and unions (2), as well as the UN (1) and Latin American networks (2; see Appendix F).[45]

4. Sixty web-based publications (see Appendix A) pertaining to both the introduction and creation of the CORE. I gathered publications by (a) using the search terms "corporate accountability," "corporate social responsibility," "Canadian Ombudsperson for Responsible Enterprise," and "Canadian extractive sector," (b) reading related publications whose links were provided either within or at the bottom of publications found using the aforementioned search terms, and (c) searching for related content on relevant Canadian non-state actors' webpages (e.g., CNCA, MiningWatch Canada) and the Business and Human Rights Resource Centre

[45] The SDEV was and the SDIR is tasked with evaluating international human rights vis-à-vis various themes, including extractivism. The Parliamentary meetings and reports I analyzed for the purpose of this research focus on human rights and the overseas activities of Canadian extractive corporations. Meeting evidence from other Parliamentary studies was excluded based on relevance.

webpage.[46] I ceased locating, reading, and interpreting relevant web-based publications once I reached a saturation point and no new discourses were uncovered.

5. (ATI) Documents (114 pages, disclosed in part) sent, received, or prepared for/by the Minister and Deputy Minister for International Trade and representatives from the MAC, Barrick Gold, Goldcorp, Tahoe Resources, or Hudbay Minerals between February 1 and April 17, 2018 pertaining to the creation of the CORE. I received these documents from GAC via an informal ATI request for records previously released (see Appendix B).[47]

I chose these five datasets because they spoke to the constitution of the CORE and to ensure a variety of voices were adequately represented in my analysis. Parliamentary meetings provided verbatim transcripts including Government commentary and witness testimony. Of note, to appear before the SDEV and SDIR, witnesses must either request or be invited to present, which undoubtedly shapes which discourses appear within Parliamentary debates. I included web-based publications and ATI documents to supplement perspectives therein with non-state, Canadian media, industry, and additional Government voices. In other words, each of the sources selected was included to ensure the data represented the *full* range of voices, and discourses, on the topic. Collectively reviewing these sources helped me interpret, using my theoretical-analytical framework, which factors influenced the Canadian state's most recent response to corporate crime and impunity within the Canadian extractive industry: the CORE. The following four-stage methodology – a particular version of CDA developed by Fairclough (2012) – reflects most closely how I performed this analysis.

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[46] Located at: https://www.business-humanrights.org/en/

[47] To reiterate, *informal* ATI requests are those for full ATI requests previously submitted and filed, which are made by searching online ATI Act databases, selecting desired records, and writing a request for receipt of the full record. Unlike formal requests, no fees or deadlines are associated with informal ATI requests.

***4.5.4. Methods***

*Stage one* involves focusing on the semiotic aspects of a specific social issue, including (a) the selection of a research topic that illustrates the issue in question and (b) the theoretical construction of research object(s), which must both be fulfilled from a transdisciplinary perspective. *Stage two* involves considering and naming potential obstacles to addressing the issue (Fairclough, 2012, p. 13), including (a) the dialectical analysis of discursive and extra-discursive social elements, (b) the careful selection of texts, sensitizing concepts, and categories of analysis in line with the research object(s), and (c) the analysis of selected texts (p. 14). *Stage three* involves considering the connection between the social order and issue in question (e.g., whether the former requires the latter to function/exist). *Stage four* involves the identification of potential solutions (p. 13); for example, by recognizing counter-hegemonic claims about, and/or forms of resistance to, the issue in question (p. 15). In using this four-stage methodology I was able to engage in a critical data analysis that accounted for both discursive *and* extra-discursive factors involved in the development of the CORE. How I read the data reflects stage two of this process.

To identify discourses within the data, I used a cyclical process whereby I oscillated between readings of the literature and the data; firstly, reading relevant literature to familiarize myself with critical topics (e.g., capitalism, CSR, ideology, regulation) used as sensitizing concepts for subsequent readings of the data. Then, I read each dataset individually, during which I highlighted important information, designated as such based on assessments of frequency (i.e., number of times mentioned) and weight (i.e., influence on the direction of the conversation and/or length of time discussed), while also making note of contradictory evidence and dissenting voices. During this first reading, I highlighted important passages (using the

Adobe “Highlight Text” function) and added comments (using the Adobe “Add Sticky Note” function) directly within the texts to help flush out connections between the data and literature. At this stage, I also began to develop an initial set of discourses.

Following this, I returned to the literature to add depth and understanding to this preliminary analysis. I completed a second full reading of each dataset individually, wherein I began the process of labelling initial discourses and more formally coding data. To do so I took detailed notes, pulling out discourses based once again on assessments of frequency and weight and transcribing direct quotes which I felt best illustrated the initial discourses identified. Once I identified and labelled several discourses (using the Microsoft Word “Highlight” and “Font Colour” functions), I re-read my notes, cross-referencing each discourse to ensure both consistency within and difference among them; some initial discourses were combined while others were separated into related but distinct sub-discourses. During this stage, I further isolated quotes that I felt best represented the discourses identified, being mindful to include as many voices as possible from the data.

Finally, to add further organization to my analysis, I uploaded each of my five datasets to NVivo – a qualitative data analysis computer software package – where I transitioned highlighted text and comments into NVivo nodes. These nodes denoted discourses, which were cross-referenced once more to ensure internal consistency and distinctiveness; where necessary, I amalgamated discourses and created sub-discourses. Using this program, I produced reports to strengthen established connections between the four main discourses identified and the literature. I also used NVivo to isolate and select the quotes that appear in the following chapter. A critical Marxist theory of ideology further informed my analysis.

### *4.5.5. A Marxist Theory of Ideology*

For the purpose of this analysis I employed a critical interpretation of Marx's ideology theory due to my concern with explanation *and* emancipation, which are not foci within non-critical accounts (Leopold, 2013, p. 35). As per my research objectives, I sought to uncover how various ideological discourses both shaped and were a stake in deliberations over the constitution of the CORE (see Fairclough, 1989, p. 89; Fairclough, 2012, p. 9). Because it is used to examine processes involved in the reproduction of existing social relations (see Hunt, 2004, p. 606), the theory of ideology was helpful in this endeavour.

Marx highlighted four characteristics shared by all ideologies, which illustrate the usefulness of his approach for analyzing the nature of state regulation within capitalist societies. First, ideologies have moral or prescriptive dimensions (Parekh, 1982/2015, p. 33). They attempt to universalize and legitimize the ideas of a particular social group on the basis that their perspectives provide the only valid or rational explanations of the nature of society. As such, these lived experiences are transformed into the "ideal" to which all other social groups are expected to conform, and the "norm" against which they are measured (pp. 33-34). The powerful often attempt "to impose an ideological common sense which holds for everyone" (Fairclough, 1989, p. 86; see Çoban, 2018, p. 90; Marx & Engels, 1964/1968, pp. 62-63) to establish "the universality of their cause" (Hawkes, 2003, p. 93). In contemporary Western societies, then, the capitalist mode of production becomes the only valid or rational framework from which we can both act and interact, shedding light on why a CSR-style CORE was more readily accepted than a quasi-judicial one.

Second, since ideologies are biased towards particular social groups they are necessarily biased against others (Parekh, 1982/2015, p. 34). For instance, capitalist ideologies are biased towards social groups whose ideas and conditions of existence reinforce and reproduce the capitalist mode of production and against those whose lived experiences threaten its dominance. As such, the latter are presented as unnatural and illegitimate. For example, capitalist legal ideology is biased towards capitalists and against workers. Although legal ideology promotes the law as rational, objective, and natural, Western legal doctrine was created within a particular social-historical formation which undoubtedly played a role in shaping its form and function such that it benefits some and disadvantages others (Norrie, 2014a, p. 10).

Third, because ideologies are based upon largely unchallenged assumptions, they cannot critically defend themselves (Parekh, 1982/2015, p. 35). As Hunt (2004) puts it, "[i]n its simplest and most pervasive form, ideology presents the existing social relations as both natural and inevitable [wherein] particular interests become disassociated from their specific location and come to appear as universal and neutral" (p. 606; see Purvis & Hunt, 1993, p. 478). In the context of my research, capitalist ideology would have us believe that economic development is inherently just and beneficial to all (Heinrich, 2004b, p. 212). Ideology theory helps us understand why this form of development is taken for granted as "universal and neutral" (Hunt, 2004, p. 606) under capitalism, ultimately masking its origins (and primary benefactors) by appearing commonsensical. Likewise, corporate ideology would have us believe that corporations are natural (even though they are legal constructs; Spencer, 2004, p. 5), and that they are necessary to – and concerned with (Bittle, 2015, p. 137) – the well-being of the whole population (Tombs, 2012, p. 187). Accepted within capitalist states like Canada, these (largely) unchallenged assumptions influence the nature of corporate regulation within the extractive industry by framing corporations as rational, autonomous entities and strict corporate regulation as neither necessary nor desirable (see Bittle, 2015, p. 137; Pearce & Tombs, 1990; Spencer, 2004, pp. 15-16; Tombs & Whyte, 2015). Neither of these assumptions hold up against critical scrutiny, uncovering capitalism's contradictory nature.

Finally, an ideology's basic assumptions are "inherently assimilationist in orientation" (Parekh, 1982/2015, p. 34): by promoting a particular standpoint as the ideal or norm, an ideology necessarily forces other social groups to conform. In the case of neoliberal ideology, for example, ontological priority is given to a certain type of individual (Eagleton-Pierce, 2016, pp. 19-20; Parekh, 1982/2015, p. 44), which shapes how both regulation (see Bittle & Snider, 2013, p. 179; Fine & Saad-Filho, 2017, p. 697; Geis, 2001, p. 39) and human rights (see Bartholomew & Breakspear, 2004, pp. 130-131) are framed within it. Specifically, Cotterrell (1992) opines that individualism, the "hallmark" of Western law, promotes the idea that society consists of "free, isolated, individually responsible individuals" (p. 119). One effect of this dominant neoliberal-legal ideology is that interpersonal crime is viewed as more immoral and punishable than structural (e.g., corporate) crime (Spencer, 2004, p. 20). Understanding this dynamic begins to illuminate the state's role in reproducing capitalist class relations, at least through the function of the law (Cotterrell, 1992, p. 130).

### 4.6. Summary and Conclusions

Ideology theory does not purport to establish causal relations but instead seeks to provide an explanation as to why certain claims are more readily accepted within given societies. When ideas and beliefs are naturalized, they, along with their material origins and effects, are less frequently examined (Cotterrell, 1992, p. 133). Marxist theory demands that we turn our attention to the ideas and beliefs which come to govern a society, where they originate, and who they ultimately serve. It challenges us to confront ideologies' supposed neutrality to view them instead as "instruments of power" (p. 136). That said, Marx's materialist approach also requires that we not view ideology as static and unchanging but as always-already in flux. This, so that we remain attuned to contradictions and open to counter points that create spaces of resistance (Rehmann, 2013, p. 34). To provide an example: hegemony, which is based on ideology, exists precariously and is always subject to resistance (Çoban, 2018, p. 98). It must, like capitalism, actively and consistently be "renewed, rebuilt, defended and changed" (p. 96). In other words, social phenomena (e.g., relations of production) "are ideologically (re)produced through discourse" (Beetz & Schwab, 2018, p. 342).

In the following chapter, I employ the theoretical-analytical combination described herein to analyze the Canadian state's process of establishing regulatory mechanisms like the CORE. Based on my theoretical-analytical framework and the issues identified in Chapter 3, I specifically sought to uncover how particular (political-economic, legal, corporate capitalist) ideological discourses influenced the development of the CORE, while always remaining open to encountering alternative perspectives.

# Chapter 5: Findings

In this chapter, I present my findings around the following four discourses uncovered within the data. First, *economic discourses*, expressed in terms of the primacy of the economy, which consist of two sub-discourses: (a) economic development as superior to other forms and (b) regulation as desirable only if it does not impede the economy. Second, *neoliberal discourses*, expressed in the hierarchical ordering of the Canadian state and extractive industry as morally and developmentally superior to the foreign states within which the industry operates. Third, *crime and violence discourses*, expressed in characterizations of corporate crime as the exception, rather than the rule. Fourth, *legal discourses*, expressed in queries about who should be deemed (legally) responsible and/or held accountable for corporate crime. A related sub-discourse expressed how the (complex) nature of state-corporate relations often complicates determinations of (legal) responsibility, as it may be used as a denial or redirection tool. These discourses represent overlapping yet distinct points that coalesce to reproduce corporate power and class interests.

As Fairclough et al. (1997) note, "[i]n using a dialectical theory of discourse in social research, one needs to take account, case by case, of the circumstances and factors which condition the allowances and resistances of social entities to particular discourse-led changes" (p. 5). In dialectially analyzing discourse – i.e., as mutually constitutive of but not reducible to social life (p. 4) – I noted dominant narratives as well as counter-hegemonic claims, including whether and how the latter were sidetracked. In so doing, I attempted to uncover the (political-economic, legal, corporate capitalist) ideological discourses that influenced the Canadian state's decision to create the CORE rather than alternative corporate regulation options. I aimed to represent as many voices within the data as possible.

**5.1. Economic Discourses: Economic Primacy, Development, and Regulation**

In Western states like Canada, the economy is organized in predominantly capitalist terms, or around capital and labour market economies rooted in the primacy of private property (Snider & Pearce, 1995, p. 20). Capitalist social relations are thus characterized by the "ownership and exchange of things" and have been "dehumanized" through the process of financialization (Whyte, 2020, p. 60; see Marx, 1976/1990, pp. 178-179; Sau, 2020, p. 13). From a neo-Marxist perspective, financialization refers to the increasing importance of finance in capitalist societies (Godechot, 2016, pp. 495-496), a process which contributes to growing inequality through the reproduction of unequal economic dimensions of social relations felt most by those already disadvantaged (p. 499). Though individuals are encouraged to compete within markets characterized as "free" and "fair," these markets respond more favourably to those who possess more capital, including corporate persons (Curran, 2018, p. 330).

Market ideology purports that the market itself can and will punish wrongdoers and that formal regulation is not needed so long as the market functions properly (Snider & Pearce, 1995, p. 22). It also assumes that all legal (rational) individuals "participate freely and equally in the marketplace and share the same (economic) goals" (Bittle & Snider, 2013, pp. 188-189). Likewise, early renditions of CSR were rooted in the idea that corporations were rational actors making rational decisions within the market (see Glasbeek, 2002, p. 20 on rational actors). Consequently, early proponents of CSR believed that corporations *could* consciously avoid causing harm and would do so to serve their long-term interests; that they could and would actively and carefully maintain important business relationships (e.g., with shareholders and local communities); and that they would naturally act in accordance with their own self interests by rationally considering the costs and benefits of their actions (Whyte, 2018, pp. 93-94). This "business case" for CSR promotes responsible business as not only the morally just thing to do but a smart business strategy, weaving corporate "conscience" together with capital (Shamir, 2011, p. 329; Soederberg, 2010, p. 141). Though met with much criticism, both within and beyond the academy, this rationale is taken for granted as common sense within business communities (Shamir, 2011, p. 329).

Framing the economy and human rights as mutually dependent reinforces capitalism by commodifying human rights along with everything else (Soederberg, 2010, p. 141; see McKenna, 2004, p. 13). Weaving social responsibility together with capital suggests that human rights can be bought and sold, and that those who possess more capital will necessarily have "better" human rights experiences. This sentiment is mirrored in capitalist development models wherein MNCs are encouraged to consider the social and environmental costs of their projects, often allocating a small sum of money to mitigate and/or repair damages incurred (Whyte, 2020, pp. 41-43), which reinforces the idea that all problems can be solved with money (Bittle & Snider, 2013, p. 189; see Soederberg, 2007, p. 502). Recent campaigns calling on corporations to more explicitly consider, in advance, the social and environmental costs of their projects (i.e., "externalities") mean that, along with production and equipment costs, they must be commodified to count (Whyte, 2020, pp. 41-43).

The perspective that the economy and human rights are mutually dependent also reinforces capitalism in the ways it shapes bilateral relations between states. The dominant assumption follows that trade relations can be utilized to positively influence the human rights situation in other countries. Whether through foreign direct investment or bilateral aid, it is assumed that when "developing" states accumulate more capital – or simply more experience interacting with "developed" capitalist states – they can better address human rights issues in their own countries. Bartholomew and Breakspear (2004), however, caution against the universal application of specific interpretations of what it means to "be developed" (p. 131) and raise important questions about what exactly constitutes "human rights." They argue that associating development with improved human rights to facilitate interstate relations is imperialistic (p. 137). Human rights, then, cannot and should not be applied unilaterally if it means disrespecting the equal sovereignty of nations to promote one understanding of development and human rights as naturally and morally superior (p. 138). Capitalist states' use of human rights as a means to an end thus reveals their underlying priority to accumulate wealth and how it shapes governments' creation of international policies and programmes that both legitimate and mask their true intent.

Overall, the importance of the economy was emphasized in four ways within the data: in framing CSR as a business advantage; in conceptualizing human rights and the economy as mutually dependent; in promoting capital as a viable (and at times the only) solution to human rights issues; and in depictions of international trade as a higher state priority than human rights. For instance, in the following exchange between a Liberal Member of Parliament (MP) and an Organization for Economic Co-operation and Development (OECD) employee of the Responsible Business Conduct Unit during a meeting of the SDIR:

> **MP Peter Fragiskatos (Lib.):** Can you explore the connection between responsible extraction and profitability? … There seems to be an assumption that an increase in capital can solve some of these complex problems (e.g., corruption, impunity, crime); that if we increase budgets we can solve the issues.
>
> **Tyler Gillard (OECD):** Indeed, doing things responsibly is good for business. That is clearly our finding. … Of course, it is worth saying that in the short term, cutting corners can be good for business. As with cutting labour laws and evading taxes, you will see an impact on the bottom line, but in the long term it is not good for business.
>
> (Exchange in SDIR, 3 October 2017, p. 2)

In this exchange there was a blending of the business case for CSR with the notion that capital can solve human rights issues. The economy was portrayed as paramount, even when considering how to ensure Canadian corporations act responsibly; a sentiment expressed by others, such as Craig Forcese, a law professor at the University of Ottawa, who suggested, "I think it's important to underscore that *human rights observance is a competitive advantage to most businesses* [emphasis added]" (Craig Forcese, SDEV, 1 June 2005, p. 4). In reference to the CORE, specifically, Government documents obtained via an informal ATI request state:

> Because it believes that trade is best when it works for everyone, the Government has announced it is creating an independent [CORE]. This represents a new global standard in promoting responsible business conduct. … reinforcing Canada's approach to inclusive economic growth, and helping keep Canadian companies at the forefront of responsible business conduct abroad, *a competitive advantage in today's marketplace* [emphasis added]. (CSR memo, ATI Documents, 20 February 2018, p. 42)

CSR is thus framed as a competitive business advantage and Canadian corporations are urged to engage responsibly not because it is recommended, or even mandated, by the Canadian state or international organizations like the OECD but because "it is profitable in the long term" (Tyler Gillard, OECD, SDIR, 3 October 2017, p. 2).

This narrative was reflected by Sheri Meyerhoffer, acting ombudsperson, in response to a question by CPC MP Kenny Chiu regarding the CORE's potential impact on business. During her testimony before the SDIR, she said, "I've worked in the oil and gas industry for 17 years and know first-hand that what CORE is set up to do is *good for business* [emphasis added]" (Sheri Meyerhoffer, Ombudsperson, SDIR, 23 February 2021, p. 4).

In other conversations, the state of the economy and of human rights were described as mutually dependent. A strong economy meant, for instance, that money could be funnelled into human rights efforts. As such, economic development was viewed as a viable method for both promoting and addressing human rights in "developing" countries. This propensity to associate strong economies with improved human rights was evidenced in the following exchange between a Liberal MP and a member of the Department of Foreign Affairs, Trade and Development (DFATD):

> **MP Marwan Tabbara (Lib.):** Also, would you suggest linking bilateral aid from Canada to Honduras as a way to encourage measures in improving human rights in the country and its accountability?
>
> **André Frenette (DFATD):** Absolutely. Yes. This is a core part of our programming, and I should say not just in Honduras but in Central America writ large. As I mentioned earlier, the promotion of human rights is core to Canada's engagement in the region, as is promoting democracy, strong governments, public institutions, and the rule of law.
>
> (Exchange in SDIR, 9 June 2016, p. 6)

Hence, Canadian bilateral aid was described as not only capable of facilitating a potential improvement in human rights and corporate accountability in Central America but also "Canada's engagement in the region" from a foreign affairs, trade, and development perspective (more on state-corporate symbiosis in a later discourse).

In other exchanges, trade relations were more explicitly characterized as an opportunity to advance human rights in developing states. For instance, David Usher, Director General of Trade Negotiations within the DFATD said:

> I would underscore … that our basic premise is that engagement with Honduras is better than isolating Honduras. We think that having stronger commercial and economic ties with Honduras gives us an added opportunity to continue our dialogue with the Honduran government and the Honduran authorities in the area of human rights. (David Usher, DFATD, SDIR, 9 June 2016, p. 7)

In other words, trade relations between Canadian and foreign states are leveraged to facilitate dialogue "in the area of human rights," emphasizing the importance of the economy in ensuring these conversations even take place.

Further, developing states' lack of economic support for formal justice institutions, like the police and public prosecutor (in Spanish, "Ministerio Público"), was used to explain their purported inability to uphold human rights. Consider the following question and response:

> **MP Marwan Tabbara (Lib.):** What are the greatest obstacles to creating an effective police force?
>
> **Rick Craig (Justice Education Society):** ["Developing" countries] have to invest more in these institutions. The Ministerio Público does not have the resources it needs. The prosecutors are critical to the process in this country, because they manage the investigation and they don't have the resources they need. One of the major advances that has led to a big improvement in Guatemala has been a change in the amount of investment in these institutions. They have to do that, they just have to; otherwise I don't think they're going to get where they need to get.
>
> (Exchange in SDIR, 2 June 2016, p. 4)

The same concern was expressed with regard to a lack of funding for external programs administered by organizations located in the Global North, like the Justice Education Society, which are designed to assist developing countries as they work to improve their capacity to uphold human rights (Rick Craig, Justice Education Society, SDIR, 2 June 2016, p. 4). In other words, it was taken for granted that more economic investment in justice institutions (whether by host or home states) could help solve human rights issues and lead to improved justice in "developing" countries where Canadian corporations operate.

From an alternative perspective, using money to solve human rights conflicts does little to improve the lives of victims. A witness from a mining-affected community in Guatemala expressed disdain for this tactic noting, "These companies, which are Canadian in origin, want to use money to solve any problem they have, and we are up against them. They are taking away our resources" (Luis Fernando García Monroy, Youth Organized in the Defense of Life, SDIR, 8 June 2017, p. 3). In this case, capital is characterized as an impediment to realizing better human rights in that local communities lack the finances to compete with large corporations who wish to extract natural resources from their region.

I also evidenced the importance of the economy in witness testimony comparing Government support for international trade to that for human rights. Diana Bronson, of the International Centre for Human Rights and Democratic Development (ICHRDD), drew a parallel between the "extraordinary protection" afforded (private) property and the Government's efforts to promote trade versus human rights, noting that these are part of a "systemic problem":

> I'm simplifying this somewhat, but as someone said, we've basically taken out the right to property from the universal declaration [of human rights], and we said we're going to afford it this extraordinary protection, and we failed to do that with most of the other rights that are there. So that's the systemic problem, and the same exists in terms of promotion of trade and investment internationally.
>
> I think when the government officials appeared before you last week, they said more or less that they have a thousand people working on this internationally, promoting trade. Why don't we have a thousand people working internationally promoting human rights? We have about twelve people in the Department of Foreign Affairs working on this issue, and we have one person working on [CSR], who works with a part-time interdepartmental committee. So we need to strengthen that; we need to make them much more equal. (Diana Bronson, ICHRDD, SDEV, 1 June 2005, p. 12)

According to this witness, the importance of human rights should be considered equal to that of the economy, which is currently overshadowing the Government's international promotion of human rights. Similarly, another witness noted that when the global economy suffers, social and environmental standards may be disregarded by those who wish to remain attractive to foreign direct investment. They called this phenomenon a "race to the bottom" whereby countries lower their social and environmental standards to attract more business (Carlos Monge, Natural Resource Governance Institute, SDIR, 19 October 2017, p. 4),[48] reiterating once again the idea

[48] See Carroll and Sapinski (2018, p. 49) for more on this "race to the bottom" process of undercutting others to attract business.

that the economy takes precedence over upholding social and environmental rights standards. Two sub-discourses speak to this broader economic discourse, the first of which concerns debates about the nature of economic development.

***5.1.1. The Superiority of Economic Development***

According to Glasbeek (2002), "[c]apitalism's strongest argument is that the accumulation of wealth for its own sake is a worthwhile economic and, therefore, meritorious social and political goal" (p. 17), based on the justification that increased wealth is beneficial for the population as a whole (p. 17; see Bittle, 2015, p. 137). As a self-proclaimed extractive state, Canada primarily achieves this end via the exploration and exploitation of natural resources wherein financial gains, no matter how small, are used to rationalize any harmful social, environmental, political, or cultural impact (Deneault & Sacher, 2012, pp. 181-182). But this capitalist "more-trumps-less" maxim puts developing states (i.e., less advanced capitalist states) most at risk, especially during inevitable global economic shifts (Snider & Pearce, 1995, p. 29). To compete within international markets "freely" and "fairly," developing states must bend to the will of more advanced capitalist states and the international bodies they influence, which forces them into dependent relationships with their oppressors and further inhibits their (capitalist) advancement (Carroll, 2004, p. 2; Gordon, 2010, pp. 142-144; Wonders & Danner, 2001, p. 102).

Despite this, economic development is commonly accepted as a viable means to *improve* the plight of others. We are led to believe that financial support, no matter its form, is a legitimate – and at times *the only* – way to address human rights issues. Unfortunately, because the social and structural power of capital has increased within recent decades, "people and their communities have less ability to influence or block hurtful changes" (Snider & Pearce, 1995, p.

41). So long as counter-hegemonic voices are silenced, dominant knowledge claims constituting economic development as logically and morally superior to other forms will prevail. As a result, developing states will continue to be reimagined in the likeness of capitalism, and resistance will continue to be cast as the problem (Robyn, 2001, p. 86), or just the "backwards" thinking of "weak" states (Bittle, 2015, p. 142). While the dominant, neoliberal-capitalist belief in the inherent value of economic development prevailed within the data, alternative depictions were also represented, which illustrates how the Canadian state became a site of competing discourses.

Competing perceptions of economic development – as either superior, natural, and necessary or imperialistic and damaging – were uncovered within debates that were shaped by the broader economic discourse outlined above. Dominant knowledge claims characterized economic development as superior to other forms based on the argument that it benefits all. Nevertheless, when testifying before the SDIR, Dr. Jeffery Webber, professor of politics and international relations at Queen Mary University of London, asserted that:

> The typical justification for the big profits accrued is that it is not only Canadian companies that are getting rich. Rather, Canadian investment is improving the living standards of the communities where they are digging gold, silver, copper, and other natural resources from the ground. In actuality, very little of company profits is invested in local communities. (Dr. Jeffery Webber, SDIR, 28 September 2017, p. 3)

During Parliamentary meetings, however, the dominant perspective won out, as evidenced in discussions promoting economic development in a positive light; particularly when accepted as a legitimate method for improving the lives of communities located near Canadian extractive projects overseas. This narrative frames extractive-related business as a gift granted by "strong" states to "weak" ones, thereby overemphasizing the few benefits received by weak states and obscuring the many benefits obtained by strong ones in the process. As argued:

> The reality in rural areas is if they want to have economic development, they do need investment from outside, and typically, whether that generates a lot of direct employment

> right off the bat, it changes the structure and it changes the economy, and usually for the better in those rural communities. I'm just wondering… is it any less imperialistic to deny rural areas' development than it is to promote it? (CPC MP David Anderson, SDIR, 28 September 2017, p. 5)

Other Government officials agreed, including Duane McMullen, Director General of the Trade Commissioner Service within the Department of Foreign Affairs, who noted:

> Responsible natural resource management is essential to generating sustainable economic benefits. Many countries in Latin America are actively promoting investment in the natural resources sector as a means to generate important domestic revenues and create significant direct and indirect employment opportunities. (Duane McMullen, Department of Foreign Affairs, SDIR, 26 September 2017, p. 1)

This sentiment was further corroborated by industry representatives, who stated:

> There are numerous benefits that we have—the hiring of people. We employ all these people in the area. We've generated employment. We're doing all kinds of things on the social and the economic front for community development. (Clifford James, TVI Pacific Inc., SDEV, 18 May 2005, p. 7)

> Canada's minerals industry is a recognized leader at home and abroad, renowned for our … ability to generate economic opportunities in the areas of the world in which we operate. (Andrew Cheatle, Prospectors and Developers Association of Canada [PDAC],[49] SDIR, 5 October 2017, p. 3)

> You can see the dramatic improvement in income standards and poverty alleviation that result from mining. (Pierre Gratton, Mining Association of Canada, SDIR, 5 October 2017, p. 6)

In some cases, local community members argued that economic development was imperative to their stability and well-being; that denying such projects was an infringement on their human rights rather than the projects themselves, as argued elsewhere. For instance, Pablo Bernardo, a lawyer and Indigenous Subano member from the Philippines argued:

> The IP Subanons belong to the marginalized sector, and only through the development of their ancestral domain do they become economically and socially stable. They want to eat

[49] The PDAC is an industry lobby group (Deneault & Sacher, 2012, p. 65).

> good food, have gainful employment, and send their children to school. They want to be freed from the bondage of hunger, ignorance, and isolation. … It is for that reason they entered into a contract with TVI, which is committed to its mandated obligation—and has in fact initiated it—to develop the ancestral domain of the IP Subanons of Siocon, Zamboanga del Norte. Denying them these basic necessities is simply violating their human rights. (Pablo Bernardo, SDEV, 18 May 2005, p. 6)

Even witnesses associated with a more liberal stance noted that economic development has the potential to improve people's lives, stipulating, however, that respect for human rights must be involved in the process for such benefits to occur (Diana Bronson, International Centre for Human Rights and Democratic Development, SDEV, 1 June 2005, p. 4). Victims of corporate crime also mentioned the importance of foreign direct investment in their testimonies before the SDIR, despite simultaneously listing the dangers that come with it. For example:

> I can also tell you that the well-being of countries like mine—developing countries seeking progress for their people—depends on you. *We know that we do need projects* [emphasis added], but please, they should not be mining projects and iron ore extraction projects. The situation in Guatemala is a terrible one. We are being threatened. Our resources are being lost. The forests are on the verge of disappearing. That is why we wish to say a resounding "no" to these companies. (Aleisar Arana Morales, Xinka Parliament, SDIR, 21 March 2017, p. 2)

> *We know that investment is important* [emphasis added] for Honduras, especially in the mining sector, but we know that some of the people who were part of the process and who ended up murdered were really fighting against what we're trying to defend. They do not respect human rights and what we're trying to defend. (Bertha Zúniga Cáceres, Civic Council of Popular and Indigenous Organizations of Honduras, SDIR, 8 June 2017, p. 2)

Likewise, a prominent industry witness from the MAC acknowledged harm but questioned whether the complete removal of Canadian investment from Latin American countries was wise:

> Is leaving countries with which we've concluded free trade agreements desirable? If walking away means creating a space for others that do not strive to implement Canadian standards, is that desirable? If walking away means depriving these countries, which struggle with poor economic outcomes and fewer opportunities for economic and social

> development, is that a desirable outcome? (Pierre Gratton, Mining Association of Canada, SDIR, 5 October 2017, p. 2)

Still others more openly critiqued economic development for creating harm within affected communities rather than alleviating it. For instance:

> There is an argument to the effect that mining is good and generates development, but I think that in El Salvador, and in other countries, we say that we're against mining. Why are we against these mining projects? First of all, nowhere in the country have mining companies have [*sic*] carried out their projects without harming natural resources, without destroying forests, without polluting water, without generating violence, and without generating corruption. (Bernardo Belloso, Association for the Development of El Salvador, SDIR, 21 March 2017, p. 3)

> We know these extractive companies here tell you that the people are happy that they are bringing development, but I come here to tell you that this is false. What they do is criminalize the people and destroy the environment. As if that wasn't enough, in Guatemala the communities suffer great poverty, as well as water scarcity, and we know that these extractive companies are using large quantities of water. (Luis Fernando García Monroy, Youth Organized in the Defense of Life, SDIR, 8 June 2017, p. 4)

> [I]n most countries, article 15 of [International Labour Organization] convention 169, which establishes that people have the right to benefit from the exportation of the natural resources in their territories, is not fully applied. People are not only not consulted, but people don't see any kind of benefit, and then they bear the burden, the impediment and social burden of these investments. (Carlos Monge, Natural Resource Governance Institute, SDIR, 19 October 2017, p. 4)

In the above examples, it is made clear by victims that local communities do not profit from Canadian extractive projects; instead, "they bear the… social burden of these investments." Canadian allies also reported seeing "first-hand the ecological, social, and health impacts of Canadian mining operations with minimal economic benefit to local communities and increases in conflict and risk [as well as] formidable barriers in seeking justice" (Jennifer Henry, The Hill Times, 14 February 2018, para. 10).

During Parliamentary meetings, counter-hegemonic claims were sidetracked on a number of occasions. Consider the following statements:

> Hearing the testimony today, I don't get the sense that any mining would be acceptable, which presents one perspective. [We] visited Guatemala and Colombia as part of our work in the foreign affairs committee. We spoke to many people on the ground, individuals who favour a perspective that you put forward. But there are many at the same time who are quite open to mining, under certain conditions whereby companies engaging in that type of work provide for development, including schools, hospitals, and roads. *We saw evidence of that. We saw evidence of companies acting appropriately* [emphasis added]. … I think the testimony is skewed in one direction because, from my experience, there are others who have put forward a different perspective, who are more open to mining, who are on the ground working for democracy and economic rights, generally speaking. (Liberal MP Peter Fragiskatos, SDIR, 21 March 2017, p. 5)

> Thanks to the witnesses. We can't imagine what you've endured up until now. You have our admiration for your courage.
>
> Mr. Molina, … [y]ou mentioned those in the media who were being persecuted. You also mentioned the number of people whose lives were threatened or who were killed and so on. Is that specifically around extraction, or is there a narco component to it as well? (CPC MP David Sweet, SDIR, 8 June 2017, p. 5)

Redirecting the topic of conversation (e.g., from corporate harm to corporate help) meant alternative perspectives were overlooked in favour of the dominant view, which prioritized the economy above all else. Hence, within debates about how to balance economic development and respect for human rights when enacting corporate regulation, alternative arguments lamenting economic primacy were sidetracked by dominant voices that framed regulation as desirable *only if* it did not drain on the economy.

#### *5.1.2. Regulation as Desirable Only If It Does Not Interfere with the Economy*

It is a core argument of this thesis that regulation has a dual purpose within capitalist societies: to promote economic interests, through the advancement of industry, *and* corporate adherence to human and environmental rights standards (Whyte, 2020, p. 112; Woodiwiss, 2009, p. 111). Regarding corporate regulation within the Canadian extractive industry, alternative perspectives often highlight the state's need to create stricter or simply more regulation. Beneath this alternative narrative lies the ideological assumption that the creation of (more) mandatory or binding legislation will solve corporate crime issues, whose origins are thought to stem, in part, from the state's morally deficient decision not to enact and enforce stricter forms of corporate regulation. What this perspective fails to acknowledge, however, is that current regulatory frameworks are not "failed" but achieve exactly what they were designed to do: "satisfy capitalism's needs" (Glasbeek, 2007, p. 250). Therefore, neither the current, dominant framework of voluntary mechanisms of corporate (self-)regulation heralded by the industry nor mandatory forms advocated by non-state actors adequately address the systemic issue that is capitalism (see Fairclough & Fairclough, 2012, p. 7). Nevertheless, there is clearly an issue with perpetuating a system that allows, and even invites, corporations to shape the laws and regulations that govern their activities (Michalowski & Kramer, 1987, p. 38; see Geis, 2001, p. 39; Khoury & Whyte, 2017, p. 62; Seck, 2012, p. 115).

Influenced by the broader economic discourse above, dominant knowledge claims that states (via regulation) should not interfere too much in the market prevailed within the data. The importance placed on the economy, for example, influenced how different forms of regulation were depicted within discussions about the development and role of the CORE. The dominant view framed corporate regulation as desirable only if it did not interfere with the economy. As such, a paradox emerged between, on one hand, the desire to prioritize economic development and, on the other, reduce corporate harm. For instance, when the regulatory role of the Canadian state was questioned in a Parliamentary meeting of the SDEV, its "dual purpose" was referenced:

> **MP Cheryl Hardcastle (NDP):** One of the reasons Canada is so unique is that, as you have pointed out, we have a disconnect, so to speak, in our government involvement, and we have not passed laws. … Other countries, like France and Norway, have moved forward with a structure that is a little different. … I would like to hear from you a little

> more about how we can be moving forward, emulating and using some of the examples some of these other countries set. Also, … what do you think is the government's role?
>
> **Dante Pesce (UN Working Group on the issue of human rights and transnational corporations and other business enterprises):** What we recommend is not one-size-fits-all but a smart mix of regulation and incentives that fits the *dual purpose of protecting both human rights and investments* [emphasis added].
>
> (Exchange in SDIR, 3 October 2017, p. 7)

This affinity – for striking a balance between investment and respect for human, environmental, and labour rights – was shared even by representatives from Latin American organizations concerned with upholding such rights. As one witness argued before the SDIR:

> *If there was a balance between the foreign investment and basic rights that would apply to the population, we think it would be possible* [emphasis added]. That's why our union hopes that we could have an alliance with mining companies to create a mine where workers might win out as well and thus prevent corruption. If this could be done, it would be an example of a mine that works without a negative impact, without violating human rights, and respecting labour rights. We could have responsible mines. That's what we believe. (Francisco Ramirez Cuellar, Movimiento Nacional de Victimas de Corporaciones Multinacionales, SDIR, 19 October 2017, p. 6)

From an alternative perspective, the regulatory status quo must be challenged because the current system "is clearly not working" to uphold human rights. As noted:

> We'd like to ask the Canadian government to condemn the crimes committed by multinationals in territories such as Guatemala, Honduras, and others like Colombia. *If you create legislation, it will stop companies from violating human rights as is the case in our country* [emphasis added]. (Francisco Ramirez Cuellar, Movimiento Nacional de Victimas de Corporaciones Multinacionales, SDIR, 19 October 2017, p. 8)
>
> Canadian mining companies operating overseas have been associated with widespread and egregious human rights abuses including murder and rape. The current system relies on voluntary industry initiatives to respect human rights. It is clearly not working. (Emily Dwyer, Canadian Network on Corporate Accountability, 3 December 2018, para. 2)
>
> Until the overarching government policies and approaches change, Canadian diplomats will be hamstrung and find it challenging to prioritize human rights concerns over private commercial interests. (Ian Thomson, Oxfam Canada, 16 October 2019, para. 8)

From this perspective, voluntary mechanisms are considered ineffective and "lacking teeth." Therefore, when the CORE was announced by Trudeau's Liberal Government in January 2018 *with* independence *and* the powers to compel testimony and documents from non-compliant companies, alternative narratives argued that these "teeth" would be imperative to ensuring the office's efficacy. Consider the following interview exchange:

> **Terry Milewski (Host):** Brad, I'm going to start with you whether you're persuaded that it is as big a deal as it sounds.
>
> **Brad Lavigne (Counsel Public Affairs):** [T]o answer your question about whether or not this can work is whether or not this ombudsperson will have teeth or just an observe and report kind of mandate. … We have to make sure this has teeth. They can compel testimony as you were inquiring about evidence and testimony that is vital.
>
> (Exchange in closed captioning of Canadian Broadcasting Corporation [CBC] Power and Politics interview, ATI Documents, 17 January 2017, p. 104)

This topic was especially relevant in web-based publications lamenting the Government's lack of action some 15 months following its announcement of the CORE's creation (see Development & Peace, 8 April 2019, paras. 3-4; The Canadian Press, 8 April 2019, paras. 7-8), and following the Trudeau Liberal Government's decision *not* to grant the CORE powers to investigate or compel documents, leaving Sheri Meyerhoffer in what some call an "awkward position":

> By failing to give her those powers, the government has left Ms. Meyerhoffer "in a very awkward position," said Mr. [Alex] Neve [former Secretary General of Amnesty International Canada].
>
> "They've appointed an ombudsperson, they've called her an ombudsperson, but they've not given her the powers that she needs in order to truly be an effective ombudsperson." (Peter Mazereeuw, The Hill Times, 29 July 2019, paras. 29-30)

Within debates about whether corporate regulation should be mandatory or voluntary, many Canadian non-state actors (e.g., Amnesty International Canada, MiningWatch Canada, the CNCA, etc.) favoured mandatory mechanisms, citing the ineffectiveness of past and existing voluntary mechanisms as sufficient reason to enact binding legislation. According to these groups, corporate regulation should both enforce compliance and punish non-compliance.

Diverging slightly from this position, Penelope Simons, University of Ottawa law professor, advocated a combination approach. Simons suggested that non-judicial mechanisms are useful when no legal cause of action is available for a particular complaint or in cases where judicial mechanisms have yet to be created or chosen, but specified that for mixed approaches to work, non-judicial mechanisms must be effective (Penelope Simons, SDIR, 13 April 2021, p. 1).

During GAC's April 2019 press conference announcing Sheri Meyerhoffer as the new CORE, even Meyerhoffer argued "that the more tools available to her in her new role, the better. She will need them to fulfil the mandate" (Jennifer Wells, The Star, 9 April 2019, para. 18). When questioned about the CORE's mandate as a witness before the SDIR in February 2021, however, Meyerhoffer's position shifted:

> I am often asked whether we have the tools we need to do our work. I would like my answer to be very clear. We can respond to complaints and initiate reviews. We can engage in mediation and publish our findings. We can make recommendations for action and publicly issue follow-up reports on their implementation. In other words, we can help Canada promote and protect human rights, full stop. (Sheri Meyerhoffer, Ombudsperson, SDIR, 23 February 2021, pp. 1-2)

While the Ombudsperson's first statement supports counter claims calling for the empowerment of the position, their second statement supports the dominant narrative that less is more when it comes to state intervention in the market. This shift therefore articulates the power of ideology in shaping which knowledge claims win out.

Although disappointing to non-state actors, the CSR-style approach of the CORE referenced in Meyerhoffer's testimony was welcome by the mining industry, members of which "fought to limit its reach" (Jeff Lewis, Reuters, 21 November 2019, para. 1). The President and Chief Executive Officer of the Mining Association of Canada (MAC), for one, opined that:

> The establishment of an ombudsman, in our view, should be justified based on whether such an office would offer services not currently provided by the CSR counsellor or the NCP. Such an office should add to the remedies available to help resolve conflicts on the ground. (Pierre Gratton, MAC, SDIR, 15 October 2017, p. 3)

In other words, according to Gratton, a new position would be unfounded and unnecessary. Others similarly argued that the proposed quasi-judicial CORE would be less efficient and credible than existing non-judicial mechanisms (Felix Lee, Pierre Gratton, & Jackie King, The Hill Times, 17 June 2019, paras. 5-6). Others disagreed with this industry assessment, opining:

> The [MAC] is pushing joint fact-finding as a tool to help solve disputes involving Canadian mining companies overseas. But that's not always the best option.
>
> The [MAC] is apparently concerned that the Canadian government may be ready to introduce a human rights ombudsperson for the extractive industries that is actually effective. (Kirsten Genevose, The Hill Times, 14 June 2017, paras. 1-2)

> Without the powers to investigate—in other words, to compel witnesses and documents—the CORE is just a replication of the Conservative Government's CSR counsellor, which failed to ever resolve a dispute. (Penelope Simons, SDIR, 13 April 2021, p. 2)

When debating possible solutions to the issues, a NDP member of the SDEV expressed confusion as to why mandatory principles were not yet adopted, in Canada and elsewhere, notwithstanding the argument that it would lead to a "competitive disadvantage":

> I've heard some of the arguments … about this competitive disadvantage to doing this. I still find it strange that the advanced developed democracies, which obviously includes Canada—we have, by and large, a very good human rights record—haven't made a stronger push for having, say, within the [Organization for Economic Co-operation and Development], the guidelines be binding. I can't quite fathom, if they all did it, how there would be any competitive disadvantage. (Hon. Ed Broadbent, SDEV, 11 May 2005, p. 7)

If binding legislation were applied across the board, in other words, the "competitive disadvantage" argument would fall flat because all corporations would be held to the same standards, regardless of where they operate.

The same member proposed applying legislation like the "Westray bill, which imposes standards of behaviour on Canadian companies domestically, up to and including compliance requirements with the Criminal Code" (Hon. Ed Broadbent, SDEV, 1 June 2005, p. 10), to Canadian corporations operating overseas. In response, Madelaine Drohan, an author and independent journalist who covers business and politics, responded by anticipating corporate backlash, citing a similar case in the US:

> When you're talking about this it makes me think of the U.S. experience with the Foreign Corrupt Practices Act, where they basically led the way by outlawing bribery by American corporations anywhere. But it was interesting, before the OECD actually caught up with the American legislation, American companies used to complain all the time … that they were being handicapped vis-à-vis their competitors in other places.
>
> So I think that while I would like to see Canada move on this, we would have to anticipate that there would be complaints by Canadian corporations that in some way this is handicapping them. (Madelaine Drohan, SDEV, 1 June 2005, p. 10)

In other words, corporate backlash is to be expected when mandatory, binding regulation is proposed. On the suggested novel creation of a quasi-judicial CORE, Canadian corporations did push back against diverging from voluntary CSR-style regulation, as predicted.

In the end, the Government assumed the dominant viewpoint that regulation is only desirable if it does not impede the economy: the Liberal Government created a CSR-style, versus more robust, position thus reneging on its initial campaign promise and contradicting its January 2018 announcement. As a result, non-state actors expressed discontent and a loss of faith in Trudeau's Liberal Government. Articles published by MiningWatch Canada following the CORE's introduction and subsequent creation more than a year later reflect this shift:

> **Reaction to the CORE Announced in January 2018:** "It has been a long road but we are encouraged to finally see progress," said [MiningWatch Canada spokesperson Catherine] Coumans. (MiningWatch Canada, 17 January 2018, para. 7)
>
> **Reaction to the CORE Created in April 2019:** "We have lost confidence that this government is at all serious about human rights when it comes to the activities of

> Canadian companies operating overseas," says Coumans[.] (MiningWatch Canada, 12 September 2019, para. 7)

As the above examples illustrate, the importance of the economy played a role in influencing the federal Liberal Government's response to corporate crime within the extractive industry, which took the form of a CSR-style approach. The CORE created in April 2019 is a voluntary dispute resolution mechanism no different from the previous Conservative Government's CSR Counsellor – except by name (Emily Dwyer, Canadian Network on Corporate Accountability, 8 April 2019, para. 6; Penelope Simons, SDIR, 13 April 2021, p. 2; Peter Mazereeuw, The Hill Times, 29 July 2019, paras. 29-30). Interestingly, the Government's creation of an "ombudsperson" was used to bolster Canada's reputation as a global industry and CSR leader; to reinforce imperialist efforts to impose Canada's social processes on other states.

**5.2. Neoliberal Discourses: The Hegemony and (Moral) Superiority of Canada**

In Canada, like in other advanced capitalist states, the dominant class expresses its power via the corporations it controls, meaning contemporary class power manifests as corporate power (Carroll, 1986, p. *xiii*; see Carroll & Sapinski, 2018, p. 3; Jessop, 2008, p. 121). Because "international credibility" is important to the pursuit and successful control of capital (Snider & Pearce, 1995, p. 30), Canadian elites must work to secure and maintain a particular reputation.

Certain readings of Marx's *The Eighteenth Brumaire* suggest that Marx "anticipated later discourse-theoretical insights into the performative nature of language, the discursive constitution of identities and interests, and their role in shaping the forms and terms of political struggle" (Jessop, 2008, p. 84; see Beetz & Schwab, 2018, p. 341). From this perspective, one's reputation, or "discursive constitution," plays a role in shaping one's identity and interests. How states are constituted therefore influences the types of beliefs and values they hold, and actions they take. Through accepting the call, Canada is constituted as an advanced capitalist state whose relations with other states are both defined and confined by this dominant framework.

Framing non-capitalist states as less than or underdeveloped (i.e., always-already inferior) delegitimates non-capitalist values and ways of being while at the same time reproducing existing power relations (Woodiwiss, 2009, p. 117). An ideological effect of which being that the Western, bourgeois experience becomes the universal norm and ideal social formation. As such, its promotion around the globe is considered warranted and even morally imperative (Harvey, 2004, p. 81), which is consistent with arguments that neoliberalism is a hegemonic project (see Hall, 2011, p. 705; Hall, 2015, p. 30; Hall & Massey, 2015, p. 67).

Unfortunately, when liberal, individual "freedoms" and "rights" are upheld as the golden standard, collective rights are overlooked within "international human rights discourse" (Woodiwiss, 2009, p. 117), because the former become taken for granted as natural (p. 111) and therefore applicable everywhere (p. 116). These processes of naturalization and universalization mean that those who challenge dominant conceptions of development and human rights can be characterized as "backwards" and averse to growth (p. 117; see Deneault & Sacher, 2012, p. 68; Gordon & Webber, 2016, p. 10). In extreme (yet not uncommon) cases, individuals who resist extractive projects are labelled criminals and/or terrorists (Gordon, 2010, p. 223; Gordon & Webber, 2016, p. 113; Snider, 2015, p. 39). By framing resistance as the problem (e.g., through criminalization tactics) the Canadian state and its extractive companies can maintain their "good" and "moral" reputations without requiring any change to either their policies or behaviour.[50]

[50] The perceived inherent goodness of Canadian actors stems from a national myth which characterizes Canada as an innocent, fair, ethical, and inclusive nation different from "real" colonial powers (Butler, 2015, p. 6). As this identity remains largely unchallenged within (white settler) Canadian society (p. 6), I would be interested to expand future research to include the intersection of capitalism with colonialism and racism to better understand the social structure of the Canadian extractive industry – and to what extent it constitutes the broader Canadian context.

Consistent with neoliberal capitalism's emphasis on the economic dimension of social relations, states were labelled either "strong" or "weak" according to their economic strength or perceived lack thereof within the data. Canada was labelled a "strong" state through direct comparison to "weak" states, such as Guatemala and Honduras (see Dante Pesce, UN, SDIR, 3 October 2017, p. 4; Dr. Paul Haslam, SDIR, 28 September 2017, p. 6; MP Marwan Tabbara, SDIR, 28 September 2017, p. 6; MP Peter Fragiskatos, SDIR, 5 October 2017, p. 6). Canada was also praised as an industry and CSR leader (Felix Lee, Pierre Gratton, & Jackie King, The Hill Times, 17 June 2019, para. 3) believed to be in an optimal position to improve the human rights situation in other, "weaker" countries where its extractive industry operates. For example, a news release published by Global Affairs Canada (GAC) one day in advance of the Government's announcement of the CORE's creation (and associated multistakeholder advisory body) states:

> Building on Canada's existing expertise and leadership in [CSR], these measures will be "best in class," reinforcing Canada's approach to inclusive economic growth, and helping keep Canadian companies at the forefront of responsible business conduct abroad, a competitive advantage in today's marketplace. (GAC, 17 January 2018, para. 5)

In a separate news release, published three months later, GAC intoned once again that "Canadian businesses demonstrate leadership around the world when they engage in responsible business practices" (GAC, 8 April 2019, para. 1). The Government's characterization of Canada as a leader was reiterated not only by industry representatives, like Pierre Gratton, President and Chief Executive Officer of the Mining Association of Canada (Pierre Gratton, MAC, SDIR, 15 October 2017, p. 1), but even well-known human rights activists like Alex Neve, former Secretary General of Amnesty International Canada (Alex Neve, Amnesty International Canada, SDIR, 8 June 2017, p. 1). As a witness before the SDIR, acting ombudsperson Sheri Meyerhoffer also noted, "The creation of our office represents another example of Canadian leadership on the international stage" (Sheri Meyerhoffer, Ombudsperson, SDIR, 23 February 2021, p. 2).

Canada's reputation as a leader reinforced the dominant narrative that "Canada's influence matters" (Alex Neve, Amnesty International Canada, SDIR, 8 June 2017, p. 1). For instance, a Guatemalan youth activist and survivor of an attack on peaceful protestors near a Canadian mine site, said, "We know Canada is a country where human rights are greatly valued and respected, so we need your support immediately as Canadian authorities" (Luis Fernando García Monroy, Youth Organized in the Defense of Life, SDIR, 8 June 2017, p. 4). Likewise, an independent investigative journalist from Honduras expressed:

> We would like to see countries such as Canada, countries who have a good long-standing relationship with our country and who have investments in the country, do something to make sure that free, prior, and informed consent is respected and that the human rights of the population are respected. (Felix Molina, SDIR, 8 June 2017, p. 5)

Hence, despite evidence that Canadian extractive projects are associated with egregious violence, and of the state's propensity to champion this industry, Canada appeared to maintain its reputation as a "strong" state that not only values but upholds human rights. Moreover, due to this reputation, Canada was characterized as somehow more capable than host states to develop and enforce human rights standards both at home and abroad. Such as when a Department of Foreign Affairs, Trade and Development (DFATD) employee highlighted Canada's role in improving human rights in Honduras – by "putting more emphasis on advancing democracy, promoting the rule of law, and strengthening the capacity of government institutions and oversight bodies to protect human rights" (André Frenette, DFATD, SDIR, 9 June 2016, p. 2) – and a CPC member of the SDIR praised these efforts, saying:

> Thank you very much … for your expertise, your efforts, and everything that you've been doing to ensure that countries like Honduras get as much help as they can from Canada to enjoy the kind of democracy that we enjoy. (MP David Sweet, SDIR, 9 June 2016, p. 2)

In this example, human rights and democracy were framed in Western terms, which appeared to mark the standard to which countries like Honduras could rise – with the help of "strong" states like Canada, of course. This sentiment was echoed in a Parliamentary meeting of the SDIR nearly one year later by a Liberal MP who stated:

> I'll say that a lot of what I've heard today relates to *a deficit of democracy in Guatemala and El Salvador* [emphasis added]. … I'm supportive of efforts at democratization anywhere [but m]y view is that you might get much further in your efforts for democracy and human rights by focusing on dealing with the democratic deficit rather than by mingling it with issues related to the extractive sector. That's a separate point. (MP Peter Fragiskatos, SDIR, 21 March 2017, p. 6)

According to this witness, then, Canada's focus should be on "weaker" countries' "deficit of democracy" rather than "issues related to the extractive sector." Others agreed on the need to address democratic issues in such countries but, unlike MP Fragiskatos, recognized their connection with issues surrounding economic development projects. These witnesses suggested that Canada's reputation as a strong state meant it was obligated to help weaker states establish "effective governance capacity," like Canada's. For example, Duane McMullen of the DFATD noted, "Though best results are achieved on the ground, one project, community, and company at a time, we also recognize that the best solution is that these countries themselves develop effective governance capacity" (Duane McMullen, Department of Foreign Affairs, Trade and Development, SDIR, 26 September 2017, p. 2).

Also, based on its perceived economic and moral superiority, some witnesses suggested that Canada need only improve its existing strategies. UN representative Dante Pesce, for instance, praised Canada's CSR efforts, suggesting there was "great room and opportunity for improvement" as Canada had already established "good platforms" from which it could grow (Dante Pesce, UN, SDIR, 3 October 2017, p. 3). Pesce reiterated these sentiments when asked by CPC MP David Anderson to comment specifically on the Liberal Government's promise to establish an independent ombudsperson office (p. 9). So, when it came to CSR, the dominant view portrayed Canada as on the right track, simply in need of enhancing its existing regulatory strategies.

Counter-hegemonic voices, on the other hand, claimed Canada's self-characterization as a human rights champion was unfounded, especially in the context of the CORE.

> By failing to live up to its own human rights commitments and by refusing to act on its own legal advice to give CORE real powers, Canada is demonstrating it is not the global leader on human rights that it claims to be.[51] (Emily Dwyer, The Hill Times, 4 March 2021, para. 11)

> Canada can't claim to be a champion of human rights when it fails to comply with its own human rights obligations and allows its corporations to operate with impunity and then also fails to provide effective remedy for those who are harmed by the latter's activities. (Penelope Simons, SDIR, 13 April 2021, p. 2)

From this perspective, human and environmental rights are not adequately protected by the Canadian state abroad. One effect being the vulnerability of those who resist Canadian extractive projects, who may be subject to oppression and criminalization, an issue brought up in the following testimonies:

> [D]efenders of human rights have been criminalized increasingly since 2009. There have been more than 3,000 cases of prosecution of human rights defenders since 2009, and 17 of them have been put in prison. My mother was one of them. (Bertha Zúniga Cáceres, Civic Council of Popular and Indigenous Organizations of Honduras, SDIR, 31 May 2016, p. 1)

> [T]he role of the Canadian government from the 1990s has been to promote the investment regardless of the expectation. The idea has been to contain opposition, to discredit opposition, to make them appear to be minoritarian elements driven by outside agitators, and so on, even when there have been community-organized popular

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[51] Dwyer's comment regarding Canada's "own legal advice" is in reference to the recently leaked McIsaac report. Commissioned by the Government to determine the best way to ensure the CORE's efficacy, the report found that it should grant the CORE the "powers to do its job through either the Inquiries Act or standalone legislation," neither of which it did (Emily Dwyer, The Hill Times, 4 March 2021, para. 8).

> referendums in several Guatemalan cases, which have rejected the presence of Canadian mining corporations. (Dr. Jeffery Webber, SDIR, 28 September 2017, p. 7)
>
> It's the same thing with the criminalization of protests. The standard practice is to go very actively after the local human rights leaders and defenders, also union leaders, in a very aggressive way, not all the time, not at all locations, but it happens so often that the general perception is that the judiciary is also co-opted and captured by the commercial or economic interests. (Dante Pesce, UN, SDIR, 3 October 2017, p. 9)

According to these witnesses, human and environmental rights defenders are criminalized for challenging the dominant economic model of development. Not only does this (discursively) shape resistance as "backwards" but development as "advanced," thereby maintaining Canada's reputation as a leader. Criminalizing resistance also means violence can be downplayed as the exception, rather than the rule. In this way, shaping discourse is an effective tool for maintaining Canada's "good" reputation and reproducing capitalist social relations.

**5.3. Crime and Violence Discourses: Corporate Crime as the Exception, Not the Rule**

Representing Canada's extractive industry as the pinnacle of "ethical" business – and naturalizing this narrative – allows for the reproduction of dominant characterizations of corporate extractive-related violence as the exception, rather than the rule. Within capitalist societies, economic power influences which "truths" are more actively promoted and readily accepted (Snider, 2000, p. 171). From a Marxist perspective, this provides a materialist account of ideology in the sense that those who control a society's productive force, typically the hegemonic class, can control and disseminate information that supports their point of view (Holt, 2014c, p. 12). However, "Marxist theory demands always that we ask where these controlling ideas come from and whose interests they serve" (Cotterrell, 1992, p. 136).

In some cases, state and industry representatives – whether consciously or not – shape commonsense understandings of the industry by discounting contrary claims in favour of maintaining Canada's "good" reputation. They do this, for example, by shaping popular discourse such that it promotes their "truth" about the virtuousness of the industry. Take former Canadian Ambassador to Guatemala, James Lambert, who was notorious for glorifying the industry despite allegations against Canadian companies operating in the region (e.g., in an op-ed published in the Guatemalan daily and an Embassy-organized National Mining Forum; Gordon & Webber, 2016, p. 95). Within Canada, industry elites have intervened by attaching strings to financial "sponsorships" of educational programs and healthcare institutions (Deneault & Sacher, 2012, p. 64), and, more specifically, by convincing the Ontario Ministry of Education to adopt changes to science curriculum based on industry recommendations. The changes in question not only forbade teachers to be "too critical" of the industry but encouraged students to see its activities in a purely positive light (pp. 66-67; see Carroll, 2004, pp. 180-181).

Social consciousness may also be influenced by neoliberal market ideology, which leads us to believe that "the [free] market is the most just and effective regulator of economic conduct" (Snider & Pearce, 1995, p. 22; see Bittle & Snider, 2013, pp. 188-189; Glasbeek, 2002, p. 33; Shamir, 2011, pp. 315, 330). Based on "market-" and "agent-centered" responsibility models (Tombs, 2012, p. 186), for instance, naming and shaming are believed to be sufficient to deter corporate non-compliance and reputational damage is framed as just as, if not more, effective than binding legislation (Fauset, 2006, p. 5; Glasbeek, 2002; Tombs & Whyte, 2015, p. 110). The effect? Responses to "systemic capitalist harm and illegality" (Tombs, 2012, p. 186) are constrained. Specifically, prosecution and, even more so, sanction in cases of corporate crime are rare, making it seem as though corporate violence is the exception. Furthermore, corporations that do get caught (and *maybe* sanctioned) are depicted as "bad apples," a rhetoric that implies corporations are rational, autonomous entities who *can* act responsibly (Bittle, 2012, p. 52) but which does nothing to address the systemic issue of corporate crime (Whyte, 2020, p. 21). Capitalist apologists therefore argue that the best way to address corporate wrongdoing is to target individual corporations (i.e., the "bad apples") rather than the system as whole (Hawkins, 1990, p. 496); that there exists no structural or systemic issues only a few weeds ruining the aesthetic and functionality of the garden. Counter-hegemonic claims, on the other hand, argue that corporate crime and violence is a systemic issue. In particular, Glasbeek (2007) argues that corporations are legally structured sites of irresponsibility (p. 263). Likewise, Curran (2018) suggests that corporate law facilitates rather than prevents harm by creating and maintaining systems of organized irresponsibility (p. 326).

In conversations leading up to and following the introduction of the CORE, crime and violence by Canadian extractive corporations was predominantly depicted as the exception. At times, discussions about the state's regulatory role were shaped to reflect this dominant claim. In one particular Parliamentary meeting of the SDIR, the MAC was critiqued for misusing findings from a draft academic article that examined "the determinants of social conflict in the Latin American mining sector" (Dr. Paul Haslam, SDIR, 28 September 2017, p. 1). One witness argued that the MAC "distorted the article's conclusions by very selectively drawing from its core arguments" to enhance Canada's reputation in comparison to other foreign mining firms operating in the region (Dr. Jeffery Webber, SDIR, 28 September 2017, p. 4). Specifically, by focusing on findings that reported Canada's corporate behaviour as marginally "better" than its foreign counterparts, the MAC selectively excluded the article's core finding that "there are extraordinary levels of conflict involving Canadian mining companies" (Dr. Jeffery Webber, SDIR, 28 September 2017, p. 7). According to Dr. Webber, the MAC reported these findings out of context, which helped them shape and perpetuate dominant discourses about the industry (e.g., violence is the exception, not the rule; Canada is an industry and CSR leader). Andrew Cheatle of the PDAC, however, supported dominant knowledge claims, saying:

> [D]espite our industry's efforts in doing things the right way, right from the start, we are before you today to discuss instances of conflict in Latin America. *These instances represent exceptions and not the rule* [emphasis added]; nevertheless, they warrant our close attention. (Andrew Cheatle, Prospectors and Developers Association of Canada, SDIR, 5 October 2017, p. 3)

When violence is characterized as the exception, corporations who fail to act responsibly (and get caught) are criticized more for their role in tarnishing the reputation of the Canadian extractive sector than their potential involvement in human and environmental rights abuses. For example, Christine Côté, Acting Director of the Investment Trade Policy Division within the Department of International Trade said, "Canadian companies not meeting CSR standards attract negative publicity for themselves, often damaging not only their own reputations, but perhaps also the reputation of Canada in countries where these problems are arising" (Christine Côté, Department of International Trade, SDEV, 11 May 2005, p. 2). A web-based article similarly noted that, "Not all mining companies are culpable, but this lack of accountability has cast a long shadow on the entire sector, and on Canada" (Jennifer Henry, The Hill Times, 14 February 2018, para. 6). Even a UN representative expressed this sentiment, saying:

> If a company doesn't act with due diligence, it will run immediately into problems, and that is going to not only hurt people and cause damage or harm, but also damage the overall reputation of an industry and the reputation and brand of a country. (Dante Pesce, UN, SDIR, 3 October 2017, p. 7)

Alternatively, counter claims suggested that "significant risk of human rights abuse is well documented" within the industry and that, for this reason, Canada had no reputation to tarnish in the first place. For example:

> We see that there's conflict and that there's a fight against human rights, on the part of both the companies and the state, and we see a systematic violent response. (Bertha Zúniga Cáceres, Civic Council of Popular and Indigenous Organizations of Honduras, SDIR, 8 June 2017, p. 2)

> For years, the Canadian government has spoken of its "expectation" that Canadian companies will meet the "highest ethical standards" when operating abroad. It's time to create a mechanism capable of finding out if this expectation is in fact being met, in a sector where significant risk of human rights abuse is well documented. (Karyn Keenan, The Hill Times, 12 June 2017, para. 16)

> Canadian mining companies are investing in activities that are often associated with displacement of peasant and indigenous communities, irreparable ecological damage, and wide-scale human rights abuses, violence, assassinations, and killings. … Our evidence suggests that this is irreducible to a few bad apples, and that it is an ongoing systematic problem, not something resolved in the recent past. (Dr. Jeffery Webber, SDIR, 28 September 2017, p. 4)

> There's violence. There's the marginalization of the poor and of all the people, in fact, who gravitate around mining operations. (Francisco Ramirez Cuellar, Movimiento Nacional de Victimas de Corporaciones Multinacionales, SDIR, 19 October 2017, p. 3)

According to alternative perspectives, then, violence is both systemic and widespread within the industry: not the exception but the rule. A possible explanation for continued harm could therefore be a link between the (dominant) tendency to downplay violence within and culture of impunity plaguing the industry. On the latter, a Honduran activist stressed, "We see that there are murders and that nothing is being done" (Bertha Zúniga Cáceres, Civic Council of Popular and Indigenous Organizations of Honduras, SDIR, 8 June 2017, p. 2), illustrating that corporations are literally getting away with murder. In many discussions, impunity was framed as a host state issue,[52] even by victims.[53] Dissenting voices, however, argued that corporate

[52] See: André Frenette, Department of Foreign Affairs, Trade and Development, SDIR, 9 June 2016, p. 1; Liberal MP Peter Fragiskatos, SDIR, 8 June 2017, p. 5; Rick Craig, Justice Education Society, SDIR, 2 June 2016, p. 1.
[53] See: Felipe Benitez, Independent Indigenous Lenca Movement of La Paz, SDIR, 8 June 2017, p. 3; Felix Molina, independent Honduran investigative journalist, SDIR, 8 June 2017, p. 6.

impunity was a major problem necessitating *home* state intervention. The CNCA, for example, suggested that:

> Currently, Canada lacks an effective regulatory framework and is lagging behind other countries that are adopting corporate accountability legislation. As a result, Canadian companies have not been constrained from engaging in practices that have led to egregious human rights abuses, largely impacting women and Indigenous peoples, with impunity. (Canadian Network on Corporate Accountability, 30 January 2018, para. 6)

Placing responsibility on host states to address (corporate) impunity allowed dominant narratives about Canada's superior morality and the industry's innocence to continue shaping discussions about the state's regulatory role. As such, debates about whether host or home states were responsible for – and consequently required to address – corporate impunity surfaced in larger discussions about whose (legal) responsibility it should be to govern Canadian corporations operating abroad: host states, home states, MNCs, or international bodies.

### 5.4. Legal Discourses: Redirecting and/or Denying Responsibility

When MNCs commit transgressions overseas, it is unclear (conveniently, for them) whether the *home* state (i.e., where the company is headquartered), or the *host* state (i.e., where the company is operating) is responsible for holding them accountable. "It is also not clear whether the acts of a foreign subsidiary or its contractors would fall within the jurisdiction of the home state" (Simons, 2017, p. 427). The location of the alleged crime seems, therefore, to be of utmost importance in determining liability for crimes committed by MNCs, illustrating globalization's influence on justice in the sense that it confuses *who* should be responsible for developing and implementing (corporate) human and environmental rights standards.

Due to procedural and substantive limitations of the Inter-American Human Rights System, host states are more likely to be held liable for harms against their citizens than either the private corporations who commit the abuses or their home states (Ignacio de Casas, 2019, pp.

261-262; see Simons, 2017, p. 428). Home state obligations are limited under international law, for example, which stipulates that states are only obligated to respect, protect, and fulfil the human rights of individuals located within their territory, or, in legal terms, under their jurisdiction (Simons, 2017, p. 425). If a corporation domiciled in a particular state commits human rights violations outside of that state's jurisdiction, international law is interpreted such that the home state is not liable for those crimes. For this reason, corporations from developed countries can capitalize on the resources located in developing countries – where there is less regulation and "weak" state governance – and benefit from impunity in their domiciled states for any transgressions they commit in the process (Simons & Macklin, 2014, pp. 16-17).

Michalowski and Kramer (1987) label this the "space between laws" where illegal actions in MNCs' home states become legal in the host states where they operate (p. 36). From this, debates ensue over whether MNCs intentionally use these "spaces between" to circumvent laws or are simply their unconscious benefactors (p. 37). Given that MNCs are capable of "influenc[ing] the regulatory climates of developing host nations" (p. 38), the former explanation seems more plausible. Due to these jurisdictional issues, developing countries are led to believe that their only recourse lies in the creation of international standards that can "better" address corporate harm (pp. 40-41). However, despite crusades in the 1970s to develop a comprehensive set of legally binding standards (p. 41), no existing international standard provides the reprieve sought by affected communities.

Within the data, dominant knowledge claims redirected and/or denied responsibility for extractive-related crimes, the default being to place the blame on either "weak" host countries or "bad apples." When extractive industry violence was acknowledged, responsibility was most often redirected from Canadian states and corporations to the host countries in which they operate. According to Gary Nash, Assistant Deputy Minister of the Minerals and Metals Sector within the Department of Natural Resources, "While the vast majority of Canadian companies may conduct their business abroad in a proper manner, *inadequate governance in developing countries* [emphasis added] can permit companies to operate in a way that will tarnish the reputation of mining and, by implication, of Canada" (Gary Nash, Department of Natural Resources, SDEV, 11 May 2005, p. 4). Similarly, Craig Forcese said:

> *[C]ountries with poor human rights environments often present poor business climates. Operating in countries with poor human rights records has a cost for businesses* [emphasis added]. Repressive governments are often capricious and unaccountable regimes. Doing business in such an environment may put at risk not only a company's assets, but also the lives of its employees. (Craig Forcese, SDEV, 1 June 2005, p. 4)[54]

Rather than focusing on affected local communities, these comments highlight obstacles faced by Canadian corporations operating in regions with "inadequate governance," notably framed by Forcese as an *economic* risk. While they clearly implicate host states as partially if not wholly responsible for these issues, witnesses less clearly articulated Canada's role making it seem as though Canadian corporations' only crime is choosing to operate in "countries with poor human rights environments." In line with Forcese's perspective, one industry witness noted that:

> Weak governance, corruption, extreme inequality, and pre-existing social strife can make investments in some countries difficult. … What we do, therefore, is a very challenging question. There are limits to Canada's extraterritorial reach. In all these cases, we are dealing with complex environments where responsibility is shared and blame can often be hard to assign to any one party. (Pierre Gratton, Mining Association of Canada, SDIR, 5 October 2017, p. 2)

[54] Note this witness's focus on protecting company assets and employees' lives (versus all community members'), which highlights how corporate capitalist ideology influences discussions about human rights and regulation. Indeed, some of the earliest regulatory acts were designed to prevent factory owners from literally working their employees to death (Snider, 2015, p. 11), providing a critical lens through which to interpret this testimony.

While this statement does better to acknowledge the complexity of regulating extraterritorial business activity, it still attributes “weak governance, corruption, extreme inequality, and pre-existing social strife” to host states. This implies that Canadian corporations only encounter these issues when operating overseas and therefore should not be held solely responsible for issues that arise when “dealing with complex environments.”

On the issue of jurisdiction, many witnesses supported the argument that international bodies should be responsible for extraterritorial regulation, including CPC MP Peter Goldring, who inquired:

> [T]here must be other countries that have their own form of impact assessments. Is it not a matter of having some kind of common discussion? Is it not presumptuous of Canada to have its own and every other country to have their own? Then you have a checkerboard pattern of assessments around the world, rather than working together with your international bodies and doing it.
>
> In other words, is the emphasis not more on the international bodies than on the Government of Canada? (MP Peter Goldring, SDEV, 1 June 2005, p. 6)

Alternatively, some witnesses felt it was *Canada's* responsibility to ensure its corporations respect human and environmental rights abroad. In particular, Catherine Coumans of MiningWatch Canada asserted “that Canada needs extraterritorial tools that will allow us to better assure that the operations of our companies abroad reflect Canadian values and development objectives” (Catherine Coumans, MiningWatch Canada, SDEV, 23 March 2005, p. 3). Others challenged the idea that certain standards should, or even could, be universalized. “I'm not sure it's appropriate or even possible to regulate extraterritorially by the Canadian government as a practical, legal matter,” reasoned Dr. Paul Haslam, professor at the University of Ottawa (Dr. Paul Haslam, SDIR, 28 September 2017, p. 8). Similarly, Liberal MP Wajid Khan doubted:

> [T]alking about human rights, you can ask our companies to go there and treat people the

> same as they treat ours, but there has been such a huge debate and it's such a wide, vast subject from country to country, from economy to economy, and *I don't know if you can bring about laws to govern everybody everywhere in the world* [emphasis added]. (MP Wajid Khan, SDEV, 11 May 2005, p. 6)

The debate over legal responsibility was further reflected in the following exchanges between the Government of Canada and the Standing Committee on Foreign Affairs and International Development (FAAE) regarding tabled Parliamentary reports drafted by the SDEV and SDIR:

> ***FAAE Report 14: "Mining in Developing Countries – Corporate Social Responsibility"***
> **Report:** These hearings have underlined the fact that mining activities in some developing countries have had adverse effects on local communities, especially where regulations governing the mining sector and its impact on the economic and social wellbeing [*sic*] of employees and local residents, as well as on the environment, are weak or non-existent, or where they are not enforced. (FAAE, 22 June 2005, p. 1)
>
> **Government Response:** Given that *weak governance is the most significant barrier to ensuring that business operations in developing countries maximize positive developmental results, and mitigate any negative impacts* [emphasis added], Canada will continue to promote good governance more broadly through democratization, human rights and conflict prevention. (Government of Canada, 17 October 2005, para. 51)
>
> ***FAAE Report 22: "Race to the Top: Improving Canada's Extractive Sector Corporate Social Responsibility Strategy to Safeguard Human Rights in Latin America"***
> **Report:** Weak governance capacity or a lack of will to uphold social and environmental standards can compound negative environmental impacts and result in the uneven distribution of the benefits of a project. *Rampant corruption and impunity in some host states* [emphasis added] allows for the repression of those who oppose extractive activities. (FAAE, 30 January 2019, p. 2)
>
> **Government Response:** As ably evidenced in the Committee's work, responsible natural resources extraction can be a complex and challenging endeavour for companies operating in foreign jurisdictions and for host governments and communities that face issues over governance, rule of law, and capacity to address deep rooted social and economic inequalities, and to combat corruption and impunity. These challenges can also exist even though Canadian extractive companies are operating within very stringent and high global standards. (Government of Canada, 28 May 2019, para. 44)

Within these exchanges, the Government both denies and redirects blame for Canadian corporations' transgressions. Host states' "weak" governance is cited as a "significant barrier to ensuring that business operations in developing countries maximize positive developmental results, and mitigate any negative impacts" (read: "weak" host state regulation is the problem, not Canadian corporations' behaviour or Canadian regulation). Hence, while weak governance is recognized as an impediment to CSR – albeit only in "developing" countries – neither the Canadian state nor Canadian-based MNCs seem open to alternatives. Whether and how this rejection of mandatory mechanisms within the extractive industry is constitutive of the broader context is addressed by the following sub-discourse, wherein the nature of state-corporate relations, and its influence on determinations of legal responsibility, was explored.

#### ***5.4.1. State-Corporate Relations and Determinations of Responsibility***

Whyte (2020) outlines three characteristics of economic development (i.e., the "neo-colonial model of development"; p. 94) that "add up to a pattern of power-brokering" (p. 95). First, host states grant corporations political support and access to natural resources based on perceived advantages (e.g., power, influence, wealth). Second, material advantages disproportionately benefit elites, inciting conflict between host states and their citizens, many of whom oppose this dominant development model. Third, corporations receive support from home states – in the form of political (e.g., diplomatic assistance) and economic (e.g., aid) incentives – to ensure development projects move forward as planned (pp. 94-95). Hence, the nature of state-corporate relations can be understood as complex and situation-dependent.

To MNCs, who appear to benefit most from them, such relations are considered positive and inevitable. To states, such relations are either denied or expressed as natural within the current political-economic framework, depending on the corporation's reputation: both host and home states tend to disassociate from "harmful" corporations yet express pride in those deemed "helpful" (see Curran, 2018). Finally, to affected community members, the nature of state-corporate relations is framed as either a barrier to or avenue for obtaining justice, depending on the state's reputation: more often than not, developing states are depicted as corrupt and immoral (Felices-Luna, 2016, p. 130), only seeking economic advantage, while developed states are depicted as white knights who ride in and (democratically) save the day. Moreover, endemic corruption within foreign regions is associated with state deficiencies and used to justify neoliberal reform (e.g., market liberalization; p. 131). Evidently, dominant knowledge claims regarding the state's (negative) regulatory role depend on whether it is characterized as develop*ed* or develop*ing*.

As within previous discourses, debates produced competing conceptions of the nature of state-corporate relations. Unlike previous discourses, however, dominant depictions were context dependent. They shifted based on whether the relation involved a developed or developing state and produced either positive or negative characterizations, respectively. Consider the following:

> [Regarding Canada's trade commissioner service:] We cover all the hot issues—the issues [companies] need to look at in labour, environment, and corruption. We have to tell them what we think is happening there. We point out local and Canadian legislation, so that it's obvious. (Ken Sunquist, Department of International Trade, SDEV, 11 May 2005, p. 2)

> Well, they can provide information on how the country works. They can provide support in liaising with the government. There is a lot of support that embassies can provide. (Pierre Gratton, Mining Association of Canada, SDIR, 15 October 2017, p. 8)

> [T]he Canadian embassy in Mexico is part of the problem and not part of the solution, because *the embassy played an active role in exerting an influence on the adoption of Mexican legislation that would actually help Canadian mining companies* [emphasis added]. It has also played a role in delivering permits for ad hoc projects, permits that are given out by municipalities and other organizations. (Gustavo Lozano, Mexican Network of Mining Affected People, SDIR, 17 October 2017, p. 4)

> Jen Moore of MiningWatch Canada said embassy officials should have clearer guidelines for their role in relation to Canadian companies accused of shoddy environmental or labour practices.
>
> "We need to think about ways of pro-actively ensuring that Canadian embassies are not perpetuating, through their actions of support of companies, conditions of risk and harm for land and human-rights defenders," she said. (Bill Curry, The Globe and Mail, 6 February 2018, paras. 12-13)

Each of the above statements describe the state's role in supporting the advancement of Canadian extractive projects via diplomatic and political support. State-corporate relations were considered positive when referring to the Canadian state (or its embassies), based on its alleged ability to help Canadian corporations improve their CSR efforts, but negative when referring to foreign states, based on their purported willingness to collude with "rogue" Canadian corporations looking to cut corners. In either case, state-corporate relations seem to enable the shifting of blame back-and-forth between various parties, never quite settling on anyone.

### 5.5. Summary and Preliminary Conclusions

This chapter explored the various political-economic, legal, and corporate ideologies that influenced the Canadian state's decision to create the CORE as a non- versus quasi-judicial grievance mechanism for the extractive and garment sectors, and which continue to influence ongoing Parliamentary debates about its role. Each of the discourses outlined herein – (1) the importance of the economy, (2) Canada's reputation as morally and developmentally superior, (3) extractive industry violence as the exception, and (4) overseas extractive industry violence as largely *not* the (legal) responsibility of Canada or its MNCs – coalesce in the reification of corporate capitalist power. While these narratives clearly overlap, they represent distinct points which illustrate the kinds of ideological discourses that inform Canadian (capitalist) state decision-making.

Commonly held assumptions about the importance of the economy meant human rights were framed as secondary concerns, or else their realization was reliant upon capital. Though dominant voices did accept the occurrence of corporate harm, they rejected counter-hegemonic claims that it was a systemic issue, arguing instead that it was either the problem of a few "bad apples" or corrupt and ill-equipped host states who lacked the tools (and will) to properly regulate MNCs operating in their jurisdictions. Not only did this redirection reinforce Canada's "good" reputation but justify CSR-style regulatory approaches based on the assumptions that corporations can and should be trusted to self-regulate, and that the market will step in when they fail to do so.

Ultimately, dominant discourses uncovered within the data served to not only maintain Canada's "good" reputation but reinforce the dominance of Western understandings of crime and justice, including ideological conceptions of human rights, regulation, and responsibility. Marx's theory of ideology was a useful framework through which to conduct this analysis because it helped uncover why certain truths were more likely accepted and (re)produced within debates about Canada's role in regulating extractive industry corporations. The dismissal of counter-hegemonic claims (e.g., that extractive industry harm is a systemic issue) in discussions regarding the constitution of the CORE thus illustrates a key ideological effect of dominant claims: the reproduction of capitalist social relations via neutralizing capitalism's contradictions and creating the illusion that it is natural, inevitable, and universal.

# Chapter 6: Conclusion

Canadian extractive corporations' long and sordid history, replete with countless and ongoing allegations of human and environmental rights abuse (Bittle, 2015, p. 139; Gordon & Webber, 2008, pp. 68-70; Imai, Maheandiran, & Crystal, 2014, pp. 289-290; Simons, 2017, pp. 417-418), both at home and abroad (Deneault & Sacher, 2012, p. 181), justifies the current study's critical focus on instances of corporate crime and regulation within this particular industry. This history not only speaks to the industry's existing culture of corporate impunity but inability (or unwillingness?) of the dominant class to change its trajectory. Corporate capitalist elites are happy to continue self-regulating and (capitalist) states seem largely content (or at least resolved) to let them. Thus, in conducting this analysis, what might initially appear as an isolated problem within one industry – and, according to some, the even smaller problem of a few "bad apples" within it (Hawkins, 1990, p. 496; see Bittle, 2015, p. 137) – is exposed as a systemic issue of the highest order: under capitalism, corporations can, and will continue to, literally get away with murder so long as they continue to ensure capitalism's dominance (see Pearce & Tombs, 2001, pp. 185-186; Whyte, 2004, p. 145; Whyte, 2014, p. 244).

What also becomes evident is that these types of crises are not unique but inherent to the capitalist system, and even integral to its continuation (see Marx 1978/1992, p. 390). For, the occurrence of crises necessitates intervention to restore order (Fairclough & Fairclough, 2012, pp. 2-3), which, while it does offer the opportunity to enact change, creates space to reify the current social structure (see Marx, 1981/1991, pp. 357-358). From an ideological-discursive standpoint, the "semiotic or discursive dimension" of such responses – as an element of social processes (Fairclough & Fairclough, 2012, p. 4) – may create potential obstacles to addressing and remedying social issues.[55] Like influencing the outcome of policy and law debates such that they reinforce and reproduce the system creating said issues, rather than endorsing alternatives.

To address the social issue of corporate crime within the Canadian extractive industry, and its regulation, the current study took the CORE as its object of inquiry, situating this Canadian CSR-style regulatory mechanism within relevant critical corporate crime literature as well as the wider social-political-economic context of Canada. This meant analyzing the interconnection between discursive and extra-discursive elements involved in the CORE's development, so as not to reduce the social processes involved to the sources analyzed or discourses uncovered therein. To do so, the study made use of a theoretical-analytical combination that accounted for the dynamic and fluid relationship between various research elements. This led to the identification of four main (ideological) discourses within the data that ultimately influenced the outcome and direction of the Canadian state's decision regarding the form and function of the CORE. The ongoing nature of such debates, however, also illustrates that capitalism's dominance it not absolute, foregrounding the power of sustained resistance.

**6.1. Ideological Effects on State Regulation**

Dominant knowledge claims within debates about the CORE reflected commonsense assumptions about key points of contention on the topic of corporate crime and its regulation, producing several ideological effects. For example, the primacy of the economy prevailed within debates, even appearing in the testimonies of those whose lived experiences did not benefit from this value. Said one witness before the SDIR, "We know that investment is important for

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[55] Fairclough (2012) includes the identification of "obstacles to addressing the social wrong" (p. 13) as part of *stage two* of his CDA methodology. Based on key concepts addressed in Chapter 3 and the theoretical-analytical framework outlined in Chapter 4, this study identified as obstacles (to addressing and remedying extractive industry corporate crime) those ideological discourses which (re)enforced and (re)produced capitalist social relations, domination, and inequity.

Honduras, especially in the mining sector, but we know that some of the people who were part of the process … were really fighting against what we're trying to defend" (Bertha Zúniga Cáceres, Civic Council of Popular and Indigenous Organizations of Honduras, SDIR, 8 June 2017, p. 2). Though mining projects are represented as detrimental to this witness's lived experience, economic investment is still (discursively) framed as important for their country.

Moreover, (dominant) assumptions regarding the positive correlation between a strong economy and respect for human rights went largely unquestioned. Developing states' perceived poor human rights situation, and lack of development for that matter, was consistently associated with their "weak" economies. One irony being that the powerful is content to (imperialistically) assert Western forms of development but not human and environmental rights standards within foreign countries where they operate. When it came to human rights, the argument followed that it would be unjust to impose Canadian standards on foreign states. Regarding development, however, it was simply taken for granted that economic models, in this case extractivism, should be universally adopted. Either way, elites from the Global North unilaterally decided what was best for everyone (see Bartholomew & Breakspear, 2004; Felices-Luna, 2016, p. 130; Whyte & Wiegratz, 2016, p. 4) by suggesting that only the positive role of the Canadian state could justifiably be imposed on other states but (conveniently) *not* its negative role.

Another irony being that to become "developed," "weaker" states were forced to assimilate into the system that constituted them as such, leaving few opportunities for them to actually become "developed" – at least in the Western sense of the term (see Carroll, 2004, p. 2; Gordon, 2010, pp. 142-144; Wonders & Danner, 2001, p. 102). Capitalist ideology thus regularizes economic inequity while its neoliberal phase justifies holding individuals, rather than the system, responsible for their plight. Dominant conceptions of "development" and "human rights" only strengthened this effect by facilitating the state's enactment of regulatory responses that ensured capitalism's continued reproduction.

As well, the autonomy of states and corporations was assumed and unquestioned within debates about the CORE. Though comments did arise as to the nature of state-corporate relations, and its impact on determinations of responsibility, at no point was their autonomy challenged. Indeed, such comments focused on state-corporate collaboration, versus symbiosis or interdependence. What is more, the existence of extractive corporations was taken as a given, meaning corporations were conceived as natural and inevitable within dominant discourses. The ideological effect being that their presence in foreign regions also went unquestioned, focusing debates on if and how to oversee their operations versus whether they should be there at all.

It is also curious that, while heralded as an improvement upon the previous Conservative CSR Counsellor's reach, the CORE's expanded scope (to include the garment sector) was rarely mentioned, if at all, during discussions about its introduction, creation, and role – except in descriptions of the CORE's mandate.[56] At present, no industry representatives from the garment sector have appeared as witnesses before the SDIR. Based on industry support (see Barrick Gold Corporation, 17 January 2018, para. 3) and the (lack of) attention paid to the sector within Parliamentary meetings of the SDIR, the expansion was most likely symbolic. Presumably, the CORE's scope was extended to indicate that similar issues occur within non-extractive industries (i.e., to downplay extractive industry crime and violence). As Torrance and Burns (2018) opine, "[t]he fact that other sectors, like retail, will also be in the scope of the ombudsperson's mandate should be seen as a positive for the mining sector, which has previously been the exclusive focus of scrutiny" (p. 9). In either case, the lack of debate about the garment sector's overseas activities

[56] It was also mentioned in the SDIR's April 20, 2021 meeting transcript; however, due to its unavailability at the time of writing, the contents of this transcript were not included in this thesis analysis.

illustrates that, along with how discourses were represented, which were even included in the conversation factored into the establishment of the CORE.

As Fairclough and Fairclough (2012) argue, the discourses that prevail in the context of any struggle “will strongly affect which strategies and policies win out” and how the broader struggle plays out in the long term (p. 6). In this case, both processes of naturalization and recontextualization shaped which knowledge claims prevailed. Dominant claims ultimately reproduced and reinforced the existing social structure, evidenced in the current constitution of the CORE, which remains an ombudsperson in name only (Emily Dwyer, Canadian Network on Corporate Accountability, 8 April 2019, para. 6; Penelope Simons, SDIR, 13 April 2021, p. 2).

### 6.2. The CORE: A Step Forward or A Step Back?

Discourse performs an important role in processes of meaning-making based on how subjects are “represented, interpreted, narrated and explained” (Fairclough & Fairclough, 2012, p. 6). According to Fairclough and Fairclough (2012) there are two main accounts of the capitalist crisis: “systemic and non-systemic” (p. 6). Systemic accounts point to causes that arise from the nature of the current system and may include capitalism itself or its neoliberal form. Non-systemic accounts, on the other hand, refer to causes that arise from elements of the system rather than the system itself; for example, “too much or too little regulation” (p. 7) or the moral failures of some individuals. To address and remedy systemic social issues requires radical change whereas non-systemic accounts simply call for a return to the status quo (p. 7). All of this to reiterate that how an issue is discursively framed influences the types of interventions available when seeking its resolution (see Bittle & Snider, 2006; Jessop, 1990, p. 204). Based on this logic, even the proposed quasi-judicial version of the CORE would not have addressed the systemic issue that is capitalism. Even though it might have made it easier to sanction corporations or for victims to access remedy, a quasi-judicial CORE would not have produced the radical change necessary to eradicate corporate crime because arguments for more (or stricter) regulation reflect non-systemic accounts of the issue, as noted above (see Norrie, 2014b, p. 132). In sum, through the lens of Marxist ideology theory, capitalist solutions to capitalist problems will not create lasting change. Though regulatory reforms do, at times, placate counter-hegemonic groups, they remain designed to reproduce the status quo by securing capitalism's continued reproduction and dominance (Carroll & Sapinski, 2018, p. 17; Jessop, 1990, p. 205; Mahon, 1979, p. 166; Tombs, 2012, pp. 172-173; Whyte, 2014, p. 241). So, then, what is the way forward?

In moving forward, it is important to remember that discourse is both a stake in and site of class struggle (Fairclough, 1989, p. 89; see Fairclough, 2012, p. 9). On discussions about the CORE, specifically, I think two things are worth noting: (1) that we are *still* debating its establishment and mandate and (2) that we *are* still debating its establishment and mandate. While the first statement expresses discontent – that, despite more than a decade of advocating "better" corporate regulation of the Canadian extractive industry, victims and their allies have merely witnessed the state inch from one ineffective CSR strategy to another – the second point expresses optimism and strength – in that, despite countless disappointments and setbacks, the struggle continues. The latter point thus articulates the enduring force that is resistance; that even if counter-hegemonic struggles yield no short-term victories, their mere existence indicates the possibility for change (Lipsitz, 1988, p. 150). As Lipsitz (1988) puts it, "victory and defeat are not mutually exclusive categories" (p. 149). We can always use our "failures" to carve a new path forward (p. 150) by uncovering contradictions and inconsistencies within, and counter claims to, the dominant system. We can always create spaces of resistance.

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# Appendices

## Appendix A: List of Web-Based Publications

Below is a list of the 60 web-based publications, in reverse chronological order, analyzed for the purpose of this thesis project.

*March 30, 2021*

1. "Canadian Ombudsperson for Responsible Enterprise Launches Human Rights Complaints Process" – Bennett Jones LLP, *JD Supra*

*March 18, 2021*

2. "International human rights parliamentary subcommittee studies the CORE" – *CNCA*

*March 4, 2021*

3. "Without investigatory powers, feds' watchdog for mining industry toothless" – Emily Dwyer, *The Hill Times*

*March 2, 2021*

4. "Ombudsperson's success 'may be compromised' without powers to compel info: legal review" – Jolson Lim, *iPolitics*

*February 25, 2021*

5. "Government conceals and ignores expert advice on CORE, report leaked by civil society" – *CNCA*

*November 3, 2020*

6. "New office will soon take complaints about Canadian firms acting badly abroad" – Jolson Lim, *iPolitics*

*April 30, 2020*

7. "Impacted communities are advised to 'Approach with Caution' – Canadian civil society groups raise alarm about Canada's Ombudsperson for Responsible Enterprise (CORE)" – *CNCA*

*November 21, 2019*

8. "Canada companies' watchdog to press Trudeau for expanded powers" – Jeff Lewis, *Financial Post*

*October 16, 2019*

9. "5 things Canada's next government should do to curb corporate abuses of human rights" – Ian Thompson, *Oxfam Canada*

*October 4, 2019*

10. "Government Updates Ombudsperson's Mandate, Still Fails to Provide Investigatory Powers" – *Maquila Solidarity Network*

*September 17, 2019*

11. "Parliament has dissolved and Canada still does not have an independent ombudsperson with #power2investigate" – *CNCA*

*September 12, 2019*

12. "Frustration fuels exodus from advisory body: Members say federal ombudsperson has no power to probe mining companies" – John Longhurst, *Winnipeg Free Press*
13. "Trudeau Government Drops Writ and Publishes Revised Ombudsperson Mandate, Again Fails to Provide Necessary Powers to Investigate Corporate Abuse of Human Rights" – *MiningWatch Canada*

*July 29, 2019*

14. "'We didn't get the job done': Liberals poised to break promise on corporate ombudsperson, say observers" – Peter Mazereeuw, *The Hill Times*

*July 11, 2019*

15. "Advisors quit, accusing Trudeau government of dithering on corporate watchdog" – Morgan Sharp, *Canada's National Observer*
16. "Government of Canada turns back on communities harmed by Canadian mining overseas, loses trust of Canadian civil society" – *CNCA*

*June 17, 2019*

17. "Ensuring success for Canada's human rights ombudsperson: the importance of collaborative dispute resolution" – Felix Lee, Pierre Gratton, & Jackie King – *The Hill Times*

*May 15, 2019*

18. "Canada's 'toothless' new corporate watchdog is a broken promise and a major setback for human rights" – Emily Dwyer, *Business & Human Rights Resource Centre*

*May 5, 2019*

19. "Why does Justin Trudeau succumb to corporate pressure?" – Charis Kamphuis, *The Conversation*

*May 4, 2019*

20. "Canada Still Needs an Ombudsperson to Investigate Mining Cases Not an Advisor to the Minister of International Trade or another CSR Counsellor" – *MiningWatch Canada*

*April 30, 2019*

21. "UN official criticizes Canadian delays setting up corporate ethics watchdog: International Trade Minister Jim Carr took 15 months to appoint new ombudsperson" – Mike Blanchfield, *CBC News*

*April 9, 2019*

22. "Canada has a new watchdog for corporate ethics. But where are its teeth?" – Jennifer Wells, *The Star*
23. "When mining companies work abroad, should justice follow them home?" – Whitney Eulich & Sara Miller Llana, *Christian Science Monitor*

*April 8, 2019*

24. "Canadian Government Breaks Promise to Create an Effective Ombudsperson: The United Church expresses dismay over the government's failure to appoint an independent ombudsperson with real powers" – *The United Church of Canada*
25. "Canadian Government Reneges on Promise to Create Independent Corporate Human Rights Watchdog" – *Development and Peace*
26. "Canadian Government Reneges on Promise to Create Independent Corporate Human Rights Watchdog" – *CNCA*
27. "John Ruggie welcomes appointment of Canadian Ombudsperson for Responsible Enterprise" – John G. Ruggie, *Business & Human Rights Resource Centre*
28. "'Lobbied to death': Liberals face backlash over corporate responsibility ombudsman, Jim Carr said lawyers still need to study whether the office will be able to force companies to turn over documents or compel witnesses to testify" – Gabriel Friedman, *Financial Post*
29. "Minister Carr announces appointment of first Canadian Ombudsperson for Responsible Enterprise" – *GAC*
30. "New corporate-ethics ombud named but powers remain unclear" – The Canadian Press, *CBC News*
31. "New corporate-ethics ombud named but powers still subject to legal review" – Mike Blanchfield, *National Post*
32. "The United Steelworkers Dismisses Government Announcement and Renews Calls for Independent Ombudsperson" – *United Steelworkers*

*January 29, 2019*

33. "Feds vowed a watchdog to oversee Canadian business abroad. Where is it?" – Jennifer Wells, *The Star*

*January 23, 2019*

34. "Top court weighs precedent-setting case of human rights breaches at Canadian mine in Eritrea: Eritrean refugees want to sue B.C.-based Nevsun Resources over alleged forced labour at its gold mine" – Kathleen Harris, *CBC News*

*January 21, 2019*

35. "Human rights groups concerned about powers for long-delayed mining, textile ombudsman" – Peter Mazereeuw, *The Hill Times*

*January 18, 2019*

36. "Canada's overseas mining practices on trial in alleged rights abuse case" – Jennifer Wells, *The Star*

*January 7, 2019*

37. "Human rights activists frustrated over delay in naming mining ombud" – Michael Swan, *The Catholic Register*

*December 10, 2018*

38. "Over 200 organizations from 56 countries ask, "Where is Canada's Ombudsperson for Responsible Enterprise?" – *Development and Peace*

*December 3, 2018*

39. "Dwyer: Canada's new corporate ombudsperson needs real power" – Emily Dwyer, *Ottawa Citizen*

*November 28, 2018*

40. "Mining affected communities ask: Where is Canada's Ombudsperson for Responsible Enterprise?" – *Amnesty International Canada*

*February 14, 2018*

41. "Human rights ombudsperson will bring long-awaited accountability to Canadian mining" – Jennifer Henry, *The Hill Times*

*February 6, 2018*

42. "Mexican activists ask Ottawa to investigate alleged support of mining firm" – Bill Curry, *The Globe and Mail*

*January 29, 2018*

43. "Canada is moving towards effective corporate oversight with new human rights watchdog" – Emily Dwyer, *Business & Human Rights Resource Centre*

*January 19, 2018*

44. "Canada's new corporate behaviour office is just a start" – Jennifer Wells, *The Star*

*January 18, 2018*

45. "Canadian miners welcome new federal business ethics ombudsman" – Henry Lazenby, *Mining Weekly*

*January 17, 2018*

46. "Announcement by the Honourable François-Phillippe Champagne, Minister of International Trade, concerning the creation of a Canadian ombudsperson for responsible enterprise (CORE)" – *GAC*
47. "At Last, Communities Impacted by Canadian Corporations Overseas will be Heard: Government Creates Human Rights Watchdog" – *CNCA*
48. "Barrick Comments on Creation of Canadian Ombudsperson for Responsible Enterprise" – *Barrick Gold Corporation*
49. "Long-Fought-For Ombudsperson Announced to Investigate International Complaints against Canadian Mining Companies" – *MiningWatch Canada*

50. "The Government of Canada brings leadership to responsible business conduct abroad" – *GAC*
51. "Trade Minister plans to confront CEOs over human-rights rules" – Bill Curry, *The Globe and Mail*

*January 16, 2018*

52. "Champagne to announce new ombudsman for corporate responsibility Wednesday, after years-long campaign by human rights groups" – Peter Mazereeuw, *The Hill Times*

*December 12, 2017*

53. "Canada to create overseas mining watchdog early in 2018" – Reuters Staff, *Reuters*

*June 14, 2017*

54. "Mining group tells government to stand at wrong end of elephant" – Kristen Genovese, *The Hill Times*

*June 12, 2017*

55. "Don't confuse dialogue with accountability in ombudsman debate" – Karyn Keenan, *The Hill Times*

*May 31, 2017*

56. "From dialogue to accountability: A call for Canadian leadership on business and human rights" – Karyn Keenan, *Business & Human Rights Resource Centre*

*November 20, 2016*

57. "'No real role': Canada's watchdog for mining abroad struggles to sharpen its teeth, Agency has new 'enhanced strategy' but critics question its effectiveness" – Ghada Alsharif, *CBC News*

*October 4, 2016*

58. "What the Liberals, Greens and NDP Have to Say on Mining in Canada: With Canadians looking ahead to a federal election on October 19, The Northern Miner submitted mining-related questions to the leaders of the four major political parties running across Canada" – John Cumming, *HuffPost Canada*

*April 25, 2016*

59. "Nearly 200 organizations write to PM urging stronger accountability of Canadian mining overseas" – *CNCA*

*February 23, 2015*

60. "Oil, politics and human rights: A look back at Talisman, Company faced years of criticism for its connection to Sudan civil war and genocide" – Kyle Bakx, *CBC News*

## Appendix B: Informal Access to Information Request

Your informal request for ATI records previously released has been submitted.

# Informal Request for ATI Records Previously Released

**Organization:** Global Affairs Canada

**Year:** 2019

**Month:** February

**Request Number:** A-2018-00177

**Request Summary:** Documents pertaining to the creation of the new ombudsperson overseeing Canadian business abroad (Canadian Ombudsperson for Responsible Enterprise) sent between February 1, 2018 and April 17, 2018. Limited to documents sent, received or prepared for/by the minister for international trade, the deputy minister for international trade and Mining Association of Canada, Barrick Gold, Goldcorp, Tahoe Resources or Hudbay Minerals (and/or their representatives).

**Disposition:** Disclosed in part

**Number of Pages:** 114

## Appendix C: Members of the Subcommittee on Human Rights and International Development

Below is a list of members (as of November 29, 2005) of the SDEV (38th Parliament, 1st Session) whose names appear in the minutes from the Subcommittee's inquiry into the promotion and respect of international human rights and the achievement of sustainable human development goals, held between March and June 2005.

- Hon. Paul DeVillers, Chair, Subcommittee on Human Rights and International Development
- Hon. Stockwell Day, Vice-Chair
- Hon. Navdeep Bains
- Diane Bourgeois
- Joe Comartin
- Hon. Helena Guergis
- Hon. Paddy Torsney

**Appendix D: Witnesses Appearing Before the Subcommittee on Human Rights and International Development**

*Wednesday, March 23, 2005*

- Catherine Coumans, Research Coordinator and Asia Pacific Program, MiningWatch Canada
- Craig Forcese, Law Professor, University of Ottawa, As an individual
- Diana Bronson, Coordinator, Program on Globalisation and Human Rights, ICHRDD
- Godofredo Galos, As an individual
- Onsino Mato, As an individual

*Wednesday, May 11, 2005*

- Carl Pilon, Trade Commissioner, Department of International Trade
- Christine Côté, Acting Director, Investment Trade Policy Division (EBI), Department of International Trade
- Gary Nash, Assistant Deputy Minister, Minerals and Metals Sector, Department of Natural Resources
- Ken Sunquist, Assistant Deputy Minister, International Business and Chief Trade Commissioner, Department of International Trade
- Lise-Aurore Lapalme, Senior Policy Advisor, Economic, Financial and Social Analysis Branch, Department of Natural Resources
- Louis Perron, Senior Policy Advisor, Programs Branch, Department of Natural Resources
- Michel Miron, Senior Policy Advisor, Industry Analysis and Business Development Branch, Department of Natural Resources
- Vernon MacKay, Senior Trade Policy Analyst, EBI, Department of International Trade
- Vivien Escott, Deputy Director, Trade Southeast Asia Division, Department of International Trade

*Wednesday, May 18, 2005*

- Benifacio Patoh, As an individual
- Clifford James, President and CEO, TVI Pacific Inc.
- John Risdel, Advisor, Corporate Affairs, TVI Pacific Inc.
- Pablo Bernardo, As an individual

*Wednesday, June 1, 2005*

- Craig Forcese, Law Professor, University of Ottawa, As an individual
- Diana Bronson, Coordinator, Globalisation and Human Rights, Rights and Democracy
- Madelaine Drohan, As an individual

**Appendix E: Members of the Subcommittee on International Human Rights**

Below is a list of members (as of September 11, 2019) of the SDIR (42nd Parliament, 1st Session) whose names appear in the minutes from the Subcommittee's inquiry into human rights surrounding natural resource extraction within Latin America, held between 2016 and 2017.

- Anita Vandenbeld, Chair
- Cheryl Hardcastle, Vice-Chair
- David Sweet, Vice-Chair
- David Anderson
- Iqra Khalid
- Marwan Tabbara
- Peter Fragiskatos

Below is a list of current members of the SDIR (43rd Parliament, 2nd Session) whose names appear in the minutes from the Subcommittee's ongoing study of the role of the CORE, which began in February 2021.

- Peter Fonseca, Chair
- Alexis Brunelle-Duceppe, Vice-Chair
- Kenny Chiu, Vice-Chair
- Anita Vandenbeld
- Heather McPherson
- Iqra Khalid
- Jennifer O'Connell
- Scott Reid

## Appendix F: Witnesses Appearing Before the Subcommittee on International Human Rights

Below is a list of witnesses who appeared before the SDIR during their study of human rights surrounding natural resource extraction within Latin America.

*Tuesday, May 31, 2016*

- Bertha Zúniga Cáceres, COPINH
- Gustavo Castro Soto, Coordinator, Otros Mundos – Friends of the Earth Mexico
- James Cavallaro, Professor of Law, Stanford Law School

*Thursday, June 2, 2016*

- Rick Craig, Executive Director, Justice Education Society

*Thursday, June 9, 2016*

- André Frenette, Director General, Latin America and Caribbean Bureau (Foreign Affairs and Trade), DFATD
- David Usher, Director General, Trade Negotiations, DFATD

*Tuesday, March 21, 2017*

- Aleisar Arana Morales, President, Xinka Parliament
- Bernardo Belloso, President, Association for the Development of El Salvador

*Thursday, June 8, 2017*

- Alex Neve, Secretary General, Amnesty International Canada
- Bertha Zúniga Cáceres, COPINH
- Felipe Benitez, Coordinator, Independent Indigenous Lenca Movement of La Paz
- Luis Fernando García Monroy, Co-Founder, Youth Organized in the Defense of Life
- Felix Molina, Independent investigative journalist from Honduras, As an individual

*Tuesday, September 26, 2017*

- Duane McMullen, Director General, Trade Commissioner Service – Operations, DFATD
- Jeffrey Davidson, Extractive Sector CSR Counsellor, DFATD
- Martin Benjamin, Director General, North America Strategy Bureau, DFATD
- Sylvia Cesaratto, Director, South America bilateral relations division, DFATD
- Tarik Khan, Director General, Central America and Caribbean Bureau, DFATD

*Thursday, September 28, 2017*

- Dr. Jeffery Webber, Senior Lecturer, School of Politics and International Relations, Queen Mary University of London, As an individual
- Dr. Paul Haslam, Professor, School of International Development and Global Studies, University of Ottawa, As an individual

*Tuesday, October 3, 2017*

- Dante Pesce, Member, Working Group on the issue of human rights and transnational corporations and other business enterprises, UN High Commissioner for Human Rights
- Kathryn Dovey, Manager, NCP Coordination, Responsible Business Conduct Unit, DAF, OECD
- Tyler Gillard, Manager, Sector Projects, Responsible Business Conduct Unit, DAF, OECD

*Thursday, October 5, 2017*

- Andrew Cheatle, Executive Director, PDAC
- Ben Chalmers, Vice-President, Sustainable Development, MAC
- Pierre Gratton, President and Chief Executive Officer, MAC

*Tuesday, October 17, 2017*[*]

- Araceli Tecolapa Alejo, Indigenous Human Rights Defender, Morelos y Pavón Human Rights Center in Guerrero State
- Daniela Pastrana, Journalist and Coordinator of Investigations, Periodistas de a Pie
- Gustavo Lozano, Human Rights Defender, Mexican Network of Mining Affected People
- Rachel Vincent, Co-chair, Americas Policy Group, Canadian Council for International Co-operation
- Santiago Aguirre, Human Rights Lawyer and Deputy Director, Miguel Agustín Pro Juárez Human Rights Center

*Thursday, October 19, 2017*

- Carlos Monge, Latin America Director, Natural Resource Governance Institute
- Francisco Ramirez Cuellar, Attorney, Movimiento Nacional de Victimas de Corporaciones Multinacionales
- Leah Gardner, JCAP
- Shin Imai, JCAP

[*] On this day, only Gustavo Lozano's testimony was considered for the purpose of the SDIR's inquiry into human rights surrounding natural resource extraction within Latin America. Consequently, only their testimony was used for the purpose of this thesis analysis.

Below is a list of witnesses (as of April 27, 2021) who appeared before the SDIR during their ongoing study of the role of the CORE.

*Tuesday, February 23, 2021*

- Emily Dwyer, Coordinator, CNCA
- Sheri Meyerhoffer, Ombudsperson, Office of the CORE

*Tuesday, March 23, 2021*

- Anne-Elisabeth Piché, Senior Advisor, Environmental and Social Risk Management, Export Development Canada
- Chris Moran, Director General, Trade Portfolio Strategy and Coordination, DFATD
- Hon. Mary Ng, Minister of International Trade, House of Commons
- Mairead Lavery, President and Chief Executive Officer, Export Development Canada
- Sara Wilshaw, Chief Trade Commissioner, Assistant Deputy Minister, International Business Development, Investment and Innovation, DFATD
- Surya Deva, Vice-Chairperson, Working Group on Business and Human Rights, UN, Human Rights Office of the High Commissioner

*Tuesday, April 13, 2021*

- Penelope Simons, Associate Professor, Faculty of Law, Common Law Section, University of Ottawa, As an individual

*Tuesday, April 20, 2021*

- Aymara León Cépeda, Sociologist and Human Rights Coordinator, Peru-Subgroup of oil spills, Platform of Amazonian Indigenous Peoples United in Defense of their Territory (PUINAMUDT)
- Ben Chalmers, Senior Vice-President, MAC
- Clemente Bautista, International Network Coordinator, Kalikasan People’s Network for the Environment
- Doug Olthuis, Department Leader, Global Affairs and Workplace Issues, United Steelworkers
- Margareta Dovgal, Task Force For Real Jobs, Real Recovery
- Mark Agnew, Vice-President, Policy and International, Canadian Chamber of Commerce
- Ken Neumann, National Director for Canada, National Office, United Steelworkers
- Lisa McDonald, Executive Director, PDAC
- Jeff Killeen, Director, Policy and Programs, PDAC
- Pierre Gratton, President and Chief Executive Office, MAC

*Tuesday, April 27, 2021*

- Chris Moran, Director General, Trade Portfolio Strategy and Coordination, DFATD