

Homicide Waiting to Happen: Sacrifice and Corporate Manslaughter Law in the UK

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ABSTRACT

The original purpose or motive of the sacrifice, rooted in ceremonious or religious acts, was as a gift to a centralized power that ensured a common good or prosperity. In modern capitalist society, sacrifice is about “a willingness to sacrifice short-term gains for long-term gains” (Keenan 2005: 11) of freedom and fortune. What is concealed in this propaganda is that true freedom and prosperity is mostly restricted to a few exceedingly privileged and powerful individuals – and every year, these ‘short-term’ sacrifices include the millions of lives of the disciplined and altruistic workers that the system supposedly admires. Within this context, in recent years a growing recognition of the social and economic harms that corporations are capable of causing, specifically against workers and members of the public, led to the development of laws in several countries aimed at corporate manslaughter and corporate criminal liability. However, despite these legal advancements, the law continues to fail at protecting the victims of corporate harm and wrongdoing, and to adequately hold corporations and their actors accountable for their crimes. This research asks the following question: what role does corporate manslaughter law play in the reproduction of sacrifice and, in the process, violence and capitalist hegemony? This is done by interrogating the introduction and enforcement of corporate manslaughter law in the United Kingdom and the struggle for corporate criminal accountability from the socio-historical perspective of advanced neoliberal capitalism. Employing a theoretical lens that draws together literatures on sacrifice, law, and violence, this research shows that the law (re)produces particular understandings of sacrifice and violence that benefit the powerful, therein normalizing death and dying at work as the natural and largely unavoidable costs of modern employment relations. The research concludes that, to better address the systemic violence faced by workers, we must consider a restructuring of the legal enterprise and the ‘common sense’ understandings of sacrifice, violence, and harm that accompany it.

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This research is in solidarity with workers worldwide and the sacrifices they make in the face of widespread systemic violence.

Chapter 1: Introduction

The original purpose or motive of the sacrifice, rooted in ceremonious or religious acts, was as a gift to a centralized power that ensured a common good or prosperity (Keenan 2005). The historically consistent definition is of an ethical action that one is obliged to do, and which offers a benefit or ‘truth’ greater than any one person. In class-based societies, such as with contemporary neoliberal capitalism, individual worth is related to the frequency and quality of sacrifices (Pearce 2010). The spirit of modern capitalism is often hailed as involving “a willingness to sacrifice short-term gains for long-term gains” (Keenan 2005: 11) of freedom and fortune. What is concealed in this propaganda is that true freedom and prosperity is mostly restricted to a few exceedingly privileged and powerful individuals – and every year, these ‘short-term’ sacrifices include the millions of lives of the disciplined and altruistic workers that the system supposedly admires.

A growing recognition of the social and economic harms that corporations are capable of causing, specifically against workers and members of the public, led to the development of laws in several countries aimed at corporate criminal liability. In the United Kingdom (UK), the *Corporate Manslaughter Corporate Homicide Act (CMCHAct)* was introduced in 2007, and to date there has only been 24 successful prosecutions under the law. For several reasons explored in this research, the law is clearly underperforming in its capacity to both protect workers and members of the public, and to adequately hold corporations and their actors accountable for their harms; and the low number of prosecutions is not indicative of the widespread and routine violence experienced by workers.

On 28 May 2008, Steven Berry was killed when he fell 13 meters through a fiberglass roof at the Lion Steel factory in the UK. The evidence collected from the investigation proved that Berry was untrained, unsupervised, and was not provided with safety equipment for working at such heights. Furthermore, there were no safety precautions in place to prevent serious injury or death. In July 2012, the company offered a guilty plea of corporate manslaughter, one which spared the company directors from accepting any criminal liability, and was fined £480,000 over four years. Despite the obvious negligence and disregard for health and safety, manslaughter cases such as this¹ are reconstructed as ‘accidents’ and as unfortunate, yet inevitable, costs of doing business in an otherwise faultless system. They are considered the “price to be paid” (Keenan 2005: 11) on the road to freedom and prosperity. They are sacrifices

Research Objectives

There is a continued need for corporate crime research and activism that draw academic, political, and public attention to the structural aspects of sacrifice and violence in society, specifically against workers. This research asks the following question: what role does corporate manslaughter law play in the reproduction of sacrifice and, in the process, violence and capitalist hegemony? Answering this question entails interrogating the introduction and enforcement of corporate manslaughter law in the UK and the struggle for corporate criminal accountability from the socio-historical perspective of advanced neoliberal capitalism.

The present study is critical of those institutionalized endeavours which strengthen existing power structures by accepting and reinforcing state and legalistic definitions of ‘crime’ and violence. As such, the goal is to develop a nuanced approach to the question of corporate violence and the violence of contemporary capitalism more broadly. How we understand the

¹ Details for all 24 cases prosecuted under the CMCHAct can be found in Appendix A.

social construct of ‘crime’ generally influences how we understand (or fail to understand) crimes of privilege (Alvesalo & Lähteenmäki 2016; Michalowski 2016). In examining why certain actions are not prohibited by law, or at least publically condemned, we can make sense of the social relationships that comprise capitalism. It may also help explain certain hidden but significant social processes in capitalist societies, such as how violence and sacrifice are constituted; in turn, this may aid in challenging those same hegemonic understandings that leave the powerful essentially untouched by law and beyond control.

This research considers dominant understandings of violence and sacrifice from the point of view of their ideological consequences. The objective is to explain the application and enforcement of corporate manslaughter law and to understand what is being (re)produced during this process. In the end, this could help to identify important continuities in the ideological role that law and sacrifice play in the reproduction of a profoundly divided social order; examine the hegemonic discourses that support and mystify this role; challenge the presumption that law is neutral and wholly beneficial; and understand the impact that the sacralisation of violence has on corporate killing and capitalist hegemony. The sacralisation of violence (Girard 2011: 65) is about who has the power at the time not only to legitimize their violence, but to make it a universal good, something more beneficial and important than the harm inflicted on the victim. This is an incredibly powerful and privileged position.

Understanding ‘Crime’ and Privilege

A major concern for this research is the problematic disconnect between what is ‘criminal’ and what is harmful. The criminal justice system has an extraordinarily narrow focus, based on limited state and legalistic definitions of ‘crime’ that ignore the broader reality in which harmful and violent behaviour may occur (Scott & Bell 2016: 23). How is it that particular actions and

behaviours become identified and subsequently condemned as ‘crime’ while others do not? Alvesalo and Lähteenmäki (2016: 54) argue that ideological and socio-economic tensions characterize the processes of criminalization. For example, ‘crimes’ are perpetuated in popular images and in legal doctrine as incidents that occur at a certain time, in a certain place, and with a certain weapon. Furthermore, concepts such as criminal liability have grown out of a system of individual accountability (Alvesalo & Lähteenmäki 2016), so harmful behaviours are seen as a product of individual choice and reasoning. This narrow view omits almost entirely the (mis)behaviour of powerful and privileged individuals and organizations.

Largely for this reason, Sutherland (1924: 20) observed that “the legal definition of crime is purely formal, and quite inadequate.” This notion is characterized by the debate (see Michalowski 2016) of whether a ‘crime’ is simply something defined as such by the state, or whether it is something inherently wrong or evil (even if not technically illegal or criminalized). Sutherland further argued that the level of social injury resulting from problematic behaviours should determine a transgression’s relevance, rather than the severity of the penalty that is commonly applied. Unfortunately, this is not the way of criminal law, and corporate crimes are most often relegated to the legal fringes.

In addition to legal understandings, academia and orthodox criminology are also failing when it comes to the crimes of the powerful. The dominant focus on state definitions of crime creates a constrained, and arguably backwards, criminology in which the greatest social injuries receive the least attention (Michalowski 2016). As a result, the academic discipline is generally “compliant with state, corporate, and commercial interests” (Sim 2004: 129). Some even argue that mainstream criminology, in capitalist societies, is part of the (re)production of a hegemonic consciousness consistent with the needs of capitalist accumulation (Michalowski 2016). This is

largely due to the fact that the interests of dominant classes play a substantial role in determining what is and is not ‘crime’ in class-based societies (Comack 2014; Michalowski 2016). Therefore, a criminology that studies only behaviours criminalized by the state becomes part of the process of reproducing existing class arrangements and their inequalities. This has made it practically impossible, if not unthinkable, to develop the consciousness and critical concepts necessary to move beyond a legalistic definition of ‘crime’. As a result, mainstream criminology suffers from the internal contradiction of claiming to be a value-neutral and intellectual discipline, while reproducing ideological and hegemonic understandings of ‘crime’ and its control (Michalowski 2016). Through the “suffocating theoretical and political orthodoxy” of evaluating “what works” (Sim 2004: 129-130), criminology becomes stuck on those criminalized behaviours whose collective harm to society falls well below the harms (often decriminalized, if not fully legal) caused by the economic and political elites.

At the same time, *critical* criminology has propelled forward by building on theoretical insights and extending the definition of ‘crime’ to include the social harms experienced disproportionately by the powerless – and perpetrated by the powerful (Sim 2004; Hillyard and Tombs 2007). This is necessary, as critical criminologists often argue that ‘crime’ is a social construction reflecting the interests of the powerful, especially by deflecting attention from the social harms produced both directly and indirectly by privileged people (Scott & Bell 2016: 16). Furthermore, the discipline critiques existing institutions and power structures, and some offer radical and utopian alternatives to hegemonic visions of justice (Scott & Bell 2016; Tombs & Whyte 2015). But still, even in this critical realm, the violence faced by workers and the harms caused by corporations receive little attention and focus. This research seeks to help fill that gap.

Chapter Outline

Chapter 2 explores the concept and definitional issues of corporate crime. The nature of corporate offences is a debated issue which has been most often summarized in the question of whether elite offenders are ‘real criminals’ (Gray 2006; Slapper & Tombs 1999). This review explains the corporation as an artificial entity which has a privileged legal status and whose widespread harm is rarely subject to legal intervention (Alvesalo, Bittle & Lähteenmäki 2017). Chapter 2 also details the form of corporate harm most relevant to this research: safety crimes. The debate surrounding regulation, the punishment model, and the compliance school is examined (Tombs 2017; Bittle 2012; Gray 2006), including a critique of advice and bargaining as the dominant strategies for addressing corporate violence.

Chapter 3 explores the role of violence in contemporary capitalist societies. Providing a sociology of violence will allow this research to consider violence from the point of view of its ideological consequences. This chapter argues that the power and authority of the state is intimately bound to violence, and the legitimacy of this violence is established by law. Importantly, common and legal understandings of violence do not typically include those acts most committed by the powerful. Also explored is the violence inherent to neoliberal capitalism and the impact this has for occupational health and safety. As such, it is argued that in contemporary capitalist societies, all forms of violence are connected and are rooted in the unequal distribution of power and wealth.

The chapter continues with a discussion of corporate violence, and of violence against workers specifically (Pawlett 2013; Sim & Tombs 2009; Chasin 2004). The general functioning of the system is argued to be at the heart of the worker death problem, and the boundaries of the legitimacy of this violence are established by law (Salmi 1993; Comack 2014). Chapter 3 ends

with a discussion on law and corporate hegemony, exposing some of the law's many contradictions and suggesting that they should be explored further via theoretical insights of violence and sacrifice.

Chapter 4 details the theoretical lens used in this research: sacrifice and law. Here the concept of the sacrifice is explained from both its religious origins and from a critical perspective (Keenan 2005; Girard 2011). The chapter continues with a discussion of sacrifice and capitalism to demonstrate how sacrifice has been interpreted in economic terms – paired with the ideological belief embedded in capitalism that sacrifice is a requirement on the road to prosperity, sacrifice under neoliberalism has become ‘common sense’. Criticisms of sacrifice are then offered, which argue that the process secures and reinforces a violent social order (Pearce 2003; Bell 2002). The chapter ends by exploring the relationship between sacrifice, hegemony, and the corporation (Gramsci 2000; Datta & MacDonald 2011). The theoretical contribution of this research uses sacrifice via the law as a concept to bring focus to how a law (*CMCHAct*) ostensibly introduced to criminalize corporate violence ends up reinforcing the very conditions that produce that violence.

Chapter 5 details the data analysis and provides background knowledge on corporate criminal liability and corporate killing – including the debates, processes, and political struggles surrounding the introduction of new laws (Alvesalo, Bittle & Lähtenmäki 2017; Tombs 2013; Glasbeek 2013). The main focus of the case study for this research, the *CMCHAct* (2007), is introduced and critiqued, and an argument is made that the legislation was constrained from the onset (Gobert 2008) through an institutionalized notion of sacrifice that is effectively reproduced in law and its reform. This chapter then analyses judicial decisions on corporate manslaughter cases from the UK, commentaries from private law firms on the application of the law, and news

media content. These sources provide the basis for critically examining how language, key concepts, and categories are used to frame corporate killing. Five main themes are explored and which demonstrate the connection between corporate violence (and how it is responded to) and sacrifice.

Chapter 6 provides a discussion on sacrifice, violence, and the individual. Based on the data analysis, it is argued that there are several factors that coalesce to reproduce a particular view of violence and a certain understanding of sacrifice – both of which benefit the powerful and protect capitalist hegemony. The law is argued as playing a key role in this reproduction of sacrifice. This research concludes with considerations for the future, including a need for a restructuring of the legal enterprise and the ‘common sense’ understandings of sacrifice, violence, and harm that accompany it; challenging the power of the corporation to operate as freely as it would otherwise prefer; rethinking the intrinsically violent foundations of a capitalist social order; and ultimately striving to abolish the corporation and capitalism itself.

Chapter 2: Corporate Crime

Definitional issues are crucial to the concept of corporate crime. As briefly explored in the introduction, even the concept of ‘crime’ raises important questions and issues. With corporate wrongdoing, it is not always apparent that death, injury, and deprivation are caused by real people in respectable positions of responsibility and privilege. The nature of corporate offences is a debated issue which has been most often summarized in the question of whether elite offenders are ‘real criminals’. For example, Gray (2006: 877) argues that corporate offenders differ from “the traditional image of malicious street criminals” because they are believed to be responsible social actors engaging in productive economic activities, and their harm is a routine aspect of the corporate contract to maximize profits. As such, the stigma of ‘crime’ is not seen as appropriate since, despite some shortcomings, the corporation is perceived as the single best way to organize production, and also a motor of social good (Tombs & Whyte, 2015: 3). Some scholars, then, prefer to use ‘corporate non-compliance’ when discussing corporate harm and misconduct, arguing that the label of ‘crime’ should only be applied to successfully prosecuted cases (for examples see Tappan 1947). However, it is the use of these very concepts that maintain the ideological and functional divide between real widespread suffering and rather innocent non-compliance. Not only do they mystify the destructive realities of corporate crime, but they also hamper efforts in harm prevention and punishment.

Corporations are “institutions that are created for the mobilisation, utilisation, and protection of capital. They are wholly artificial entities whose very existence is sustained through legal and political institutions, which in turn are based upon ideological supports” (Tombs & Whyte 2015: 69). In modern capitalism, the corporation is deemed to be the most efficient vehicle for maximizing wealth production (Glasbeek 2002). Additionally, they are granted

privileged legal rights and limited liability status, which offers legal protections to shareholders from any risks and responsibilities beyond their financial investments in a company (Pearce & Tombs 1998; Glasbeek 2002). The criminogenic design of the limited liability corporation and the veil that it produces is explored further in sections to follow.

As key and central agents of power in contemporary capitalist societies, corporations are able to profoundly influence processes of criminalization, often defining the boundaries of their own harm and their regulation (Whyte 2009). Though the modern corporation “enjoys unprecedented power and a privileged legal status” (Alvesalo, Bittle & Lähteenmäki 2017: 8), it was not until the mid-nineteenth century that it emerged as the dominant means to undertake significant entrepreneurial endeavours (Glasbeek 2002). During this time, the corporation, both in form and reach, expanded significantly – pushing the limits of production in the pursuit of profit, and bringing with it serious and widespread social harm (Alvesalo, Bittle & Lähteenmäki 2017; Slapper & Tombs 1999).

Slapper and Tombs (1999: 50) document empirically the types of actions and omissions that constitute corporate ‘crime’. Contrary to popular opinion, they argue that these harms are widespread and pervasive, and not restricted to a few “bad apples” or the fringes of corporate activity. In fact, as more activities in our society are taken over by large corporations, “an increasing share of misconduct will originate in the corporate sector” (Hills 1987: 121).

Encompassing an exceptionally broad range of frequently misunderstood activities, Pearce and Tombs (1998: 107-110) define corporate crime as:

illegal acts or omissions, punishable by the state under administrative, civil, or criminal law which are the result of deliberate decision making or culpable negligence within a legitimate formal organization. These acts or omissions are based in legitimate, formal, business organizations, made in accordance with the normative

goals, standard operating procedures, and/or cultural norms of the organization, and are intended to benefit the corporate itself.

As this definition suggests, corporate offences can be administrative, environmental, financial, labour or manufacturing-related, or unfair trade practices (among others). Most importantly for the present research, corporations and their actors can also commit criminal offences, including manslaughter, though subjecting corporations to the criminal law is often deemed unfeasible or, for some, undesirable (Alvesalo & Lähteenmäki 2016; Tombs & Whyte 2015). In reality, the bulk of corporate harms are rarely criminalized in practice; this remains true even for those harms technically deemed ‘illegal’ in criminal law.

The question of what should be done about corporate harm and wrongdoing is most often discussed through what Gray (2006) terms the ‘punishment model versus compliance school debate’. Here, some argue for a much stronger use of penal law (for examples, see Pearce & Tombs 1990; Snider 2000; Bittle 2012), while others (such as Hawkins 1990) advocate for persuasion and education as appropriate strategies for regulating corporate misdeeds (Alvesalo & Lähteenmäki 2016:56). The compliance strategy is, apparently, about advising and educating corporations on social responsibility, as opposed to the prosecution approach that is often argued as alienating to business and ineffective, even unreasonable. The competing strategies of regulation and compliance versus punishment are explained in greater detail in following sections, specifically for the main focus of this research: safety crimes and corporate killing.

Safety Crimes

Safety crimes, a subset of corporate crime, are defined as “violations of law by employers that either do, or have the potential to, cause sudden death or injury as a result of work-related activities” (Tombs & Whyte 2007: 1). While breaches of criminal law are the main focus of this

research, safety crimes encompass harms that also violate regulatory law. In either case, these harms have devastating physical, psychological, social, and fiscal consequences. According to the International Labour Organization, two million people are killed worldwide each year, just for showing up to work; and many more (even based on grossly under-recorded official data) die of illnesses caused by their work environment or suffer debilitating injuries (Tombs & Whyte 2007). Obviously, work is a major source of harm. But despite their pervasiveness and magnitude, these harms generally fail to attract the interest of politicians, the media, or criminology as a discipline. The apparent invisibility of safety crimes is related to the invisibility of corporate crime more generally. The harms that do gain any attention are almost always the sensationalized deaths involving some sort of scandal or multiple casualties, though this is not the only type of violence experienced by workers. It is important to note here that workers are not the only group victimized by corporate crime, as consumers and members of the public also suffer from routine corporate misdeeds.

Corporate production of harm and law-breaking are routine outcomes of the way that business is conducted. Breaches of health and safety law, even as criminal offences and even if they are also products of the prioritization of profit over people, are rarely intended to cause death, injury, or illness. Rather, risks to workers are taken in the knowledge that harm is likely to occur. Corporate practices privilege some costs and benefits over others, often viewing workplace injury and disease, environmental pollution, and consumer danger as “externalities” (Tombs & Whyte 2015: 14-15), not counted under the standard inputs of productivity (such as the cost of raw materials or the costs of labour power). Essentially, human suffering remains absent from the cost-benefit balance sheets. This is what helps reduce the value of death, injury, illness, and deprivation as a peripheral side-effect of corporate activity.

Consequently, and perhaps even unknowingly, the destructive outcomes of routine business practices are often located within individual workers or so-called ‘risk groups’. This is a fairly commonsensical belief of how death and injury in the workplace happens: some worker was not being careful or was cutting corners (Kecojevic, Komljenovic, Groves, and Radomsky 2006). Contrary to this popular understanding, Wheelwright (2005) suggests that ultimate responsibility for occupational health and safety rests with the top actors in any business (such as owners, directors, and stakeholders), as the causes of serious injury and death are more often attributable to management failures and the neglect by organisations to take health and safety seriously. Concentrating on worker or employer behaviour individualizes workplace safety and most often shifts responsibility away from corporations and their senior management or owners (Bittle 2012; Tombs & Whyte 2007). This effectively means ignoring any potential structural causes of safety crimes, such as dangerous modes of production or the inherently competitive and risky nature of for-profit organizations. From this perspective, safety crimes commonly result from the consequences of profit-motivated decisions and cultures; this can involve “poorly designed or maintained equipment, the use of casual and overworked staff, or the absence of basic safety equipment” (Tombs & Whyte 2015: 86).

Safety crimes are an example of ‘unacceptable forms of work’, which “are conditions that deny fundamental principles and rights at work and put the lives and health of workers at risk, as well as their freedom, human dignity and security, or which keep households in conditions of extreme poverty” (International Labour Office 2014). Unfortunately, the state of safety crimes and of occupational health and safety (OHS) more broadly demonstrate a cycle of neglect. OHS is of low public and political importance, which leads to a lack of treatment and compensation for harms in the workplace (International Labour Office 2014). As a result, OHS violations are

under-reported and no picture of the real impact of poor and dangerous working conditions can be made. Within this void there are few resources allocated for health and safety improvement and the collection of information, which produces public ignorance of the problem (International Labour Office 2014). In the end, this solidifies OHS as a low priority, and the cycle of neglect begins again.

When harms produced by corporations are not formally recognized, criminalized, and prosecuted (which is most of the time), they are often regarded as simply a fact of life – as unfortunate events that ‘just happen’. In the rare occasions where workplace crimes are taken seriously, it is most often viewed as the result of rogue bad apples and not the fault of a rotten barrel (Glasbeek 2002). That is, the real problem lies not only with those scandalous corporations that cause mass casualties that are sensationalized in the media, but with the routine activities of corporations and capitalism itself (Pearce 2010). As a result, safety crimes (like corporate crime broadly) have historically been addressed “primarily within a regulatory framework and, more specifically, within a compliance model of regulatory enforcement” (Bittle 2012: 46), though criminal law remains a potential option.

Regulation and the Compliance School

Regulation generally “involves state imposed limitation on the discretion that may be exercised by individuals or organizations, which is supported by the threat of sanction” (Stone 1982; as quoted in Bittle 2012: 46). This application of official rules and sanctions is combined with strict liability, which is “a legal standard that imputes liability to a person regardless of their culpability” (Tombs & Whyte 2015: 93). Violating business/health and safety regulations is considered a strict liability offence, which effectively lowers the standards of proof of *mens rea*, or intent. This legal convenience of strict liability is one of the reasons that formally, and most

frequently, the state's approach is to seek to regulate the corporation with respect to health and safety law.

The Health and Safety Executive (HSE) is the key regulatory body in the United Kingdom and is comprised of representation for both employers and employees (Tombs & Whyte 2013). It was established under the Health and Safety at Work Act (1974) to prevent work-related death, injury, and illness. Measures of regulating how businesses operate include taxation, codes of conduct, standards, and guidelines, which are associated with compliance-oriented enforcement. The goal of compliance-oriented enforcement, in theory, is to prevent harm rather than punish it (Snider 1990). This is attempted through persuasion, bargaining, and corporate self-regulation, with the argument that strict enforcement strategies are counter-productive as they may decrease market efficiency and alienate corporate actors who were once cooperative (Bittle 2012). Instead of imposing restrictions or punishments for safety violations, regulation should encourage corporations to act as responsible and self-managing organizations.

Similar to several other western economies, the UK has experienced a long period of the “ideological reframing” of the idea of regulation (Tombs & Whyte 2013: 64). Discursively associated with the concept of ‘red tape’ and a hindrance on business, health and safety regulation became paired with the idea that regulators should not discourage or interrupt the economic progress of the bodies that they regulate (Bittle 2012). As such, developments in occupational health and safety law enforcement have led to “the responsive regulation rationale” and the use of “risk-based” targeting techniques (Tombs & Whyte 2013: 62). Risk regulation refers to “the governance, accountability and processing of risks, both within organizations as part of their risk management and compliance functions, and also at the level of regulatory and other agencies that constitute risk regulation regimes” (Tombs & Whyte 2013: 63). Essentially,

the focus shifted from routine inspection to risk assessments based on evaluating past performances with health and safety, as well as potential future risk. This type of regulation was introduced in an effort to allocate dwindling levels of regulatory resources and is now universal across UK regulatory bodies (Tombs & Whyte 2015).

With the withdrawal of routine inspections from the majority of businesses, the national system of health and safety in the UK has been profoundly weakened in recent years (Tombs & Whyte 2015:7). There has been an enormous decline in investigations and prosecutions, and convictions for health and safety offences fell by more than half over ten years (Tombs & Whyte 2013). As shown below, this lack of credible enforcement is but one of several criticisms of health and safety regulation that needs to be discussed.

Criticisms and the Punishment Model

Risk-based and responsive regulation share several assumptions that have significant implications for monitoring real rates of death, injury, and illness in the workplace. Both view the state as insufficient for overseeing compliance with regulation, and thus prefer to leave the management of ‘risk’ to institutions beyond the state, specifically to business organizations themselves (Tombs & Whyte 2013). They maintain that this is possible and desirable because most corporations are believed to be law-abiding and socially responsible, and likely to comply when offered a combination of market incentives and persuasion (Tombs & Whyte 2013: 67). However, compliance with regulatory measures (i.e. guidelines) is rarely automatic and critical scholars argue that “corporations simply will not self-regulate in the absence of external pressures” (Bittle 2012: 51). This is evident in the UK, as Tombs and Whyte (2013:74) show that only about 25% of prosecutions result from employers’ self-reporting, and that these numbers as well as the total number of reports themselves are falling. Furthermore, many businesses fail to

register their existence with the HSE in the first place and are thus unable to be evaluated or inspected; meaning the dominant regulatory practice is “premised on the assumption that most businesses are responsible, [and] undermined by the fact that many businesses remain unregistered... that is, they are violating the law” (Tombs & Whyte 2013: 73).

Another criticism of compliance-oriented regulation is the arbitrary and ambiguous methods of evaluating risk. This approach offers no indication of how regulators will determine which companies are failing to effectively self-regulate aside from ‘targeting’ those companies who have already been caught breaking health and safety law (Verrico & Crosbie 2013; Tombs & Whyte 2015). This essentially means that we have to wait for people to die or be hurt before companies are inspected. Regulating based on past performance in a time where we are seeing huge declines in inspection is contradictory and self-defeating: how can past performance on safety inspections be included in risk calculations in a regime where there is a minimal chance of being inspected in the first place? This decrease in routine inspection has led to what Tombs and Whyte (2013:73) call an “intelligence deficit”, where regulators are tasked with making future decisions based on information that they do not have. In the absence of knowledge, resources, and political support, the dominant regulatory approach uses targeting in sectors where risk is perceived as greatest, and it is argued as ineffective and unnecessary in so-called ‘low-risk’ industries. However, the category of low-risk includes dangerous activities such as work in agriculture and on docks, which are “industries with some of the highest fatality, injury, and illness rates” (Tombs & Whyte 2013: 74). In the end, many companies may decide to take the risk of unsafe systems as there is a very low chance of being inspected, detected, and successfully prosecuted (Slapper & Tombs 1999; Snider 1990; Tombs 2017).

Although penal sanctions are not the only or primary means to improve safety in the workplace, several critical authors argue that they should nevertheless be available (Alvesalo & Lähteenmäki 2016; Sharpe & Hardt 2006; Bittle 2012; Tombs & Whyte 2015). A major criticism of the compliance approach is that the few sanctions that do result from safety violations are insufficient, ineffective, and sometimes even counter-productive. An example of OHS reform which avoids criminal law is the call for increased fines and ticketing. Although it is the most common consequence of health and safety violations, the fine is itself problematic. Not only are fines disproportionate to the harms caused, but the burden of such fines is often inappropriately borne by employees, through worsening working conditions or wage cuts, or even the fine itself (Tombs 2017). The cost of fines may also be passed on to consumers in the form of elevated pricing. Therefore, a significant critique of regulatory tools is that they may punish workers and consumers even when harmful conditions are out of their control (Gray 2006; Bittle 2012).

With little reason to believe that compliance strategies will seriously challenge companies to reduce workplace risk and violence (especially in industries where fixing hazardous conditions is complex and expensive), some critics argue that cooperative models of regulation are only preferred because they legitimate existing power relations and reaffirm the status quo (Snider 1990; Bittle & Snider 2006). The idea of self-regulation, for example, relies on the assumption that workers and employers fundamentally have a common interest in safety. Not only is this inaccurate (where corporations are legally obligated first and foremost to make money for shareholders), but it ignores the power imbalance inherent to work relations (Tucker 2012). Management decisions, failures, and ignoring warnings (from regulatory bodies and, usually, lower-level employees) have huge implications for health and safety at work (Tombs & Whyte 2017: 17), and the voices of workers are often silenced.

In the end, regulation does, in many ways, prevent serious harm from being identified and formally recognized as illegal or criminal. In fact, the term ‘regulated’ indicates that these acts are not policed in the traditional sense of the word (Tombs & Whyte 2015). Treating safety crimes as strict-liability offenses, for example, effectively removes the negative connotation or stigma attached to ‘criminality’ and instead portrays this violence as (unintentional) mistakes or oversights in the production process (Bittle 2012; Tombs & Whyte 2007; Pearce 1992). This differentiation ignores the social construction of ‘crime’ and the problematic features and consequences of the state definition. Furthermore, regulation advances an underlying commitment to business and the belief that the profit-making activities of corporations deliver enormous benefits – which in turn paints corporations as a force for social good (Alvesalo, Bittle & Lähteenmäki 2017). Ignorance of these considerations can lead to apathy and less demand for addressing serious issues, and the cycle of neglect continues.

The lives and health of workers require more protection than the bare-minimum regulatory regime is currently providing, and it is argued that “stricter punishments would effectively prevent crime” (Alvesalo & Lähteenmäki 2016: 61). In fact, confining the role of prosecution to a measure of last resort misconstrues the seriousness of safety crimes and sends the “wrong message” to employers (Tucker 2012: 44). This perspective is strengthened by the argument that criminal accountability and deterrence would work with corporate offenders because they are calculating, rational actors that consider the costs and benefits of their actions (Whyte 2009). As opposed to crimes of passion, necessity, or anomie, corporations commit harms out of greed and indifference to life, and a strict enough punishment could potentially outweigh the benefits of malpractice. Sharpe and Hardt (2006) suggest further that if employers

have reason to believe they will not receive real punishment for allowing unsafe working conditions, fatalities can only be expected to rise.

Despite persisting attitudes that health and safety are at odds with competitive business or that criminal law is inappropriate for addressing corporate harm, there has been some progress made in targeting safety crimes – such as the introduction of the *CMCHAct* (2007) and comparable legislation. Though not without its faults and restrictions, the *CMCHAct* came out of the punishment model and provides a different way of looking at corporate violence, creating a space for dialogue about how safety crimes fit into society. Systems of regulation obscure this violence, and it requires critical exposure. To fully grasp the violent nature of corporate killing, it is important in the next chapter to understand the conditions and role of violence in society generally.

Chapter 3: Sociology of Violence

To understand the effects and reproduction of violence it is necessary to start from its long-term consequences and not from its immediate results (Sorel 1999: 43). I do not claim to present in this research everything that can be said about violence, nor do I produce a systematic theory of violence. What I do attempt, however, is to consider violence from the point of view of its ideological consequences. The goal is to explain the application and enforcement of corporate manslaughter law and to understand what is being (re)produced during this process. To accomplish this task, I must first explore the role of violence in contemporary capitalist society.

The modern state is characterized by its ability to create, inflict, and sustain violence (Sim & Tombs 2009). Not only is the power and authority of the state intimately bound to violence, but the boundaries that dictate the legitimacy of violence are established through law (Sim & Tombs 2009). There are competing conceptions of who is violent, why violence exists, and how violence should be dealt with – and historically this has gone on for a long time (Chasin 2004:7). There are even different ideas of what constitutes violence. Popular understandings range from common assault and violence against women and children, to drug wars, police violence, and militarization (although the response to each of these scenarios is far from uniform). While these types of violence do happen and cause harm, more political and academic focus can and should be geared towards generating a clear perspective on the diverse forms of violence and degrees of harm in the world today (Bernstein et al. 2009). Obviously, the most common understanding and most widely publicized and consumed type of violence is interpersonal ‘street crime’. This deeply-embedded, common-sense view of violence is immensely important for understanding the ideological role that violence plays in the reproduction of a profoundly divided social order. As we shall see, the role of the law, the state,

and the media in the exaggerated condemnation of inter-personal/individual violence obscures normalized systemic violence.

For social theorist Georges Bataille, “all societies are born in violence, from violence, and all endure in violence” (Pawlett 2013: 29). This is argued as equally true for liberal democracies as dictatorships. This particular approach discusses state authority and social order as forms of violence which confine yet also maintain human life (Pawlett 2013: 30). That is, society exercises a powerful restriction upon the thoughts and behaviours of individuals, and this ongoing repression is of such a magnitude that it can be considered an infliction of violence (Pawlett 2013: 50). Examples of this type include the imposition of strict social rules and mores; policing, discipline, and containment; and the (re)production of a socio-political system based on structural inequalities. These examples all fall under two broad violence types: organizational and structural.

Organizational and Structural Violence

Chasin (2004: 14-15) explores the concept of organizational violence as “a result of an explicit decision made as part of individual’s role in formal institutions, such as bureaucracies”.

Examples of this type of violence can be both obvious (i.e. police brutality) or less apparent (i.e. the corporate executive who decides to let an unsafe product hit the market). In either scenario, decision makers in corporations and government agencies are responsible for organizational violence. Decisions are made at the elite level and have nearly immediate adversarial effects against less privileged peoples (Chasin 2004).

Organizational violence is different from interpersonal violence mainly because of the connection between one’s role (and the expected behaviour) and the violent outcome (Chasin 2004). A particular role one occupies during interpersonal violence does not typically require

acting in a harmful way. However, in organizational violence, the role connection is the key (Chasin 2004: 15). For example, a corporate executive is expected to maintain or increase company profits at any cost. As such, deciding to ignore safety considerations can become part of the job. Furthermore, most victims of organizational violence do not see and are generally unaware of those responsible for the harm caused to them (Chasin 2004). This mystification of harm is even more prevalent with structural violence. Systemic and structural are often used interchangeably to represent the arrangement of and relations between the parts or elements of a complex whole. Essential to this research is the understanding that systems can be violent as well as individuals. In fact, as I will demonstrate in the following section on violence and capitalism, systems can be responsible for direct and indirect violence themselves, as well as for creating the conditions that encourage and foster violent acts between individuals.

Systemic violence is a very wide-ranging form of harm that encompasses the violence of modern life in the broadest sense (Pawlett 2013: 2). This is the violence both implicit and explicit in systems of control, such as the state or the legal system. Systemic violence also covers “the violence implicit and explicit in sexual, gender, and racialized relations” (Pawlett 2013: 3), including how they play out, how they are regulated, and how they are enforced. Examples in this area include patriarchal violence and violence against women, such as domestic violence. In any case, control and power are fundamental, and much of this violence is hidden or appears legitimate; often, it is even normalized or protected by ideology (Pawlett 2013: 30). For instance, violence may be presented as just through law (or lack thereof), or understood as simply an inevitable aspect of regular life, such as with the violence of work.

In a similar vein, Johan Galtung (1969) presents the concept of structural violence as a counterpart to direct and interpersonal violence. Structural violence is defined here as “injury

that is not immediately attributable to an acting subject, but is built into the structure and manifests itself as inequality of power” (Winter 2012: 195). Structural violence takes place when people are harmed because they lack access to resources available to others, including food, shelter, and (safe and fair) employment. Increasingly within critical circles, this violence is becoming characterized as the violence of austerity (Cooper & Whyte 2017). Contrary to the individualist take of popular understandings of violence, these are “consequences of policies that have occurred and accumulated over a long period of time and may involve many decision-making bodies” (Chasin 2004: 16). For example, the dismantling of welfare, housing, and other social systems continues to have a devastating impact on the lives of many people. The threat of eviction, of homelessness, and of unemployment are just a few examples of the widespread and routine violence now built into the fabric of society (Cooper & Whyte 2017). Not only does it consolidate class power, but it targets already marginalized groups and exacerbates existing inequalities; in some cases, organizations are even profiting from this violence (Cooper & Whyte 2017). Theorizing differential access to power as a form of violence forces the category of violence to shift away from surface phenomena toward broader structural issues.

These understandings of violence address a key theoretical problem: conventional definitions associate violence with visibility and individual actions (Winter 2012). This follows the trend of a positivist paradigm dominating social research. In this area specifically, definitions are restricted to the direct, immediate, visible infliction of physical harm. However, Winter (2012: 196-197) builds on the concept of structural violence and argues that silence and invisibility are entangled with contemporary forms of violence. This makes the notion of individual agency and responsibility wholly unsatisfactory criteria in understandings of violence. While appreciating this critique, I would not be entirely convinced by the claim that for violence

to be reproduced it has to be hidden. In fact, one could argue that safety crimes and other forms of corporate violence go unnoticed because they are so *openly* visible. In this sense, it is not invisibility that allows certain forms of violence to reproduce, but that repetition and reproduction make violence invisible – in addition to the very power it takes to define what is openly visible and destructive as nonviolent, or even if violent, as legitimate.

Our need for the language of structural violence is strengthened by a corresponding concern to understand the specific ways in which violence is reproduced and redistributed over time (Dilts 2012:192). In limiting ourselves to a discourse of violence that points only to individuals and intentions, we miss the pervasive forms of harm that are “built into structures, institutions, ideologies, and histories” (Dilts 2012:191). Violence can be part of the everyday life of a society, with people suffering and sometimes dying because they do not have the same access to resources and opportunities needed for a healthy life. What is most remarkable about these processes is how they attract little or no popular, political, or academic attention; and just as remarkable is the contrast between “the deafening silence on the one hand and the ongoing moral panic that characterises social responses to most ‘mainstream’ violent crime on the other” (Sim & Tombs 2009: 97). As explained in the following section, violence in modern capitalist societies is carried on as a simple yet brutal manifestation of class struggle (Sorel 1999).

Violence and Capitalism

Most of popular, political, and academic attention focuses on criminalized violence in the streets or emphasises the violence caused by foreign terrorists (Chasin 2004: 7). Yet our own social system, capitalism, continues to create and inflict violence both at home and abroad that far outweighs these both. Capitalism produces the conditions that create class, racialized, and gender inequalities, which are all “factors that have a profound impact on the opportunities available to

us, our own contributions to violence, and our vulnerability to harm” (Chasin 2004: 51). Contemporary forms of violence are so varied and complex, occurring at such different levels and in such widely differing contexts that their specific links to capitalism need solid understanding. These include the violence that attends the development of capitalism; the counter-violence that resistance to capitalism and imperialism generates (from violent protests to armed struggle); and the interpersonal violence among the public largely generated under the conditions of neoliberal capitalism (Bernstein et al. 2009: 6-7). Historically, most of the harm and destruction is perpetrated by those who are economically and politically more powerful than their victims (Chasin 2004:7).

Neoliberalism as the ‘new’ violence

Neoliberalism has been defined as a “theory of political economic practices that proposes that human well-being can best be advanced by liberating individual entrepreneurial freedoms and skills within an institutional framework characterized by strong private property rights, free markets, and free trade” (Schwarzmantel 2007: 262). Commonly, it is a policy model characterized by the transfer of control of economic factors from the public sector to the private sector. More critically, however, neoliberalism (and the contemporary capitalist societies in which it is found) is characterized by the worship of private property and of individual ‘freedom’ over collective endeavors and genuine equality (Pearce & Tombs 1998; Pearce 2010). Importantly, this new formation is not the result of “retreat” of the state, but of a “transformation” that involved significant changes in how the public and private spheres interact, especially through law (Picciotto 2010: 87). Neoliberalism revealed the close linkages between governments and the corporate sector, as both share mutual interest in maximizing economic productivity (Michalowski, Chambliss, & Kramer 2010; Bittle 2012; Tombs 2017b). As such, we see the kinds of “soft law” regulatory approaches endorsed by the state (like those explored in

the section on safety crimes) that help sustain market-oriented political and economic environments (Picciotto 2010: 98).

With this evolution in capitalist thinking, the violence embedded within the system has changed. Neoliberalism is a distinctly new liberal formation of late-modern capitalism (Dilts 2012:193) that involves a specific type of violence identifiable at a structural level. The high levels of violence that characterize neoliberal capitalist social orders are caused by high levels of inequality within society (Chasin 2004: 17). For example, globalization, international corporations, and universal market competition result in conditions (such as increasing income inequality) that expose more and more people to forms of violence (Bernstein et al. 2009: 5-6). This is significant, as the ‘obviousness’ of capitalist violence has changed drastically; we often fail to see how these events are “on-going catastrophes” (Dilts 2012: 193), and as forms of violence that persist and reach far beyond punctuated events, such as with the violence of austerity (Cooper & Whyte 2017).

Some idea of equality is held by most people in contemporary capitalist societies, whether it is equality of opportunity or equality of legal rights (Scott & Bell 2016; Wright 2010). However, the individualism and competition engrained in neoliberal class formations undermine communal ties and perpetuate expansive forms of human suffering (Wright 2010: 3). For example, the value of equality would imply that it is unjust for the burden of workplace and environmental harms to be disproportionately borne by poor and minority communities, but they are. Furthermore, collective participation in social, institutional, and political structures is becoming increasingly limited, allowing power to become ever more concentrated at the top (Scott & Bell 2016: 69). Therefore, it is necessary for this research to situate the discourse of corporate violence within neoliberal capitalism. The “significant hegemonic power of the

neoliberal model” (Scott & Bell 2016: 69) creates and sustains the conditions for powerful corporations and their actors to commit serious harms while remaining virtually unchecked and unchallenged. Not only is corporate crime being given the room to spread rapidly and globally, but states then allow themselves few strategies to respond to the resulting harms (Alvesalo, Bittle & Lähteenmäki 2017).

The ascendancy of neoliberalism, paired with state (in)action, downplayed the need to regulate corporate harm and wrongdoing in many countries (Alvesalo, Bittle & Lähteenmäki 2017; Friedrichs 2010; Snider 2000). The “collapse of the UK health and safety inspection and enforcement regime has occurred at the same time as a series of government promises to the business community that they will further restrict labour rights” (Tombs & Whyte 2013: 75); this type of “re-regulation” is easily incorporated into a broader neoliberal agenda. Laws governing corporations have been argued (successfully) as unnecessary and redundant, “because free market competition was seen as the best way to separate out socially irresponsible companies” (Alvesalo, Bittle & Lähteenmäki 2017: 8). Thus, organised labour was weakened considerably, health and safety and environmental regulations and their enforcement were increasingly undermined by neoliberal rhetoric, and corporations became more powerful than ever (Tombs & Whyte 2015).

The International Labour Office (2015) provides research that has been conducted to assess the impact of neoliberalism and the recent global recession on occupational health and safety. Many employers have reported that their OHS budgets have been reduced due to economic downturn (Health and Safety Executive 2015). These reductions can take various forms, such as less frequent inspection and maintenance to work machinery and less overall time spent on health and safety management. This has obvious implications for the physical health

and safety of workers. Work-related stress and other psychosocial risks are also more significant in these contexts, as work pressure and intensity often increase as businesses struggle to cut corners (International Labour Office 2013). Low-level employees who have managed to hold onto their jobs are often forced to work longer hours and increase output because their colleagues have been made redundant, while those whose work is already precarious must cope with the associated uncertainty (International Labour Office 2013). These settings, paired with cost-cutting initiatives and a specific indifference to life built into the very foundation of capitalist relations (Tyner 2016), create the conditions which threaten health and safety. The harms generated in profit-making settings are not simply physical, as a ripple of harms is generated by each death or illness.

The imposing force that is neoliberalism strengthens the compliance paradigm of regulation as the preferred method for addressing safety crimes, and corporate harm more broadly. Within the overall context of neoliberal re-regulation (Picciotto 2010; Tombs 2017b) safety crimes are responded to by shifting the issue from the courts to administrative boards (Bittle & Snider 2006; Rosner 2000). Since it cuts into profits and is argued to threaten the entrepreneurial spirit, occupational health and safety is not viewed as necessary for capitalist survival (Tombs 2017b); and the use of criminal law for work-related death and injury is perceived as causing more harm than good. However, as the following sections indicate, the level of violence generated by capitalism is in fact criminal, and causes far more harm than the behaviours currently criminalized by the state.

Violence because of the system (interpersonal)

One of the most widespread kinds of violence today is between people who are all victims themselves (Bernstein et al. 2009: 9), in one way or another (of capitalism, inequality, injustice,

imperialism). While interpersonal, ‘street’ level violence is mostly understood as physical violence inflicted by one individual onto another, the system also plays its part. “Consumer-capitalist societies exert powerful economic, moral, psychological, and symbolic restraints” where individuals are always positioned as inadequate: we should have more, look better, and strive for improvement (Pawlett 2013: 107). This pressure, coupled with the unequal access to opportunities characteristic of neoliberal capitalism, creates conditions that foster violence out of frustration, contestation, or defiance (Pawlett 2013: 107). For example, an individual lacking ‘legitimate’ access to resources and opportunities as a result of neoliberalism and austerity may commit robbery out of feelings of desperation or disenfranchisement. Therefore, interpersonal violence can be understood as proletariat violence – the violence “produced due to ongoing class struggle generated by neoliberal capitalist ideals” (Sorel 1999: 66).

Violence against the system (counter-violence)

Capitalism is also violent because it can drive the proletariat to revolt when their bosses use force in daily life that is in direct opposition to the desires of their workers (Sorel 1999: 78). The imposing nature of capitalism is at the base of this entire process and it operates in an imperious manner (Sim & Tombs 2009). It assumes power and authority without justification, and sometimes the response can be fierce. Counter-violence, such as citizen violence against police repression, “is always loud and the response is usually louder” (Sim & Tombs 2009: 89). This is contrary to the silence associated with the mundane structural violence outlined in the next section. This difference is essential to understanding what does and does not count as violence in a neoliberal capitalist social order.

Violence of the system (systemic, structural, organizational)

The indirect manner in which violence can operate is of utmost importance to this research.

Under capitalism, violence is abstracted according to a specific indifference to life (Tyner 2015).

This is the systemic and structural violence built into the very foundation of capitalist relations, described by Tyner (2015: 110) as “the difference between actively killing and passively letting die”. That is, in most cases, no particular individual is the target of harm. Instead, anonymous members of groups, such as consumers or workers become the victims (Chasin 2004: 72-73). Faceless individuals are disposable when profits are the only priority.

Violence grows within the capitalist system as it becomes limitless and hegemonic (Pawlett 2013: 119). I do not claim that these forms of violence could not, or do not, exist in forms of social organization other than capitalism; rather, the aim is to explore connections between society, law, and these forms of violence. Some researchers point directly to the forms of systemic violence and domination inherent in wealth and income inequality (Dilts 2012:192). This includes job losses, chronic economic insecurity, poverty, and the related effects of economic injustice. The violence inflicted by the global capitalist system and by marketization is also a feature of systemic violence. For example, sweatshop production embodies direct violence in the brutal treatment of workers and alienating violence in the denial of opportunity (Salmi 1993). Systemic violence includes the actions of elected governments including the persecution of labour organizations as well as the violent outcomes of marketization, such as increased worker and producer suicide in developing countries (Pawlett 2013: 3). It also includes colonialism, military intervention, and economic imperialism (Pawlett 2013: 3). This is all mostly in alignment with the demands of the global markets.

The important thing to take away is that in contemporary capitalist societies, all forms of violence are connected and are rooted in the unequal distribution of power and wealth in society (Chasin 2004). Inequality leads to interpersonal, organizational, and structural violence when part of the population is denied the needed resources for a healthy life and environment (Chasin

2004: 45). The broad patterns of violence rampant in capitalism outlined above are hardly mysterious, but how they are understood and reacted to is not so straightforward. On the one hand, violence is condemned. On the other, it is condoned and even advocated (Bernstein et al. 2009: 12). This apparent contradiction suggests that concern about violence has limits and diminishes with distance. Ideology plays a crucial role in determining our view of violence, and neoliberalism offers its own particular rationale claiming that what is good for business is good for society. This notion is one that is imbricated within one of the most central and powerful pillars of modern capitalism: the corporation.

Corporate Violence

Corporate violence is defined as “actual harm and risk faced by workers, consumers, and the public as a result of decisions by corporate executives, from corporate negligence, the quest for profit, and the willful violation of health and safety laws” (Hills, 1987: 1). Self-interest of the decision makers, the capitalist goal of profit maximization, and the structure of the corporation itself all come together to produce the conditions that are associated with violence (Chasin 2004: 80). For example, the criminogenic design of the limited liability corporation offers legal protections to shareholders from any risks and responsibilities beyond their financial investments in a company (Pearce & Tombs 1998; Glasbeek 2002). Not only does this secure actors from accountability for their harms, but this organizational culture can promote further harmful acts by creating distance between perpetrators and victims. This distance is physical but also social and temporal (Chasin 2004); not only do elites not identify with their lower-class victims, but there is usually a significant time lag between when decisions are made in board rooms and when people are getting hurt.

With respect to violence, there is a discrepancy between official portrayals of ‘reality’ and what is actually taking place. According to Hills (1987), there are several types of violence perpetrated by corporations which include, but are not limited to: violence with the consumer as victim (the sale of unsafe food, drugs, and products); the dumping of hazardous products (air and water pollution); community and environmental destruction; and manslaughter and homicide (including work related violence and exposure). The latter includes examples of violence that do not involve immediate death or major injury: for example, the invisible risk of gas poisoning, or the prolonged deterioration of health due to repetitive strain injuries.

Violence against workers

In a capitalist society, the general functioning of the system is at the heart of the worker death problem (Chasin 2004: 180). The tremendous toll in occupational death and illnesses results from the oppression of one class by another, and this violence can be both indirect and alienating. Indirect violence involves harmful situations and actions caused by human intervention but without a direct relationship between the parties involved (Salmi 1993). This includes violence by omission – the type of negligent behaviour that most often leads to safety crimes. Related is the notion of ‘criminal failure to intervene’ which takes place when “human lives are threatened by actions or phenomena whose harmful effects are technically avoidable or controllable” (Salmi 1993: 2). For example, if an employer was to ignore health and safety warnings or fail to repair damaged machinery and a death or injury occurred, this is violence by omission. This indirect violence is related to capitalist ideology, as employers will often allow unhealthy and unsafe workplaces because improvements in working conditions eat into profits.

Alienating violence refers to the “deprivation of a person’s higher rights, including the right to psychological, emotional, cultural, or intellectual integrity” (Salmi 1993: 4). Bittle

(2012) argues that corporate violence can also manifest in the form of economic or psychological/social violence. Work is now less about secure employment for life and more about temporary or part-time work which is susceptible to the whims of the market economy and which can be painful for workers (Bittle 2012: 62). The ultimate goal of the corporation, to maximize profits, is a major cause of precarious work, under- and unemployment, workplace strain and anxiety, and economic stress. The long-term effects of corporate decision making have a number of consequences that are forms of structural violence, including physical and mental illness, suicide, and addiction (Chasin 2004).

Despite the pervasive and widespread harm, corporate violence is often separated from ‘regular’ violence. Several factors play into this social phenomenon, including the media, state-corporate relationships, and, most importantly for this research, the law. Partly because corporations influence what is reported in news, the media focuses much more attention on street crime than on the more harmful corporate wrongdoing (Chasin 2004: 34). In fact, corporate crime may not be covered as crime at all, but rather as a business matter. As a result, we are bombarded with the types of violent images that actually make us fear the wrong things. One of the “paradoxes of a culture of fear” is that serious social problems remain widely ignored even though they give rise to precisely the dangers that people despise most (Chasin 2004: 36). For example, poverty is associated with adverse outcomes for society as a whole: like criminalized harm, drug abuse, and poor health. However, the relationships between corporate goals, political decisions, and the conditions that give rise to interpersonal violence are rarely discussed.

Emphasizing street crime over business crime is useful to political figures as well. Fear of other individuals is politically exploitable, while fear of the system is detrimental. In order to achieve their economic goals, corporations and wealthy shareholders need to have government as

their ally. Neoliberalism revealed the close linkages between governments and the corporate sector in maximizing profit through the manipulation of politics (Michalowski, Chambliss, & Kramer 2010: 7). The processes used to ensure government cooperation with corporate agendas include lobbying, financing of parties and candidates, staffing of political positions, and formulating policy (Chasin 2004: 98). Unfortunately, a lot of death and deprivation result from public policies that benefit corporations and their elites (Chasin 2004: 95). For example, the more pro-business a government, the more lax the safety laws that may infringe on profits and the more dangerous workplaces are likely to be. These policies reflect deeper processes in the day-to-day workings of contemporary capitalist societies that make some people more likely to become victims of violence than others (Chasin 2004: 14). Corporations and elites use the political system to promote their own interests over the welfare of the general public; this includes weak regulation of their actions, which means few rules, minimal enforcement, and small penalties for violations (Whyte 2009). The success of these efforts leads to a society in which violence, in all its forms, becomes more likely.

Given the knowledge that exists on corporate violence and the real-life consequences that cause such suffering, it seems counterintuitive that there is such little legal/policing/enforcement consideration of these crimes. But in reality, corporate lawbreakers often double as corporate lawmakers. Most have the power to affect what is considered illegal and criminal, and to obstruct legislation that would outlaw their violent activity (Chasin 2004; Tombs & Whyte 2015). While some laws are in place to help protect workers and members of the public from corporate misbehaviour, companies are often able to circumvent them or to avoid serious consequences for breaking them. The following sections outline further the intimate relationship between violence, corporate harm, and the law.

Violence and Law

Law is one of the everyday discourses that shape and constrain social life (Richland 2015), and there is a definitive inseparability between it and violence. According to Swiffen and Nichols (2016), violence is not incidental or secondary to law, but a condition of which it exists. Not only are the boundaries of the legitimacy of violence established by law, but the power and authority of the state (and of law itself) is necessarily and intimately bound to violence. That is, there are no real solutions to violence within the legal system, just different distributions of it. Richland (2015) argues that even law itself is violent because it merely interrupts or sustains suffering instead of combating it.

According to liberal ideology, “the state’s exercise of ‘legitimate’ violence today limits itself strictly to instruments set by a humane standard to achieve peace and prosperity” (Bernstein et al. 2009: 14). However, the body of the police, imprisonment, and state-sanctioned punishment reveal this rotten core to the ‘justice’ system, where law is a manifestation of violent domination for its own sake (Bernstein et al. 2009). That is, violence in the name of preserving law and, by extension, the social, political, and economic system. Therefore, it is increasingly important to consider the role of law in supporting capitalism and the resulting violence that might occur. The section above detailed the violence inherent to capitalism, and the law plays a significant part in maintaining a bourgeois society that feeds on cut-throat competition and injustice. Simply put, law is violent because society is violent and the law plays a role in sustaining a violent social order. This is not just a reactive phenomenon to be analyzed in particular cases; the violence of law has a constitutive function in establishing the conditions of possibility for law in the first place (Swiffen & Nichols 2016: 132). Essentially, “lawmaking is powermaking and to that extent, an immediate manifestation of violence” (Sim & Tombs 2009: 87). Having the power to give organized existence to something means some extremely harmful

acts may be illegal and criminalized while others are not – and how certain behaviours come to be established as criminal or as accepted business practice is important.

Law and corporate hegemony

The official version of how law sees itself, and wants others to believe about it as well, is that of a neutral, objective system for resolving social conflict (Comack 2014: 11). It is supposedly based on facts and completely value free, treating everyone as legal equals and holding no one above it. However, law is a social process that is predicated on the functioning of other social processes (Comack 2014). Besides the most obvious (like training legal professionals and enacting new laws), its reproduction is also grounded in the reproduction of power relations. Even though it is arbitrary in its capacity to punish, the ideology of a fair and consistent rule of law is necessary to sustain the current social order and the hegemony of the ruling class (Tombs & Whyte 2015: 80). As such, social, economic, psychological, and cultural forces act upon law, and law itself has social consequences (Hunt 1993).

Modern criminal law was formed in a particular historical epoch and “derived its characteristic shape” from fundamental features of the social relations of that time (Norrie 2001: 8). Its principles, therefore, are not value-neutral or general. In fact, law emerged historically alongside free market capitalism, binding legal thought to the commodity form and fortifying the very conditions necessary for capital (re)production (Alvesalo, Bittle & Lähteenmäki 2017; Woodiwiss 1990). Essentially, the logic of capitalism is embedded in law. The central principles of law are thus the site of struggle and contradiction, as they introduce a principle of selection that refuses to recognize certain harms as violent (Winter 2012). For example, the legal category of ‘violent crime’ consists of violence against the person, sexual offences, and robbery (Slapper & Tombs 1999: 55). While the subcategory of ‘violence against the person’ could clearly include

some forms of corporate crime, especially safety crimes, this is not typically the case. This fragmented understanding and preoccupation of the law with conventional ‘street’ crimes committed by the poor and powerless limits public knowledge of the range and magnitude of corporate violence (Hills 1987).

Law is most often seen as an instrument of social justice, but this is a misconception (Pearce 1976). It is a complex and often contradictory system of rules and practices with the ultimate goal of preserving the existing social order (Bittle 2012). Some even argue that law masks and reinforces inequalities and reproduces social relationships based on domination and exploitation (Whyte 2009). This does not mean that law is simply a tool or pre-ordained, but rather is something that is produced and reproduced through different class processes. As an ideological form, “law acts as a legitimizer of capitalist social relations” (Comack 2014: 31). This is, in part, due to law upholding the political, economic, and social system as a valid and moral order where the unequal distribution of wealth and advantage is merited (Comack 2014). It is also accomplished in the form that law takes in a capitalist society; its shape and structure (the rule of law) provide the appearance of equality when, in reality, the legal system typically operates in accordance with the interests of the dominant class (Comack 2014). Power is derived “both from the form that law takes and from the ability of powerful institutions to influence and even create the law...from the ability of the powerful to *break* the law” (Whyte 2009: 219). In this sense, law plays an important role in supporting the legitimacy of the social order by creating and adapting the boundaries of corporate power.

To better address the harms caused by powerful corporations, we need to better understand the many different and contradictory factors that shape law and its enforcement. Any analysis of criminal law involves the identification of traditional legal scholarship as involving a

“rationalizing enterprise” (Norrie 2001: 7). That is, there is supposed to be a logical approach to criminal law based on the identification and application of certain established principles. Paradoxically, it is this ‘logical’ and rational tool that makes criminal law both inapt and also potentially perfect for handling corporate offenders. The argument that individuals should be held accountable for their social harms is rooted in the belief that humans are rational beings capable of making their own decisions. However, critical scholars would argue that people and their relationship to the legal system are more complex than that, with the majority of criminalized harms not actually resulting from the rationalization of pain versus pleasure. Ironically, the kind of calculating and ‘rational’ crimes widely perpetrated by corporations are the types of harms that criminal law should, in theory, be most effectively able to address (Prashad 2017) – if not for the general reluctance to apply law to the world’s most harmful actors, or the inability of enforcement agencies to accurately identify their crimes, or for traditional jurisprudence focusing on individual responsibility and *mens rea*. It is for this reason that Norrie (2001:8) argues that criminal law is neither rational nor principled; not that there is no rationality or principality to the law at all, but rather the elements of reason and principle are constantly in conflict with other elements in the law itself.

To be clear, this is not to say that criminal law is simply inappropriate for addressing corporate crime and that it should be dealt with through other channels, as though the nature of corporate harm is getting in the way of an otherwise rational process. The problem lies in a fundamental feature of criminal law: it is contradictory. With the advancement of capitalism, law developed a distinctive set of logics to deal with corporations, while also ensuring that their crimes were a peripheral concern (Tombs & Whyte 2015). In fact, there are certain aspects to law and how it is structured, such as individual responsibility and a guilty mind that benefit

corporations and their actors (Pearce 2007). For example, the ultimate principle at the root of criminal law, which includes the element of logic, is the requirement of doing justice to individuals (Norrie 2001: 10-11; Prashad 2017). Individualism claims that punishment should be dealt to individuals who voluntarily break the law, as their actions represent the outcome of free choice and a guilty mind. However, “individualism within the law has nothing to do with concern for the dignity, happiness, or importance of the individual” in actuality (Norrie 2001: 12). The legal view of what individuals are like is entirely different from the realities associated with actual individual lives. Criminal law essentially bases its claim to rationality on the fact that it has a one-size-fits-all view of the individual, but “dominant notions of legal individualism and the universal legal subject actually constrain legislative efforts to hold corporations accountable” for their harmful (criminal) actions (Alvesalo, Bittle & Lähteenmäki 2017: 2). The legal discourse of individual responsibility has paradoxically justified the irresponsibility of corporations and abstracted the real conditions of violence that allow corporations to thrive.

Karl Marx (1818-1883) discussed the exploitation of capital and was also critical of the law’s claims to neutrality, fairness, and objectivity. A major defect of legal theory has been the tendency to reify law and to treat it as an actor that has an autonomous existence within social systems (Hunt 1993). The problem here is that, in reality, the social classes that are able to exert power when it comes to law making and law enforcement are the same social classes that control and benefit most from corporate capital accumulation (Michalowski 2016). It is not necessarily that the capitalist elite control the legal process itself, or that they are actively trying to ensure that criminal laws target only certain behaviours or groups, but there is “ample evidence that these classes are very interested and are very capable of mobilizing powerful political forces against ideas, social movements, or legislative proposals” that would criminalize some harms,

while obscuring the ones from which they most benefit (Michalowski 2016: 189). The state, acting in the long-term interests of capitalism, must find a way to secure the conditions under which capital accumulation is possible while also maintaining the conditions for social harmony. This is an example of how law is fundamentally contradictory and hegemonic.

This review begins to demonstrate law's contradictions, especially as related to corporate harm and violence. However, considerations of sacrifice are somewhat underdeveloped in critical accounts of law and within safety crimes literature. What we have here is a law that was introduced expressly for the purpose of addressing corporate violence (or at least a certain aspect of corporate violence: negligent killing at work) and yet, as will be argued, the law is actually helping to reinforce the very conditions in which violence and sacrifice are seen as a natural and largely unavoidable aspect of employment relations. This research contributes to the socio-legal literature and to the literature on sacrifice and corporate crime/capitalism by exploring law's contradictions via violence and sacrifice.

Chapter 4: Theoretical Lens – Sacrifice and Law

The sacrifice literature essentially has two main divisions: religious or theological perspectives, and critical theories. In *Sacrifice: Its Nature and Function*, Hubert and Mauss (1964: 41) propose that “sacrifice is a religious act which, through the consecration of a victim, modifies the condition of the moral person who accomplishes it or that of certain objects which he is concerned”. Similar definitions describe the term as a “necessary passage through suffering and/or death (of either oneself or someone else) on the way to a supreme moment of transcendent truth” (Keenan 2005: 1). Simply put, sacrifice is an ethical action that one is obliged to do, and which offers a benefit or ‘truth’ greater than any one person.

The original purpose or motive of the sacrifice, rooted in ceremonious or religious acts, was as a gift to a centralized power that ensured a common good or prosperity (Keenan 2005). Some were understood as involving the total consumption of a life, especially in blood sacrifices, but were still considered the “price to be paid” (Keenan 2005: 11). While most perspectives on sacrifice view loss as a gift to be given, others argue that the concept has moved past this; some as polarizing as pairing sacrifices with science and evolutionism, arguing that self-sacrifice is a necessity for all living creatures (for examples, see Keenan 2005). Regardless of the orientation, the ‘truth’ of sacrifice that remains relatively constant throughout the literature is that it is the altruistic behaviour that is necessary for a community to survive (Derrida 1995; Keenan 2005; Girard 2011; Bell 2002). It is inevitable, and most recently, sacrifice has been interpreted in economic terms.

Sacrifice and Capitalism

From the ritualistic blood sacrifices of Aztec societies (Pearce 2003) to Foucault’s *ancien regime* (1975), it was generally believed that a sacrifice would, in some way, honor a superior other, or

‘the sacred’. In advanced industrial societies, the neoliberal capitalism way of life is seen as sacred (Datta & MacDonald 2011: 78). The spirit of modern capitalism is often hailed as “involving rational conduct in the form of disciplined work, careful calculation, and a willingness to sacrifice short-term gains for long-term gains” (Keenan 2005: 11). We live in a society whose dedication to capital can be seen in its social organization, its ideologies, its education system, its socialization practices, and more. It is one characterized by the worship of private property and of individual ‘freedom’, and a seeming disdain for genuine equality and collective endeavors (Pearce 2010). This is partly due to the fact that dominant ideologies exemplify capitalism as “the source of everything that is good, favorable, and legitimate” (Pearce 2003: 56). Consequently, possession, consumption, and sovereignty become sacralised (Bell 2002: 343).

The competitive and market-driven characteristics of capitalism can invoke the notion of sacrifice to serve many different ends, such as reducing subjectivity and the person to a tool used to achieve certain goals. That is, the world is seen as “occupied by tools and potential tools that can be used to produce goods which can be sold for a profit” (Datta & MacDonald 2011: 82). This notion was also held by Bataille, who argued that the development of capitalism reduces the human condition to that of a thing (Datta & MacDonald 2011; Pawlett 2013). In both cases, the subjectivity of the person is sacrificed in the name of capital accumulation.

Along with subjectivity, the capitalist system may also demand the sacrifice of autonomy and control (power). Workers are often led to believe that their sacrifice is in the pursuit of independence and universal well-being, when really it is in the name of economic hegemony (Pearce 2010). In fact, “control over the production process is central to sacrifice and oppression” (Datta & MacDonald 2011: 84). This means that the vast majority of people, at one

point or another must work for someone else in order to sustain their basic needs. It is the division of labor and the control over what is being produced, and how and to what end, that alienates workers from the product of their labor (Datta & Macdonald 2011) and all of the benefits that accompany the surplus of their sacrifice. This includes concepts such as leisure and time, and the luxury of a future, both immediate and long term, that is not predicated on subordination to another (Datta 2017).

In class-based societies, such as contemporary neoliberal capitalism, individual worth is related to the frequency and quality of sacrifices (Pearce 2010). For example, people who participate in the reproduction of capitalism are valued more than those who do not, and then there is an additional hierarchy among those who do based on earning, education, and other forms of capital. Under these conditions, individuals as well as social institutions are used up in the name of what is good for the whole system. This is the sacrifice – the destruction and harm that is left behind with every act and infliction of compulsory violence. Importantly, this massive expense comes equipped with the commonly held belief that liberty and freedom require sacrifice (Pearce 2003: 50). Paired with the other ideological belief embedded in capitalism that sacrifice is a requirement on the road to prosperity, sacrifice under neoliberalism then becomes ‘common sense’. As we will see, this belief and “historic confidence” (Girard 2011: 25) in sacrifice is dangerous mysticism.

Criticisms of Sacrifice: A Violent Social Order

All sacrifice is implicated in violence as it necessarily demands a loss – “a loss of self, a loss of dignity, a loss of identity, a loss of life” (Bell 2002: 347). Capitalist activities specifically have led to the sacrifice of many individuals, groups, and communities. It has historically been demanded through events such as colonization, military intervention and war, and economic

imperialism (Pawlett 2013: 3). It can also be seen in the destruction of social welfare with an increasingly privatized and corporatized economy (Sassen 2014). According to Sassen (2014: 63), mass incarceration is another example of a brutal form of sacrifice “inextricably linked to advanced capitalism”. Incarceration is argued as a way of expelling surplus labor populations, as “most of the people who are being incarcerated are also the people who do not have work and for whom work will not be found in our current epoch” (Sassen 2014: 64). Some theoretical understandings suggest that these large-scale sacrifices are an inevitable response to conflict: in a structure characterized by struggle (such as capitalism), the system tips over into unanimity against a specific adversary, “a scapegoat chosen for sacrifice” (Girard 2011: 26). Allegedly, directing ‘legitimate’ violence at a victim temporarily relieves the pressure of violence and conflict that once plagued an entire community system. However, the effects are always temporary, and the system falls back into the same violent patterns (Girard 2011).

Many sacrificial systems “make a point of minimizing their own violence, excusing it, sometimes even apologizing to victims before immolating them” (Girard 2011: 6). The very concept of a victim or scapegoat within sacrifice is something paradoxical, an illusion whose effectiveness requires complete ignorance of its reality. A victim is equally guilty and divine, and sacrificing them “requires a structuring of power that can never fully exert itself except by concealing itself from the eyes of those whose vision it structures” (Girard 2011: 72). That is, sacrifice requires mystification to work, concealing the power that can create ways of understanding concepts like ‘violence’ and ‘sacrifice’ itself. An important element of this mystification, one that helps to ensure compliance with the violence, is the long-standing ideological belief in the ‘miracle’ or good that follows a sacrifice. For example, some understandings even involve using the violence of sacrifice to minimize or avoid further violence

(for examples, see Girard 2011). This is important, as it suggests that some forms of violence (and therefore, some victims) are more legitimate than others. Hiding behind this label of legitimacy, sacrifice can be understood as a “charade of nonviolence” that is organized in such a way as to render the murder of victims as inconspicuous as possible (Girard 2011: 5).

As such, Girard (2011: 6-8) argues that sacrifice is not about renouncing violence (as murder hardly renounces that) but it is about “emphasizing its transgressive power”. Similarly, Kristeva offers a criticism of the ideological practice and argues that sacrifice drives a symbolic order characterized by violence (see Keenan 2005: 33). For example, feminist theories argue that understandings of sacrifice commonly exhibit notions of gender “ranging from taken-for-granted male domination to explicit misogyny” (Keenan 2005: 13). Here, sacrifice is seen as a call to an unquestioning selflessness that is often demeaning and destructive. The imagery that is created when thinking about sacrifice is different from the reality in which it is experienced, presenting a paradox: contrary to being offered willingly by a victim, sacrifice can be calculated and is then “imposed” on a person’s existence (Keenan 2005: 22, 33-35). In this sense, sacrifice is not about a selfless giving, or even a guilt-filled giving – it is about power, specifically who has the power to demand sacrifice and who is missing the power to object.

Sacrifice and Capitalist Hegemony

Antonio Gramsci (1971) offers an analytical lens for examining capitalist hegemony and its role in reinforcing elite class interests. For Ives (2004), Gramsci’s lasting importance derives substantially from his insightful and wide-ranging analyses of the complexity and operations of power in industrialized capitalist societies. He has pointed out that the production and reproduction of a society based on inequalities requires that the state both invoke serious repression while actively constructing a ‘common sense’ consciousness of the everyday world

(Sim 2004: 115-116). This combination of force and consent is fundamental to the concepts of hegemony and sacrifice, and to this research.

Hegemony traditionally signifies some arrangement of authority, leadership, and domination (Ives 2004). The concept of hegemony used here refers to “the ideal representation of the interests of the ruling-class as universal interests” (Scott & Marshall 2009: 305), a process by which the domination of the capitalist class is continually being reproduced. This representation justifies the social and economic status quo as natural, inevitable, and beneficial for everyone, rather than as social constructs that favour the ruling classes. It is a particular way of thinking and seeing the world, and a marginalization of alternative discourses. It is not necessarily about some conspiracy amongst the elite to crush the opposing classes; instead, their interests simply appear to be the natural order of things since they are confirmed in everyday experiences.

A Gramscian approach is significant here because it helps to understand the relations of coercion and consent; actual operations of power rarely separate them so clearly (Ives 2004). It is important to focus attention on the processes by which hegemony is realized because consent is not an automatic condition, but has to be continually constructed and mobilized (Gramsci 2000; Hunt 1993). This is rooted in a Marxist way of thinking about the pervasive power of ideology in reproducing class relations and concealing contradictions (Heywood 1994). The most effective way to maintain control is often to create consent, which is seen in work relations and in the law through the notions of individual responsibility and choice. Importantly, this research explores the ideological element of law and how understandings of sacrifice and violence under neoliberalism become common sense. In a capitalist state, the primary role in the maintenance of social order is fulfilled first by the process of ideological domination (Hunt 1993). Law is only

one of the means of ideological domination, but it is a particularly powerful form. For example, the legitimacy accorded to the legal system means that the law, and the social relations that it creates, become perceived as intrinsically deserving of obedience (Hunt 1993: 53). From this perspective, law and law reform processes are discursive practices that give meaning to relations of power in society (Comack 2014; Woodiwiss 1990). In fact, the content of law is a product of the struggle for hegemony, which is why it is so contradictory (Hunt 1993). Various, often opposing, social forces are represented in the changing content of law, its emergence, and its application. This is addressed specifically in chapter 5 when discussing the genesis of corporate manslaughter law.

The use of language is also very important in hegemonic control. Gramsci's interest in the politics of language is held as a defining influence on his entire thought. His opinion of language as he developed his Marxist political theory was that it is inseparable from culture, politics, and society (Ives 2004), making it extremely useful for social analysis. However, it is important to note that language does not grow and develop spontaneously and of its own accord. This approach therefore views language as an element in the exercise of power (Ives 2004). For example, the outraged language used by powerful groups to condemn the 'criminality' of the poor is offensive because it is misleading and ultimately self-serving (Pearce 1989).

Concurrently, the language used to discuss the 'misdeeds' of the powerful and privileged are often far less condemning. The dialectical processes of defining (and defining away) corporate harm allows powerful groups to virtually monopolize the debate about violence (Sim 2004). In a Gramscian sense, that authority has contributed to the construction of a 'common sense' discourse concerning the nature of violence in capitalist societies – one that does not typically include the violence of corporations.

As previously noted, the language and content of law surrounding sacrifice and violence is dangerous mysticism (Pearce 2003: 66; Pearce 1989). It aids in the reproduction of an imaginary social order in which everyday forms of exploitation, oppression, and violence appear to be normative (Michalowski 2016). For example, neoliberal forces constrain alternative discourses suggesting that social problems, including harm, might be rooted in the basic arrangements of capitalist society. Another example is the general belief that the ‘Rule of Law’ is rational and neutral and therefore should be obeyed. However, regardless of how ‘rational’ a society, myth will always have a role in constructing the social order in one way, when it is really playing out in another (Pearce 2003: 67).

When powerful people and organizations commit harms or demand sacrifice, it is most often seen as being in service of something greater, such as freedom, security, or entrepreneurial capitalism. This creates an imaginary distinction between ‘legitimate’ and ‘illegitimate’ violence (Prashad 2017), which often normalizes widespread harm and destruction. The scale of violence perpetrated by corporations, for example, is so much greater than that of traditional ‘street crime’ that one should really anticipate widespread outrage on behalf of their victims. However, the logic of this violence binary actually moves consciousness in the opposite direction (Prashad 2017), tossing the notion of universal humanity out the window. The divisions which are integral to capitalist society give specific meaning to the violent activities of organizations, one that pushes them to the “ideological periphery” (Sim 2004: 126), as the greater focus gets placed on individuals committing ‘illegitimate’ acts of interpersonal violence. The benefits that can be derived from sacrifices are therefore real, even if they do not come in the form of the cosmological benefits that have been historically promised. But the power and profundity of sacrifice has not been adequately grasped, especially in how it can be (re)produced through law.

Sacrifice and the Corporation

There are three main elements to a sacrifice – the sacrificer, the sacrificer, and the victim – and this research will apply them to contemporary examples. Understanding the differences between these elements is important because, while connected, each has a specific role in explaining not only how and why sacrifices happen, but how their constant drain on human life and well-being is accepted. The sacrificer “is the one in whose interest the sacrifice is purportedly conducted” (Datta & MacDonald 2011: 89). Sacrificers are also typically the ones that must offer up the victim to be sacrificed. In the case of corporate manslaughter, capitalism is the ultimate sacrificer. As noted above, so much in our daily lives is geared in favor of sustaining the socio-economic order. Furthermore, capitalism offers victims by not only creating a hierarchy of classes but also by assigning relative worth to its members. Thus, it is important to understand that the problem of violence and excessive suffering in society lies with the activities and needs of capitalism that requires routine sacrifices.

The sacrificer in the more modern example, the corporation, is equivalent to the symbol of the executioner of past sacrifices. The sacrificer is the one who conducts the ritual or oversees the event that “consumes” the victim (Datta & MacDonald 2011:89). For the purposes of this research, dangerous working conditions can be understood as the ritual that corporations subject their victims to (for example, in the form of unsafe practices and procedures, outdated equipment, or the absence of safety gear) in favor of their relationship to the sacrificer (capitalism, in the form of profit security and accumulation).

This discussion goes to say that violence and sacrifice are mystified ideologically through complex and connected social forces. These forces render certain forms of social injury the subject of state and legal control, while others are technically prohibited but practically tolerated,

and others still are left to operate partially or entirely outside of legal intervention (Michalowski 2016). As such, it is important to analyze how economic, social, and legal forces lead to the construction of what a society understands as violence, and to uncover a greater understanding of the sacrifice that is characteristic of neoliberal capitalist arrangements. Sacrifice is constantly being produced and reproduced, and the more this process is repeated, the more it becomes imbedded within our institutions (Keenan 2005: 32). In fact, the phenomenon is all the more valuable insofar as systems succeed in reproducing it using substitute victims (Girard 2011). As long as there is reconciliation for the harm (justification, benefit, redemption), sacrificers will continue to sacrifice and produce that same violence (Girard 2011; Bell 2002). The sacralisation of violence (Girard 2011: 65) is about who has the power at the time not only to legitimize their violence, but to successfully claim it as a universal good, something more beneficial and important than the harm inflicted on the victim. This is a privileged status. As Alvesalo, Bittle, & Lähteenmäki (2017: 15) state:

whilst it may not be surprising to read that powerful voices get heard more easily than others...realising this privileged position is not simply a result of the powerful imposing their will on others, but instead the product of the conveyance of powerful interests through various legal and extra-legal discourses or forms of 'common sense' that ultimately serve to reinforce the capitalist status quo.

Put another way, the legitimacy of a system that prioritizes legal orthodoxy and capital accumulation over human life is associated with the development and reproduction of hegemonic ideologies. The theoretical contribution of this research uses sacrifice via the law as a concept to bring focus to this fact and applies it in the following chapter, exploring how a law ostensibly introduced to criminalize corporate violence ends up reinforcing the very conditions that produce that violence.

Chapter 5: Data Analysis – Criminal Liability and Corporate Manslaughter

The criminal liability of corporations has been the subject of extended debate in many countries (Bittle 2012; Alvesalo & Lähteenmäki 2016; Snider 2000; Tombs 2013). The scope and quality of the acts that are criminalized in a given society are defined by complicated processes (Alvesalo & Lähteenmäki 2016: 56). Despite the political influence of powerful corporations, there has been the introduction of laws in several countries aimed at holding corporations criminally liable for their harmful acts (Alvesalo, Bittle, & Lähteenmäki 2017; Tombs and Whyte 2015). Analyses of the processes of addressing corporate liability have sought to understand why, at times, stricter legislation (that harms corporate interests) has been successfully passed, even in otherwise pro-business and anti-regulation contexts. Some may be introduced in response to a disaster or scandal (Bittle 2012), others may criminalize corporate wrongdoing owing to a general desire to modernize the criminal code (Alvesalo 2003), and others still may be the result of “political leverage of the left, and/or strong influences within the labour movement” (Alvesalo, Bittle, & Lähteenmäki 2017: 2). I will first discuss the idea of corporate criminal liability and development of manslaughter legislation generally, and then move to the empirical focus of the present study: the *CMCHAct* (2007) of the UK.

Alvesalo & Lähteenmäki (2016: 58) suggest that “various interest groups, such as unions, NGOs, employer organizations, jurists, courts, lawyers’ associations, and government agencies” take part in the struggle over corporate criminal liability, and shape the final legislation in a given country in many ways. It is essentially a site of conflict, a back and forth between established legal principles and changing real-world experiences. These experiences include “evolving systems of paid work and corporate action, interest in protecting the environment, and the incompetence of the criminal law in dealing with crimes that [take] place within these areas

of life” (Alvesalo & Lähteenmäki 2016: 58). This research seeks to critically investigate this struggle from the socio-historical perspective of advanced neoliberal capitalism, unveiling the turns of the law-making process and enforcement. It has been argued that for-profit corporations are distinct bodies that should have distinct legislation, one that is sensitive to the realities of competitive capitalism and the role played by the drive for profit (Glasbeek 2013). For the most part, legal developments have favored companies, and criminal law is sensitive to the needs of entrepreneurship and business (Slapper & Tombs 1999: 26). However, the emergence of criminal law to deal with corporate killing signalled a potential challenge to the historical apathy and ignorance towards crimes of the privileged.

From the beginning, the very idea of corporate criminal liability was not well received, especially by employers, industry, and commerce (Alvesalo & Lähteenmäki 2016: 59; Bittle 2015). The legal profession also opposed, sometimes going as far as arguing that the notion of corporate criminal liability undermines the integrity of law itself (such as the idea of individual liability). Opposition has often hit one or several of the following areas: the penal code and criminal punishment are not considered suited for business matters; other means should be used to regulate economic activity (Hawkins 1990); the preservation of established legal principles, such as *mens rea* and individual guilt (Michalowski 2015), which contradicts efforts to establish liability with complex organizations; and corporate criminal liability represented hostile and aggressive attitudes towards business and entrepreneurship (Alvesalo & Lähteenmäki 2016: 59-6). Health and safety officials may justify their opposition by emphasizing more extensive enforcement of regulations and education, suggesting an administrative compensation payment instead of penal sanctions (Tucker 2012). Those parties that neither clearly oppose nor support corporate criminal liability (e.g. the Minister of Finance) also nevertheless often support other

means, such as education and cooperation, as better suited for developing workplace health and safety (Alvesalo & Lähteenmäki 2016; Alvesalo, Bittle, & Lähteenmäki 2017).

The convergence of these discourses allow for powerful corporate actors “to challenge their new position as (potentially) criminal subjects and, in the process, undermine the state’s efforts” to hold the corporation accountable (Alvesalo, Bittle, & Lähteenmäki 2017: 10). As seen in previous sections, demands for new laws in response to corporate killing and workplace harms have been mostly avoided, often watered down or diverted entirely in favour of non-criminal rules and regulations (Alvesalo, Bittle, & Lähteenmäki 2017; Tombs & Whyte 2015). The apathy of not associating corporate violence with serious harm “does not suggest a total disregard for corporate offending, but that reforms have been slow, hard fought, and have rarely resulted in dramatic improvements in corporate accountability” (Alvesalo, Bittle & Lähteenmäki 2017: 1; Slapper & Tombs 1999). Instead, corporate killing and safety crimes remain poorly understood by law enforcement officials and are not accorded anywhere near the same priority as policing street-level ‘crime’. Ironically, though, the introduction of corporate liability laws are “marked by considerable discussion, debate, and controversy that is atypical when legislators contemplate new laws” to deal with social harms committed by individuals (Alvesalo, Bittle & Lähteenmäki 2017: 2; Gobert 2005).

The political struggles and processes leading to corporate criminal liability legislation may differ in any country, but corporate crime laws are similarly shaped by hegemonic beliefs in the non-criminal status of corporations, the importance of advancing private capital, and of established jurisprudence (Alvesalo, Bittle & Lähteenmäki 2017). In contemporary capitalist societies, powerful corporate interests and legal orthodoxy combine with hegemonic discourses to limit law reform efforts to criminalize corporations. Understanding how the law works in

relation to safety crime requires an analysis of the laws themselves, including “their nature and scope, what they prohibit and permit, and the ways in which this renders (im)possible the criminalisation of corporate malfeasance” (Alvesalo, Bittle, & Lähteenmäki 2017: 3). That is, understanding what it is about the legal system that explains why so many blatantly negligent corporations are able to continue causing widespread harm with minimal, if any, consequences. This phenomenon is especially interesting since activism and debate have transformed the law over the years specifically to criminalize corporate harm (Alvesalo, Bittle, & Lähteenmäki 2017; Crown Prosecution Services 2015). The development of corporate manslaughter law in several countries had the potential to be a radical movement that held powerful corporations accountable and liable for their violence. At the very least, the fact that these laws exist “provides a new way to speak about corporate harm and wrongdoing by signalling that corporations are capable of committing—or at least they can enable—serious crimes and deserve to be punished accordingly” (Alvesalo, Bittle, & Lähteenmäki 2017). But are they?

Introducing the Corporate Manslaughter Corporate Homicide Act

In the last few decades, various efforts emerged in the UK to develop strategies for holding corporations to criminal account for their harmful behaviours (Alvesalo, Bittle & Lähteenmäki 2017). From 1994 to 2009 there were eight manslaughter convictions against corporations for work-related death across UK jurisdictions (Tombs 2017). The fact that these convictions had all been against very small businesses “raised the central legal problem in applying the common law offence of manslaughter to a larger corporate entity; the legal test of identification required identifying a company’s acts and omissions with those of one or more controlling minds” (Tombs 2017:3). That is, for a corporation to be found guilty, one or more senior individuals (usually directors) also had to be found guilty of the offence. This proved to be a difficult task in large and complex organizations. With the compliance approach (advice, support, guidance)

dominating, the health and safety regime which had evolved in the UK was also considered inadequate for effectively punishing corporations responsible for deaths caused by their activities – especially in response to large-scale disasters (Allan 2016).

This is especially notable in the capsizing of the *Herald of Free Enterprise*, which killed 193 people in 1987². This event was a crime “that could be traced back to the carefully planned decisions of accountants and managers” (Tombs & Whyte 2007: 16) as well as other key causal issues including market pressures, systematic failure to heed warnings, and poor design, maintenance, and management of the vessel. A manslaughter charge did follow against the owners of the *Herald* (P&O European Ferries) and seven individuals, but the case did not proceed because the legal test of guilt and intent under common law manslaughter could not be met. Basically, the problems with the identification doctrine created a legal loophole which allowed acts of violence perpetrated by corporations against large numbers of victims to remain un-prosecutable in the UK. In the failure of the prosecution, the problems of successfully holding large and complex organizations to account for the production harm were raised on political and popular agendas. The state’s response was to review the (common) law of manslaughter to consider how it could be extended to include deaths caused by work or work activities.

As with several other countries, the law reform processes in the UK have been laborious and lengthy, and involved intense political debate (Tombs & Whyte 2015; Alvesalo &

² The report into the incident concluded that the *Herald* sank because it had sailed with the bow doors open and attributed this occurrence to serious negligence on the part of several crew members and the owners, Townsend Car Ferries Limited. The report also highlighted several areas of concern relating to the spirit class vessel design and also to the companies operating policies. WordPress (2012): <http://www.ship-disasters.com/passenger-ship-disasters/herald-of-free-enterprise> (also see Tombs and Whyte 2007).

Lähteenmäki 2016: 54). The *CMCHAct* was introduced in 2007, taking the government 13 years to enact the legislation³. In light of large-scale disasters claiming the lives of many people, and no one being held to account, there was growing recognition “of the social and economic damages that corporations were capable of inflicting”, especially when left to their own devices (Alvesalo, Bittle, & Lähteenmäki 2017: 5). However, consistent with the historic reluctance of using criminal law against the powerful, there was notable resistance against the criminalization of corporate harm (Tombs & Whyte 2015; Bittle & Snider 2006). The path from original suggestions and demands to the enactment of the law was full of conflict, controversies, dead ends, and governments succumbing to the voices of several powerful groups supporting industry (Tombs & Whyte 2003; Tombs 2017; Gobert 2008).

The “legal innovation of the new law is that it no longer requires the identification of specific individuals and their guilt as contributing to death in the workplace” (Tombs 2017). Instead, a prosecution under the Act requires a failure in the way in which the corporation is organized or managed that amounts “to a gross breach of its duty of care” (Crown Prosecution Service). This in turn requires evidence that the failure fell “far below what can reasonably be expected” and may include consideration of the “attitudes, policies, and systems of accepted practices” of the organization (Tombs 2017: 4-5). When the Act was being passed, there was the possibility that directors could be disqualified and potentially prosecuted alongside a corporation being convicted of manslaughter (Tombs 2017). When these debates first started, there was little reason to believe that an individual should not or could not “be convicted for aiding, abetting, counselling, or procuring an offence of corporate killing” (*CMCHAct* 2007: 13). Significantly,

³ The genesis of the *CMCHAct* “can be traced to a 1994 consultation paper of the Law Commission which reviewed the law of involuntary manslaughter” (Gobert 2008: 413).

the original consultation documents from the Home Office indicated its willingness to consider holding directors and officers liable under *CMCHAct* for their role in the corporate killing offence (Gobert 2008). However, due to the organized lobbying of employers, directors, and organizations, that interpretation was completely reversed (Gobert 2008). This is the biggest criticism of the law's creation, as the people who owned, controlled, and profited from the business could not be held liable under the same law that allegedly sought to hold corporations accountable for the harms they caused. This is contradictory, as a conviction under the Act requires "a showing that the way in which an organization's activities were managed or organized by its senior managers was a 'substantial element' in the gross breach of relevant duty" (Gobert 2008: 423). It is difficult to imagine that a senior manager is not an accessory to the harm if their actions constitute a substantial element of the corporation's offence.

As a charge under the *CMCHAct* applies only to the organization, the prior offence of gross negligence manslaughter as it relates to corporations was abolished (though it may still be applied to individual directors, owners, and managers under the normal rules of law). Not only was this exemption from individual prosecution seen by many as "a serious watering down" of the proposed legislation, but it was argued that the point became about finding some way of holding corporations minimally accountable and comforting the public without harming business interests (Tombs 2017). In this sense, the law is not really about protecting workers and members of the public, but more about establishing the conditions under which risk and violence can be distributed in a more controlled and legitimized way (Tombs & Whyte 2017: 10). For example, Gobert (2008: 416) argues that to establish proof of a duty of care unnecessarily offers corporate actors with another avenue for deflecting blame, "because organizations, as well as natural persons are already under a duty not to kill innocent persons". Furthermore, the law is restricted

to cases of death and ignores other prevalent issues such as lack of corporate liability for causing grievous bodily harm and other routine acts of violence (Gobert 2008).

Another major criticism of the *CMCHAct* argues that the legislation actually makes it easier for individuals *not* to be prosecuted under the law. For example, Tombs (2017: 2-4) compares statistics from when corporations were subject to the common law offence of manslaughter to convictions under the *CMCHAct* and indicates the following: of the eight cases up to 2009 where companies were convicted under the common law, all but one managed to also convict a director of gross negligence manslaughter. Comparatively, in the 21 convictions (at the time of his writing) for corporate killing under the *CMCHAct*, only four involved convictions of a company director for gross negligence manslaughter (Tombs 2017: 4). Clearly, it is far less likely that an individual director will be charged separately with a criminal offence when the corporation itself is an easy scapegoat.

The introduction of the new law was intended to make it easier to prosecute larger and more complex corporations. In reality, however, it has hardly been a success. To date, there have been only 24 successful prosecutions under the *CMCHAct*, and none of which were against a company of the size and complexity that the legislation was intended for (Tombs & Whyte 2015; Tombs 2013). Furthermore, the Act states that successful prosecutions should generate fines in the range of £180,000 – £20 million, and “for corporate manslaughter the fine will seldom be less than £500,000” (Crown Prosecution Service). However, only three corporations (CAV Aerospace Ltd, Sterecycle Rotherham Ltd, and Bilston Skips) have attracted a sentence which reached the minimum putative fine of £500,000. Given the limited use of this body of law and the fact that fines have failed to reach minimal suggested levels, it is tempting to view these guidelines as purely symbolic. What we are left with is “a sphere of activity” which produces

significant harm and violence but which is “effectively non- or de-criminalized” (Tombs & Whyte 2017: 9).

CMCHAct and Sacrifice

The introduction of the *CMCHAct* institutionalized a notion of sacrifice that, as this research argues, is constantly reproduced. As noted above, the Act does not include the individual liabilities which would have made it possible to prosecute senior managers and directors for the offence of manslaughter. If this is the effect of the new law – to render individuals less likely for criminalization – then this will only serve to strengthen the corporate veil (Tombs 2017). Charging a company for manslaughter while separating it entirely from the human actors who own and profit from it is a method sacrificing short-term gains for long-term gains, which is characteristic of capitalist societies (Keenan 2005:11). From the theoretical perspective of sacrifice, to avoid having to destroy itself entirely, some people or systems can sacrifice part of themselves in order to remain mostly whole (Derrida, in Keenan 2005: 136-137). This is still violence and destruction, but on a smaller scale in order to preserve the bigger picture. The law presented the potential for the name of a company to be scapegoated in order to protect corporate actors and their (general) business interests.

As noted in the literature, some theoretical perspectives suggest that sacrifices are an inevitable response to conflict, particularly in a society characterized by struggle (Girard 2011: 26). The struggles between various interest groups over the existence and shape of the new law are essential in understanding corporate killing legislation. In fact, the driving force behind corporate regulation is dissent (Alvesalo & Lähteenmäki 2016; Snider 1991). Tombs and Whyte (2015) suggest that workplace safety regulation and enforcement are sites of ongoing conflict between competing social forces. In advanced capitalist societies, the significance of

enforcement is mediated through a continuous struggle within the workplace between capital and labour (Tucker 2012); health and safety regulation and criminal liability are ways of translating class conflict into something that is manageable. For a conviction under the *CMCHAct*, the organization must have owed a ‘duty of care’ towards the victim, and guilt requires evidence that the failure fell ‘far below what can reasonably be expected’ (Tombs 2017). This suggests that, in work, there is a certain level of sacrifice that is to be expected and accepted, and it is only when that level becomes astronomical that the *possibility* of manslaughter can be put on the table.

As previously noted, there was considerable public and political pressure to address corporate violence at the time of the law’s constitution. From a sacrifice perspective, directing ‘legitimate’ violence at a victim temporarily relieves the pressure of violence and conflict that once plagued an entire community system. Despite the good that may have been intended, the law ended up being a way to ‘do something’ about corporate killing that would ensure continued social order while simultaneously (more importantly) safeguarding capital. Each time a community is saved or comforted by a sacrifice “it rejoices, but it is soon alarmed to find that the effects... are temporary” (Girard 2011: 26). So even if sacrifice is used as a method of conflict resolution within the law, it is never permanent and the system inevitably falls back into conflict and violence. This is partly because sacrifice is not about justice, but about a tenuous balance of power – usually in favor of those who already have power (Girard 2011). Arguably, then, the law’s very constitution is less about justice and more about a process of legitimizing and reproducing sacrifice, which is the focus of this analysis. Sacrifice requires reproduction to work, and this reproduction is examined via the cases where the manslaughter law was enforced.

The Data

Corporate manslaughter is the case study in this research, one that combines data from a pool of three sources: judicial decisions on corporate manslaughter cases from the UK, commentaries from private law firms on the application of the law, and news media content. These sources provide the basis for critically examining how language, key concepts, and categories are used to frame safety crimes. Dissecting official data “is one way of constructing an alternative epistemology with respect to the nature and impact of contemporary power relations” (Sim 2004: 131). This is one strategy that can contribute to overhauling and abolishing the many unjust and inequitable policies within neoliberal capitalism and its criminal justice system.

The *CMCHAct* states “for the purposes of this Act, whether a particular organization owes a duty of care to a particular individual is a question of law. The judge must make any findings of fact necessary to decide that question” (*CMCHAct* 2007: 3). Therefore, to look at the law in action as an element of the reproduction of sacrifice, I believe it is appropriate and necessary to examine judicial decisions in corporate manslaughter cases. This is an important matter, as every time the law is ‘successfully’ applied as part of the hegemonic order, a specific understanding of violence and sacrifice is (re)produced and supported. Five judicial summaries from the cases detailed in Appendix A were collected from the *Courts and Tribunals Judiciary* website and through *LexisNexis Quicklaw*. These were the only cases readily available from these sources.

Commentaries were collected from law firms in the United Kingdom, using an internet search. Law firms provide insight into the judicial decisions in more general terms while still being representative of the kind of law-capitalism paradox that favors corporate wrongdoers. As mentioned previously, the legal profession was in opposition with the enactment of corporate

liability law, sometimes going as far as arguing that it undermines the integrity of law itself, mostly because it went too far away from individual guilt and intent (Bittle 2012). All commentaries from the firms' websites that were related to the corporate manslaughter cases successfully prosecuted under *CMCHAct* and to the law itself were analyzed, for a total of 17. While varying in their frequency of discussing corporate manslaughter cases, the law firm commentaries were basically similar: they mostly stuck to the 'facts' of the cases, sometimes discussing trends in sentencing. The commentaries cover 2011-2017, though not all cases are represented⁴.

Data from news media was collected using internet-based searches and helped explore how corporate manslaughter is presented publicly, as the average person is much more likely to read a news story than a judicial summary or law firm blog. News sources included popular UK outlets such as *BBC* and the *Telegraph*, as well as news releases from the *Crown Prosecution Services* and the *Metropolitan Police*. These various sources are useful because they show the ideologies and opinions of several sources, including lawyers, judges, union spokespeople, and popular consciousness. News media was also used to fill the gaps of the cases that were absent in the *Courts and Tribunals Judiciary*, *LexisNexis Quicklaw*, and law firm websites. Together, these sources provide a fairly holistic understanding of the framing of corporate manslaughter and the role the law plays in the reproduction of sacrifice and violence for capitalist hegemony. The themes pulled from the data come from an understanding of what has been presented already in the literature on how corporate killing, violence, and sacrifice are understood. For example, it is well documented that corporate harm is most often viewed as 'accidental' or not 'real crime'

⁴ Commentaries were collected from the top 3 most popular law firms via internet search. These were the firms with the most material on corporate manslaughter cases, with many others not discussing the crime in their blogs at all. This is likely due to the little attention afforded safety crimes generally.

(Tombs & Whyte 2015), and these are themes found throughout the data. These, along with the other themes presented in the data analysis represent the underlying structures of belief and perception about corporate manslaughter and sacrifice.

As noted previously, corporate manslaughter prosecutions, especially at the criminal level, will only ever deal with the *minutest fraction* of deaths caused by work (let alone corporate violence in general). At this time, 24 companies have been successfully prosecuted under the *CMCHAct*. The companies charged share similar profiles: they are relatively small, owner managed businesses, with a simple chain of command. Further details on each of the cases can be found in Appendix A. These cases represent only a small number of such cases opened by the Crown Prosecution Service (Kingsley Napley 2017⁵). Despite the number of investigations carried out, both criminal and regulatory (health and safety), very few lead to charges being brought and fewer still result in successful convictions. The following analysis is concerned with the cases that were ‘successful’ to develop an understanding of how the law works in practice and the impact that it can have on understandings of violence and sacrifice.

Analysis

Five main themes from the corporate crime literature were identified during the data analysis: safety crimes as accidents; corporate crime is not ‘real’ crime; negligence and risk are a normal part of doing business; maintaining the corporate veil; and the law as having roots in capitalist ideology. It is significant and worth noting that these themes emerged despite the fact that these were cases where a company was actually found guilty of criminal negligence, suggesting that the vast majority of negligent companies are looked at with even less scrutiny. Elements of the

⁵ GEO Group UK Ltd and Nestore Primecare Services Ltd face unlimited fines after CPS decision to institute health and safety prosecution [Kingsley Napley]. (2017). Retrieved July 18, 2017, from <https://www.kingsleynapley.co.uk/insights/blogs/criminal-law-blog>

sacrifice were applied in the analysis to explore if/how death at work and corporate killing (the sacrifice) are understood as inevitable, beneficial, in service of a common good, whether they involve the sacralisation of a victim or of violence, as well as the mystification and/or justification for such violence. As discussed below, these themes are all related and often overlap. This analysis is followed by a discussion of how these themes demonstrate the (re)production of violence and sacrifice in society through the law.

Theme 1: Safety crimes are accidents

The first theme apparent in the data was the use of ‘unintentional’ language when referring to safety crimes. All of the judges’ summaries utilized words such as “accident” (*R v Pyranha Mouldings*: 2, 5), “tragic” (*R v Lion Steel*: 2; *R v JMW Farm*: 10), and “sad death” (*R v Cotswold Geotechnical*: 1). Similarly, BBC News (2015⁶) describes the Diamond and Son Ltd killing as a “tragic accident”. This discourse is found throughout most of the (minimal) media coverage of safety crimes.

The law firm commentaries also described the killings as “fatal accidents” or “tragic deaths” (Kingsley Napley 2012⁷). In one commentary, Kingsley Napley describes the death of one employee (Sterecycle) as an accident, while simultaneously claiming that his death was “entirely preventable”. Not only does this statement demonstrate the paradox of how corporate killing is understood, it also hints at the particular type of offender that is being dealt with in these cases: it is a very privileged position for a company to be able to cause death through

⁶ Unknown author. (2015, January 28). Diamond and Son fined over Peter Lennon’s death. *BBC News*. Retrieved from <http://www.bbc.com/news/uk-northern-ireland-31027921>

⁷ Corporate Mansalughter – 4 years and only a single conviction [Kingsley Napley]. (2012). Retrieved July 18, 2017, from <https://www.kingsleynapley.co.uk/insights/blogs/criminal-law-blog>

deliberate decision making while also having the consequences of those decisions be explained away as unforeseen mishaps.

All of the material examined utilized words that present safety crimes as unfortunate incidents that happen unexpectedly, without apparent or deliberate cause. This theme is a glaring example of the contradictory nature of law and of corporate killing law specifically. The representation of workplace fatalities as “accidents” amounts to a hegemonic approach that draws attention away from corporate responsibility (Lofquist 1997; Benoit & Czerwinski 1997). In one example, the killing of an employee is even referred to as “the conduct complained of” (*R v Lion Steel*: 28), as opposed to ‘crime’ or ‘harm’ or any other word that would imply wrongdoing on behalf of the corporation and its actors. Even after an organization is found guilty of a criminal offence, the word ‘criminal’ is not used to describe their violence. This language downplays the seriousness and the pervasiveness of safety crimes. It is common practice to hold others responsible for acts that are reasonably considered to be under an individual’s control. As such, Benoit and Czerwinski (1997) suggest that, should the circumstances in question be out of an individual’s control, that person should be held less accountable and there should be limited damage done to their reputation. Organizations are able to avoid the stigma of criminal labelling when workplace death is constructed as an unfortunate mishap.

This process is significant. Our capacity to know about both the extent of harms in the workplace, and the extent to which those harms may have been criminally produced, is being reduced to a minimum. Most ‘accidents’ that cause workplace deaths are not accidents in the pure sense, but events which result from the conditions of production (Slapper & Tombs 1999; Tombs & Whyte 2015); and are typically the outcome of someone in a position of power failing to do what they were legally required to do to ensure the workplace operates safely. In this sense,

they are largely avoidable, and the decision to deal with the bulk of these crimes as administrative offences is an ideological one. These cases show a reckless disregard for potential consequences to human life. However, as Box (1983:9) notes, “we are encouraged to see murder as a particular act involving a very limited range of stereotypical actors, instruments, situations, and motives. Other types of avoidable killing are either defined as a less serious crime than murder or as matters more appropriate for administrative or civil proceedings.”

From the perspective of sacrifice, the fabrication of workplace death as ‘accidents’ is an example of how sacrificial systems “make a point of minimizing their own violence” (Girard 2011: 6) and excuse it. Definitions of serious crime and harm are then constructed so as to exclude many similar acts and omissions, the ones that are likely to be committed more frequently by powerful and privileged individuals. This process ensures that only a negligible fraction of deaths that have been criminally caused by employers attracts even a token response by enforcement agencies. Related is the second theme present in the data: the notion that corporations are not ‘real criminals’ who intend on committing harm. This is clearly demonstrated in the case against Pyranha Mouldings where the judge states: “and it goes without saying that in cases of this sort there was no intention to kill. It was, in the true sense, an accident... an accident courted by no-one” (*R v Pyranha Mouldings*: 2).

Theme 2: Corporate crime is not ‘real’ crime

Corporate forms of law-breaking that lack direct physical connections between the victim and the offender, and where the harm is rooted in “deviant organizational culture” rather than the intent of an individual often escape legal and popular consciousness (Michalowski 2016). This disconnect makes it difficult to charge and successfully prosecute privileged offenders. One of the commentaries from the Kingsley Napley law firm mentions that “it is more difficult to

achieve a conviction for corporate manslaughter than it is for a breach of health and safety regulation”, pointing to the requirements for proving corporate manslaughter and the obstacle they represent⁸. However, this alone cannot answer why so few corporations have been held accountable for killing workers and members of the public. Although the cases examined for this research represent successful prosecutions of corporate manslaughter, the discourse of safety crime not being ‘real’ crime is pervasive.

The fact that corporate violence is not often considered ‘real crime’ is heavily related to conventional definitions that associate violence with visibility and individual actors. These understandings are restricted to direct and immediate inflictions of physical harm between persons. Consider the following passage from the decision in the *Pyranha Mouldings* case:

In the vast majority of criminal cases, a judge is faced with a living person in the dock to whom he can explain the sentence, and to whom he may address his remarks. In those cases, almost without exception, the defendant will have committed a deliberate criminal act for which it is entirely right that he or she be punished (*R v Pyranha Mouldings*: 3).

Here the judge is discussing some of the difficulties of corporate manslaughter cases, contrasting them against the kinds of traditional street offences that truly represent “a criminal act”. The document even quotes assault and burglary as the types of crime where “the injured party should feel a proper sense of restorative justice” (*R v Pyranha Mouldings*: 3). This framing implies not only that safety crime is not deliberate or criminal, but also that it might not be entirely ‘right’ to punish corporations and their actors. The judge continues by stating that he is “satisfied that there will be worse cases than this” and that “at least [the victim’s family] are able

⁸ Corporate Manslaughter – 4 years and only a single conviction [Kingsley Napley]. (2012). Retrieved July 18, 2017, from <https://www.kingsleynapley.co.uk/insights/blogs/criminal-law-blog>

to understand that their loss was not caused by a deliberate unlawful act; rather it was a result of oversight” (*R v Pyranha Mouldings*: 3).

When considering the ‘seriousness’ of safety crimes, corporate manslaughter guidelines ask how foreseeable the risk of harm was, how far short of the applicable standard the company fell, and how common health and safety breaches are within the organization. In one of the law commentaries, the Walker Morris (2013) team writes that “directors and managers understand the importance of their own health and safety obligations”⁹, and some organizations just need to ensure “sufficient policies and procedures are fully embedded within the organization and supported by a strong compliance culture from the boardroom down to the shop floor”. This suggests that there is a health and safety standard that most corporations can and want to meet, as opposed to being inherently violent, risky, and profit-driven.

As such, corporate offenders themselves are often viewed as different from the “traditional image of malicious street criminals” (Gray 2006: 877) because they allegedly engage in productive economic activities and are capable of being socially responsible. In the *Lion Steel* case, the judge noted that the company “had experience of properly conducted risk assessments and of heeding health and safety advice”. The framing here is contradictory, as the company’s “reasonable safety record” (*R v Lion Steel*: 12) is brought up after evidence was provided that dangerous practices had been a common occurrence at the worksite, even after several HSE warnings. Furthermore, the fact that the company had supposedly conducted risk assessments is a weak defence, as Tucker (2006) argues that these are often merely paper exercises with little to no impact on health and safety. Regardless of whether a company keeps formal record of

⁹ Corporate Manslaughter – a Brief Update. [Walker Morris]. (2013). Retrieved July 18, 2017, from <https://www.walkermorris.co.uk/publications/corporate-manslaughter-brief-update/>

dangerous conditions in their work environment, “when faced with a conflict between production and safety, [employers] stint on safety to achieve production targets” (Tucker 2006: 3). This trend is seen in the data where the dangers in the working environment at JMW Farm were so significant that it was required to be recorded in the company’s own risk assessment, but “steps that were required to be taken to secure against the foreseeable dangers were not satisfied” (*R v JMW Farm*:10)

Similarly, one judiciary summary claimed that JMW Farm “has a good safety record and there is no evidence that they do not display other than a reasonable attitude to their employees” (*R v JMW Farm*: 13). Again, this claim followed evidence of deliberately ignoring health and safety warnings and the negligent killing of a worker. In line with the notion of the ‘tragic accident’, the JMW Farm killing is argued as either “isolated in extent” or indicative of a brief “departure from good practice across the [company’s] operations” (10-11). In any case, the corporate culture is not viewed as criminogenic and its violence is not understood as pervasive and ongoing.

Similar understandings of corporations as responsible social actors despite the deaths they cause were found throughout the data. One commentary from BBC News (2015) on the Diamond and Son case claims that the company “had done all in its power to mend matters and had also set up a new gold standard where safety was concerned”. Additionally, the death is held as “not a question of short changing or trying to cut corners in the pursuit of profits”. A similar notion was brought up in the Pyranha Mouldings case where the judge states that the death in question was not indicative of how things were “when production was running normally” (*R v Pyranha Mouldings*: 1). Pyranha Mouldings is described in the decision as “relatively vibrant and profit making and a valuable employer within its local community employing upwards of 90

people. It makes a valuable contribution to the local and wider economy” (*R v Pyranha Mouldings*: 4-5). It is further argued to be “a good company which is worth preserving”, an argument used by the judge for departing from the Guidelines for sanctioning corporations for negligently killing their workers.

This language suggests that the ‘normal’ operations of corporations are unproblematic, productive, and unthreatening. In a similar vein, the judge in the *JMW Farm* case states that “common sense would have shown that a simple, reasonable and effective solution would have been available to prevent this tragedy” (*R v JMW Farm*: 10). However, the literature on violence in capitalist society clearly indicates that safety crimes are not the absence of common sense, but the result of deliberate decision making (Tombs & Whyte 2015; Bittle 2012; Snider 1990). The contradictions here are astonishing, considering that corporations are always said to “have an understanding of what [is] required to control the hazards in their operation” (*R v JMW Farm*: 10), but are also understood as childishly ignorant towards the dangers in their workplaces. Similarly, a news publication from the Crown Prosecution Services¹⁰ states that “safe working practices were not in place at Bilston Skips Limited [and] the risk to onsite workers had not been considered and was not managed.” This language of ‘wilfully ignorant’ over ‘deliberately violent’ disregards that unsafe working environments *are* often considered by management and owners and simply ignored, or considered a worthy risk compared to the loss of profits suffered by fixing them.

¹⁰ Crown Prosecution Services. (2016, August 16). Failed company and its manager convicted of corporate and gross negligence manslaughter. Retrieved from https://www.cps.gov.uk/news/latest_news/failed_company_and_its_manager_convicted/

For these reasons, much of corporate violence is hidden or appears as legitimate. Often, it is even normalized or protected by ideology. For remedial orders, the Act states that organizations may be required to remedy “any deficiency as regards health and safety matters in the organization’s policies, systems or practices of which the relevant breach appears to the court to be an indication” (*CMCHAct 2007: 8*). Related to the above, this discourse implies that corporate killing is not a routine, systemic reality, but instead each incident represents a ‘deficiency’ in an otherwise rational, responsible social actor that can be remedied. Furthermore, an organization may be required “to publicise in a specific manner the fact that it has been convicted of the offence” (*CMCHAct 2007: 9*), as opposed to being *guilty* of the offence. The wording is subliminal but it affects how safety crimes and corporate actors as violent offenders are understood.

In both the Lion Steel case and the Pyranha Mouldings case, the judges decided that publicity orders would “achieve nothing” (*R v Lion Steel: 15*) and that disqualifying company directors would be “neither proportionate or just” (*R v Pyranha Mouldings: 5*). Since these two sanctions are intended to demonstrate responsibility and publicly condemn unsafe work practices, it can be argued that this violence is both legitimated and normalized. A further example is seen in the Lion Steel case, where the judge applauds the company when it “stopped using its own workmen for roof repairs” following the death in question (*R v Lion Steel: 15*). Hiding behind capitalist ideology, this decision is held as a positive step in the direction of health and safety. However, the fact that the company’s first priority is to obtain an outside workforce instead of fixing dangerous conditions or even stopping production until health and safety can be addressed suggests more that they wish to simply become less liable for worker safety, and the burden will likely shift over to other vulnerable groups, such as temporary workers.

This “charade of nonviolence” is exceedingly important to the sacrifice (Girard 2011:5) and to corporate killing. Legal responses to corporate manslaughter are organized in such a way as to render the murder of victims as inconspicuous as possible. The idea that corporate violence is normal or legitimate is paired with the notion that risk is a positive and common business strategy. Despite not being understood as ‘real crime’, the research data shows patterns of blatantly negligent acts and omissions in the corporate manslaughter cases. The following section demonstrates the contradictions that arise out of the connection between risk and negligence and its relationship to safety crimes.

Theme 3: Negligence and risk part of doing business

The *CMCHAct* sentencing guidelines explain the factors likely to affect the ‘seriousness’ of an offence, of which the first is whether injury or death was foreseeable. Unsurprisingly, it almost always is. As explored in the literature review, and argued further in this analysis, risk is generated necessarily as part of working in capitalist organizations; and negligence is not an exceptional element to these relations, it is a rule. The main contradiction here is that while there is evidence in all manslaughter cases of negligence and of taking safety risks, often despite warning from HSE, the deaths are still framed as accidental and non-criminal. As a result, corporate killing is much more likely to be considered “an accident waiting to happen” (BBC News 2015) instead of what it truly is: *homicide* waiting to happen.

In the case against Lion Steel, the judge states that “risk of a fall through the roof was an obvious one, and those running the company should have appreciated it” (*R v Lion Steel*: 9). There was “also abundant evidence” that the company’s senior management were given warnings of health and safety failings by the HSE but they were ignored. In fact, “there was a considerable history” of the company and the directors “failing to implement a safe system of

working” and failing “over a number of years to act on warnings...or with health and safety advice” (*R v Lion Steel*: 19). The evidence in this case shows that workers were not trained properly, were not equipped with adequate safety gear, and “no suitable and sufficient measures were taken to prevent, so far as was reasonably practicable, persons falling a distance likely to cause injury” (*R v Lion Steel*: 3). This not only demonstrates negligence and risk, but the specific type of prolonged and routine violence that is faced by workers over long periods of time, and how they are expected to accept this sacrifice.

Similarly, it was stated in the case against JMW Farm that “it was clearly foreseeable that the failure to address this hazard would lead to serious injury and indeed that the consequences could well be fatal”. The dangers in the working environment at JMW Farm as recognized by the company, and they were so significant that it was required to be recorded in the company’s own risk assessment (*R v JMW Farm*: 10). However, as noted above, “steps that were required to be taken to secure against the foreseeable dangers were not satisfied. Therefore of particular concern is that this operation had been going on for some time. It was not an isolated event” (*R v JMW Farm*: 10). This is another example of the prolonged violence faced by workers and the deliberate negligence of employers refusing to keep them safe. However, a glaring contradiction can be noted in the following excerpt:

The company has fallen far short of the standard...and this operation was permitted to continue for some time. However, there is no evidence that this represents a systematic departure from good practice across the defendant’s operations...and I find no evidence of a failure to heed warnings or advice (*R v JMW Farm*: 12).

Simultaneously, the judge states that the company was negligent over a significant period of time and that the fatal consequences were foreseeable, while also stating that this does not mean that

the company veered away from being a responsible social actor. Arguably, this discourse legitimizes the negligent behaviour of corporations as a positive business strategy.

In the case against Pyranha Mouldings, “there was a significant amount of advisory and regulatory material available which, if followed, would have prevented an accident of this nature” (*R v Pyranha Mouldings*: 2). There had also been a conviction for a health and safety offence “within the recent past” at this company (*R v Pyranha Mouldings*: 4). However, a contradiction is presented when the judge states that he was “far from convinced that there was any causative failure to heed warnings or advice” of that nature (*R v Pyranha Mouldings*: 3). This is significant, as one of the conditions for imposing more severe penalties for corporate manslaughter is ignoring health and safety warnings and regulations. Similarly, Odzil Investments Ltd continued work “despite warnings issued by the Health and Safety Executive about the hazards involved...and the requirement for adequate safety measures” (Kingsley Napley 2017b¹¹). The company also hired “their friend and his company, Koseoglu Metalworks Ltd, to carry out the work without those required safety measures being put in place” (Kingsley Napley 2017b). This second company “did not have any experience...and its workers were not trained in carrying out the work involved” (Kingsley Napley 2017b).

In a commentary on the Diamond and Son case, BBC News (2015) states that dangerous work practices were “allowed to occur even though repairs could have been carried out safely. In addition, it is said that the safety guards preventing access to dangerous parts of the machinery had been modified and regularly bypassed for routine tasks.” This is a significant example of

¹¹ Three companies convicted of corporate manslaughter in a week [Kingsley Napley]. (2017b). Retrieved July 18, 2017, from <https://www.kingsleynapley.co.uk/insights/blogs/criminal-law-blog>

negligence and risk being common business practices. The Crown Prosecution Services (2015) provided a similar illustration from the Huntley Mount Engineering Ltd case:

The company and its senior management allowed a 16-year-old apprentice to work on dangerous and defective machinery. Not only was [he] put to work on machinery without any meaningful supervision but he was provided with limited training. The risks were obvious.¹²

The Metropolitan Police and the Telegraph both have news commentaries on the Martinisation London construction company, who asked employees “to perform a lifting operation at height without supervision and the requisite training” (Metropolitan Police 2017¹³). The two victims in this case were not provided with a plan, method statement, or risk assessment prior to the task being undertaken (Metropolitan Police 2017). Not only does this demonstrate casual exposure to risk and serious harm, but “the firm had a long and unhappy history of neglect of health and safety” (Telegraph 2017¹⁴), suggesting that negligence is also routine and long-running.

In the case against Cotswold Geotechnical, the pit was “entirely unsupported. Unsurprisingly, it collapsed” (*R v Cotswold Geotechnical*: 6). In fact, “it was plainly foreseeable that the way in which the company conducted its operations could produce not only serious injury but death” (*R v Cotswold Geotechnical*: 6). In addition,

there was an earlier incident when the company had failed to heed advice and guidance and to take note of what the Health and Safety Executive had indicated to [the director] when following up the complaint of a young employee who had been

¹² Crown Prosecution Services. (2015, July 14). Company and its senior management sentenced following death of 16 year-old apprentice. Retrieved from https://www.cps.gov.uk/news/latest_news/huntley_mount_engineering_ltd/

¹³ Metropolitan Police. (2017, July 7). Update: company guilty of corporate manslaughter. Retrieved from <http://news.met.police.uk/news/update-company-guilty-of-corporate-manslaughter-250660>

¹⁴ Telegraph reporters. (2017, April 25). Workers fell to their death after firm was ‘too mean’ to pay for specialist lifting. *The Telegraph*. Retrieved from <http://www.telegraph.co.uk/news/2017/04/25>

required to go into deep, unsupported pits (*R v Cotswold Geotechnical*: 6).

The director gave assurances that health and safety changes would be in effect, and “they were not honoured”. This evidence paired with the minimal sentence that the company received suggests that this risk and negligence is legitimized. This is yet another example of the routine, systemic violence faced by workers when employers are aware of the dangers in their workplaces but continue to put profit first.

An interesting element of the *CMCHAct* that should be noted is that it is not retrospective. That is, negligence that occurred prior to the commencement of the Act is not considered in manslaughter cases. This component is supported because, before the Act, the company *could have* been prosecuted under common law:

While a failure to take care by Lion Steel before 6th April 2008 could have constituted an offence under the Health and Safety at Work Act...one is prevented from considering whether the inadequacy or knowledge of it was recent or long standing [in the corporate manslaughter case] (*R v Lion Steel*: 23).

This presents an important contradiction. The “good health record” of a company is frequently brought up as a reason to be more lenient in sanctions, but a poor health record cannot fully be considered because the prosecution cannot “rely on evidence of what occurred before the commencement date in support of its case” (*R v Lion Steel*: 23). This diminishes understandings of corporate violence, as safety crimes are the result of prolonged and ongoing harm but are defined-away as one-shot tragic events. It should be noted that it is not expressly stated in the Act that its prospective focus excludes past misconduct prior to its enactment. In fact, the Act says that the jury should “have regard to any other matters they consider relevant” (*CMCHAct* 2007: 8), including “whether the evidence shows that the organization failed to comply with any H&S legislation that related to the alleged breach”. However, in practice, the judicial summaries

show that a long chronology of negligent failings means very little. Years of negligent behaviour may be ignored in corporate manslaughter cases. And since the *CMCHA* “abolished liability for the common law offence of manslaughter by gross negligence in its application to corporations”, any evidence of known negligence before that date can no longer be considered criminal either.

Negligence and risk are common, even necessary, elements of doing business. The latent “truth” of sacrifice is revealed here as the inevitable behaviour necessary for the community, despite its aversion to life (Nietzsche, in Keenan 2005: 60). If what is good for the company is good for society, and what is good for the company is ignoring health and safety hazards (in the sense that health and safety diminish profits), then the sacrificial death of workers as a result of these decisions can also be seen as what is best for society (in the least, they are accepted simply as ‘what happens’). It seems counter-intuitive that death can be understood as beneficial for society, or that killing workers could be favourable to the economy, but common sense notions of sacrifice sustained through the law paired with capitalist hegemony are reinforcing this belief. This is the “transgressive power” (Girard 2011: 6) of the sacrifice – the paradox that corporate killing is both murder and a righteous act.

It is a positive step forward that corporations can be held liable for negligently killing their workers, and a step further still that their failings are detailed in official documents. However, the contradiction remains that despite this obvious neglect, only a very small percentage of (small, less powerful) corporations are charged with the manslaughter offence; and of those cases, minimal penalties are enforced when sentencing the corporations. Arguably, part of this phenomenon is linked to mystification properties of the corporate veil. The following section analyses two key characteristics of the corporate veil theme: its use benefits the powerful

by constructing the corporate form as existing independently of those who own and control it; and, paradoxically, it can be lifted in corporate manslaughter cases when a human component is beneficial to those with power.

Theme 4: The corporate veil

With legal privileges such as limited liability, the criminal justice system acts upon and continually reproduces what is known as the corporate veil (Tombs 2016). This effect of corporate personhood linked to prosecuting the corporation and not its directors or other senior managers is the fourth theme present in the data. The corporate veil holds the corporation as a single identity that is separate and distinct from the human persons that own and control it (Tombs 2016). This is the basis for the corporation as a structure of violent irresponsibility. There is “no individual liability” in corporate manslaughter cases (*CMCHA* 2007: 13); an “individual cannot be guilty of aiding, abetting, counselling or procuring the commission of an offence of corporate manslaughter” (*R v Lion Steel*: 23). However, company directors and senior officers can still be charged with the common law offence of negligent manslaughter – though this is rarely the case.

The trouble presented by the corporate veil and the mindset that accompanies it is thoroughly demonstrated in the case against Pyranha Mouldings: “Sentencing a corporation is fraught with difficulty. There is no person to imprison or to send to do community service, so there is a financial penalty imposed on the corporation for corporate failing” (*R v Pyranha Mouldings*: 3). The decision in the Pyranha Mouldings case states that “it is a relatively unusual experience for a judge to sentence a corporate defendant” (*R v Pyranha Mouldings*: 3). The judge in the case expressed his difficulty with sanctioning for corporate manslaughter because there is “no person to look in the eye” when a sentence is passed (*R v Pyranha Mouldings*: 3). However,

there was a company director who was convicted for Health and Safety offences but was not considered for gross negligence manslaughter.

Similarly, in the *Lion Steel* case, “the offer of a plea [for the corporation] was on the basis that the charges against the directors would not be proceeded with” (*R v Lion Steel*: 14). Not only did it help that “the personal levels of fault” of the directors is considered by the judge to be “irrelevant” (*R v Lion Steel*: 5), but this was paired with the notion that “a joint trial would have required directions to the jury of baffling complexity” (*R v Lion Steel*: 4). As a result, the manslaughter and negligence charges against the two directors were dropped. The Kingsley Napley team also commented on this aspect of the case, claiming that the conviction happened “in somewhat questionable circumstances – the company pleaded to corporate manslaughter in a deal that saved a director from the risk of personal manslaughter liability and likely custody” (Kingsley Napley 2013¹⁵). In the same publication, the law firm commented on the *J Murray and Sons* case, stating that “the decision to offer a guilty plea on behalf of a company in exchange for the removal of the risk of a personal conviction and likely prison sentence may not have been a difficult one, given that the director concerned was the owner of the company.” These commentaries demonstrate the kind of privilege that accompanies the corporate veil, allowing owners and directors of companies to comfortably make decisions that kill workers with what amounts to legal protection.

Legal orthodoxy and capitalist ideology attempt to separate corporations from their human components, but their influence is major. For example, in the case against *JMW Farm*, it was the director who was operating the forklift that malfunctioned and killed an employee and

¹⁵ Fourth statutory corporate manslaughter conviction – are trends emerging? [Kingsley Napley]. (2013). Retrieved July 18, 2017, from <https://www.kingsleynapley.co.uk/insights/blogs/criminal-law-blog>

“should have quite clearly seen that it was not secured in the proper fashion” (*R v JMW Farm*: 13). In the case against J Murray & Son, the working method and equipment alterations which killed an employee were devised by the controlling director of the company (*R v J Murray & Son*: 1). Clearly, the impact that owners and directors have on the companies that they profit from is significant, even though the corporate veil shields them from the consequences of their actions.

However, corporate manslaughter cases also present a paradox within the corporate veil. Despite being necessary for corporate offenders to continue causing harm with relative impunity, there were cases where the veil was lifted in order to benefit the powerful. For example, one judge stated that he had “no doubt that [the victim’s] death was a tragedy also felt by everyone there, including those who run the company” (*R v Lion Steel*: 2). Another argued that “the court can appreciate that this tragedy would have had a profound impact on [the director], not least given his close and long standing relationships with the deceased” (*R v JMW Farm*: 12).

In the case against Cotswold Geotechnical, the judge states that he “accepted the genuineness of [the company director’s] expressions of deep remorse and regret” (*R v Cotswold Geotechnical*: 6-7). In this same case, the charges against the sole company director were stayed because the judge argued “it would be unjust and oppressive for the prosecution against [him] personally to continue” (*R v Cotswold Geotechnical*: 3). He was terminally ill and “all of this would have an impact on [his] family at a time when they would have troubles enough” (*R v Cotswold Geotechnical*: 6). Indeed, “a careful direction was given to the jury about the potential disadvantages faced by the company through the inability for medical reasons of [the director] to give his evidence live” (*R v Cotswold Geotechnical*: 4). It should be noted that the jury was never deprived of the evidence from the director’s testimony, and they were aware of why he

was unavailable for court. The paradox represented here is that the claim is always that the corporation is autonomous from the people that comprise it, and it is for that reason that corporate manslaughter cases are “so difficult”; at the same time, the veil was lifted because it was “especially unfair” (*R v Cotswold Geotechnical*: 3) that the company director was not available to defend the company that allegedly acts on its own accord anyway.

In the *Pyranha Mouldings* case, the judge addresses a company director and demonstrates the contradiction in the corporate veil clearly:

The company may only act through its directors and senior officers. The company’s failure was also your failure – although the full responsibility does not fall on your shoulders. Rightly, you were not charged with gross negligence manslaughter. I fully accept that you and [the victim] were friends and that you were also devastated by the loss (*R v Pyranha Mouldings*: 6).

Here the corporate veil is lifted to demonstrate a human element that experienced loss, even though this is the same judge who had stated that corporate manslaughter cases are difficult as there are no guilty individuals to look in the eye when delivering a verdict.

The corporate veil can be equated with another form of sacrifice reproduced through corporate manslaughter law. Interestingly, Derrida argued that, to avoid having to destroy itself entirely, some people or systems can sacrifice part of themselves in order to remain mostly whole (see Keenan 2005: 136-137). This is still violence and destruction, but on a smaller scale in order to preserve the bigger picture. With the corporate veil, those who own and profit from the corporation can sacrifice the business (or at least its name) in order to protect themselves and avoid the type of punishment that would actually be harmful to business operations (such as incarceration, banishment from director positions, or dissolving the whole company, as opposed

to a small fine). This sacrifice of short-term gains for long-term gains is characteristic of the capitalist model (Keenan 2005:11) that allows the corporation to thrive.

Theme 5: Roots in capitalist ideology

The fifth theme uncovered in the data, and intimately related to those explored above, are the roots that corporate manslaughter law has in capitalist ideology. Law makers and enforcers are often either subject to the influence of capitalist ideology, or it is one in which they share (Slapper & Tombs 1999). This includes the commonly held belief that holding corporations accountable for their harms will threaten employment and entrepreneurship, and that corporations are beneficial to society as a whole. It is important to note that bankrupting or terminating a corporation is considered an acceptable consequence for a manslaughter conviction, as per the *CMCHAct* sentencing guidelines (Sentencing Council 2016). However, as this analysis demonstrates, the possible utility of this sanction is lost in practice.

In the case against Pyranha Mouldings, the judge states that “it is certainly not an acceptable consequence...to put the company out of business” (*R v Pyranha Mouldings*: 4) and that the minimum fine of £500,000 is only appropriate for companies “with huge resources and where a large fine may easily be paid” (*R v Pyranha Mouldings*: 4). Furthermore, one judge was concerned that “the recent accounts show that there has been a substantial downturn in profitability” and that “the company could not meet a very substantial fine” (*R v Pyranha Mouldings*: 5). A similar approach was found in the *J Murray & Son* case, where the judge states:

The company is not flourishing and I have no wish to see it forced out of business, principally because it is providing significant employment in a rural area in these difficult economic times. I hope that the fine I impose will not have the effect of terminating the business (*R v J Murray & Sons Ltd*).

This discourse suggests that it is more important to sustain a company than to secure the health and wellbeing of the individual workers who are sacrificed for it. In fact, the same judge implies that the severity of the fine is irrelevant as neither “this nor any size of fine can, nor is it intended, to value the deceased’s life in money” (*R v J Murray & Sons*: 2). As a result, the company was fined peanuts in the form of £100,000.

As seen above, corporations often receive more lenient sanctions for manslaughter because they are believed to make a valuable contribution to society. Additionally, the argument was made that one company was ‘vibrant and profitable’ in order to demonstrate that it is a good social actor. This contradiction holds corporations as simultaneously too valuable to be shut down, but also too helpless to be held accountable for killing its workers. Ironically, the wellbeing of workers is only considered when in defense of a lenient sanction: “the fine I intend to impose will not affect...the employment of other innocent employees” (*R v JMW Farm*: 13); “I would regard it as a most regrettable consequence...if the effect of an order of this court were to imperil the employment of current and future employees at this company” (*R v Lion Steel*: 14). Similarly, J Murray and Sons was ordered to pay their already miniscule fine of £100,000 in annual instalments “in an attempt to ensure the continued employment of the company’s 16 employees” (Kingsley Napley 2013).

A common misunderstanding for corporate manslaughter cases, both present in this research but also explored in the literature review, is that safety violations are not the result of greed. For example, one news commentary argues that “profit was not the driving force” in the Diamond and Son death (BBC News 2015). This notion secures other common misunderstandings, such as safety crimes are accidents, or not real crime, or corporations are separate entities from the human elements that run them. However, in the Martinisation London

case, The Metropolitan Police (2017) state that “advice from an experienced and reputable lifting company on how to carry out the process safely was ignored due to time and budgetary constraints”. In the same case, it was claimed in court by a witness that workmen died because their firm was “too mean to spend money” on specialist lifting and equipment (Telegraph 2017). One commentary from Stewarts Law LLP¹⁶ states that “it was the potentially cataclysmic fines which caused most concern in the boardrooms of larger, multinational organisations” but the lack of follow-through has “diluted the drive for changing boardroom attitudes towards health and safety” (2010). In true legal paradox fashion, corporate manslaughter legislation was essentially a law enacted to protect employees from greed and exploitation, only to help secure those very things in its application.

Thus, the corporate manslaughter cases demonstrate how the *CMCHAct* is an example of a legal reform which had the potential to radically undermine the legal protections which corporations currently enjoy, but that falls short. The heart of what this legislation is supposed to be is even stated in one of the cases:

The objective of prosecutions for offences relating to health and safety in the workplace is to achieve a safe environment for those who work there, and for other members of the public who may be affected. The obligation of all employers is to ensure so far as is reasonably practicable such a safe environment; it is an obligation that is the same no matter the size of the business (*R v JMW Farm*: 10).

The very first successful prosecution under the *CMCHAct*, *Cotswold Geotechnical*, “demonstrates that the Act can provide a framework within which prosecutions can succeed. To this extent the case represents an end to the frustrations long felt at the inability of English law to

¹⁶ Retrieved from https://www.stewartslaw.com/news_tag/health-and-safety-executive/

target companies whose negligence results in death” (Kingsley Napley 2011¹⁷). However, where the original hope of the Act was the conviction of cases similar to the *Herald of Free Enterprise*, it is unlikely that “the prosecution of a company of any significant size” will be realized (Kingsley Napley 2013). Furthermore, the prosecution of small companies “does not really test the ability of [the law] to identify corporate responsibility for manslaughter” (Kingsley Napley 2011)

Law firm commentaries provided much in terms of how the *Corporate Manslaughter Corporate Homicide Act* falls short of its radical promises. For instance, cases so far have “not satisfied the need for proper criminal accountability where there are work related deaths” (Stewarts Law 2010), and an over-reliance on legal orthodoxy is certainly one reason. The Act and the recent Sentencing Guidelines allow for unlimited fines and even the demolition of the organization. This is “a new direction for courts which have previously adhered to the principle that a fine should be no greater than a defendant’s resources” (Kingsley Napley 2011). However, the data demonstrates a great reluctance to hinder a company economically, and especially to put them out of business. “The key to success of these guidelines is how ready sentencing courts will be to see them simply as guidance and not, where the offences or the offenders require something different, slavishly adhere to them” (Stewarts Law 2010).

Importantly, the *CMCHAct* could and does work in tandem with health and safety legislation, but the latter is most often favoured. Kingsley Napley (2017) argues that this is most likely “because with no proof of causation necessary, the threshold for a conviction is much lower whilst still carrying the power to impose multimillion pound fines under the new [health

¹⁷ First corporate manslaughter trial under new law gets underway [Kingsley Napley]. (2011). Retrieved July 18, 2017, from <https://www.kingsleynapley.co.uk/insights/blogs/criminal-law-blog>

and safety] guidelines” enacted in February 2016. In fact, there has been a notable decline in the number of corporate manslaughter cases brought since those guidelines came into force.

Therefore, it is possible that the difficulties of securing a conviction under the Act for all the reasons demonstrated in this analysis may in fact enhance the desire to use administrative law when holding corporations accountable. And this reliance on, or desire to return to, health and safety legislation not only speaks to the non-criminal status of safety crimes, but helps perpetuate the idea that these harms are not ‘real’ crimes.

The case against JMW Farm indicated that death at work is “a serious matter which requires a substantial fine to be imposed to reflect the culpability of the company, but also to send a message to all employers that their duty to their employees is daily and constant and any failure to discharge that duty will be met with condign punishment” (*R v JMW Farm*: 13).

However, this was the second company to be convicted under the *CMCHAct* and it has since then been followed by 22 more (not to mention the countless examples of violence where the Act was not applied). In only three cases was the minimum fine ever imposed. Obviously, this was not the radical level of deterrence that the judge claimed it to be. A further example of the *CMCHAct* falling short in practice is seen when a judge states: “let me make it clear that the whole purpose of the sentence is to punish the directors who are responsible for the state of affairs that led to this fatal accident...but my intention is to keep the company trading for the benefit of its employees and its customers” (*R v Pyranha Mouldings*: 5). Again, the radical potential of the Act being applied is undermined by capitalist ideology.

As such, it is argued here that the application and enforcement of corporate manslaughter law is made up of elements, events, and discourse that together reproduce a particular notion of violence and sacrifice, one backed by hegemony. Like other “non-radical tools” in the legal

realm (Glasbeek 2013: 17), the *CMCHAct* seems to lack the ability to disrupt existing power relations and challenge the logic of capitalism. This relates to Pearce's (1976) argument that when powerful individuals and groups are prosecuted, it does not actually serve the function of regulating business activity. Rather, it serves to dramatize an imaginary social order and legitimize the economic structure as something natural and inevitable; that is, the occasional implementation of laws that hold powerful people accountable also seemingly gives teeth to law's claim to neutrality.

It is also interesting to note that one of the factors that decides the 'seriousness' of an offence is "injury to vulnerable persons" which "includes those whose personal circumstances make them susceptible to exploitation". Arguably, however, this just means people who are forced to sell their labour for a living. The law should be protecting these people but instead helps to legitimize their harm and sacrifice. Even if these documents indicate that these corporations have caused serious harm, it is followed that it is not 'real' violence or crime. Instead, they are framed as accidents too difficult to address due to contradictions inherent to law and capitalism. They are understood as outliers that are not even indicative of the guilty corporation's character, let alone corporations generally or capitalism itself. And, terrifyingly, they are even understood as inevitable and necessary sacrifices.

Chapter 6: Discussion – Sacrifice, Violence, and the Individual

As the data analysis shows, there are several factors that coalesce to reproduce a particular view of violence. It is clear that safety crimes generally are not taken seriously as violent acts that cause widespread harm and suffering. Instead, there are competing conceptions of violence, including who is violent, why violence exists, and how violence should be dealt with. This includes the deeply-embedded, common-sense view of violence that plays a role in the reproduction of a profoundly divided social order: it is individuals, not systems, who are violent; corporate offenders differ from ‘real’ offenders because they engage in productive economic activities and are capable of being socially responsible; and death at work is an unfortunate cost of business. This helps to explain the apparent “reluctance” and “lack of appetite by both prosecutors and the police to use legislation” (Kingsley Napley 2013).

The results of this analysis are consistent with the literature and theoretical framework on corporate crime and violence in society, but what can the enforcement of corporate manslaughter law tell us about sacrifice? Making this connection is important because there is a synergy between violence, law, and sacrifice. As argued previously, all sacrifice is implicated in violence (Bell 2002) and the law plays an important role in sustaining and legitimizing understandings of these concepts. Therefore, the theoretical contribution of this research seeks to establish sacrifice within corporate manslaughter law and how certain ideas – that liberty and freedom require sacrifice, that sacrifice is a requirement on the road to prosperity, that workers have always been expected if not demanded to take risks under the pretense that they are aware of, have accepted, and are compensated accordingly for these hazards – play out and are reproduced.

All of the themes detailed in the analysis add up to the reproduction of a particular notion of violence and sacrifice. The application of the legislation has a pattern of suggesting that there

is inherent risk and sacrifice to work. For example, the system at Lion Steel “involved an untrained and inexperienced [employee] being asked to work on and around a fragile roof with no precautions being taken to guard against something going wrong” (*R v Lion Steel*: 10). It was not safe and “no one should have been permitted to work without adequate precautions being taken”, but it is also argued by the same judge that “there is always a danger” in work (*R v Lion Steel*: 8). At Martinisation London, the “expectation” was for workers to partake in inherently unsafe and self-sacrificing practices, including using “a rope to haul a sofa over a balustrade and into a first floor apartment” (Metropolitan Police 2017). Similarly, the victim in the Huntley Mount Engineering Ltd case “was asked to carry out what was an inherently unsafe operation. Far from being an exceptional practice, this unsafe operation was undertaken regularly by young employees” (Crown Prosecution Services 2015).

The working conditions at JMW Farm are described as involving “an inherent and foreseeable danger to anyone working in the area” where the death of the worker took place and that such a danger was recognized by the company (*R v JMW Farm Ltd*: 9-10). It was expected that employees would be taking on some level of risk through their work, and therefore are (necessarily) sacrificing. In a similar vein, the case against Cotswold Geotechnical states that “it is not in dispute that at the time when the deceased entered the pit it was dangerous for him to have done so... it was company practice to enter into dangerous, unsupported pits” (*R v Cotswold Geotechnical*: 2). Since this fact is not in dispute, but the trial still questioned whether there was any breach in the duty of care owed to the worker, this suggests the normalization of risk and sacrifice in the workplace. An important element here is the understanding that workers are aware of, have accepted, and are compensated accordingly for these hazards. However, the Act states that “there is to be disregarded any such rule that has the effect of preventing a duty of

care from being owed to a person by reason of his acceptance of a risk of harm” (*CMCHA* 2007: 3). Despite this section of the law, the belief that work is inherently risky and that workers are knowingly and willingly accepting this sacrifice is pervasive.

Accompanying the notion of sacrifice is also the pattern of placing blame on individual workers for health and safety failings. This is another example of the system tipping over into unanimity against a specific adversary, “a scapegoat chosen for sacrifice” (Girard 2011: 26). The judge in the *Pyranha Mouldings* case states that “it appears that the company relied upon the common sense of people who worked in that area and instructions, given orally, that persons should follow procedure” (*R v Pyranha Mouldings*: 2). Similarly, it was to the *Cotswold Geotechnical* workers, including the deceased victim, “to form their own judgments about the safety of entering any particular trial pit” (*R v Cotswold Geotechnical*: 2). In fact, it is claimed in the *Cotswold Geotechnical* case that a main “cause of death was the fact that the deceased had remained in the pit alone contrary to the company’s practice...it was therefore the deceased who had acted in breach of the company’s system of work” (*R v Cotswold Geotechnical*: 2). With the failings at *Diamond and Son*, workers were so responsible for health and safety that “employees carrying out maintenance were basically taking their lives in their own hands” (BBC News 2015). In this sense, sacrifice makes workers more responsible for the violence perpetrated against them.

It was accepted in the *Lion Steel* case that “a workman doing work on a roof must be properly trained” and that the victim was not (*R v Lion Steel*: 9). However, it is also argued that workers should themselves identify if they were inadequately trained for a certain task: “if they were in any doubt about their ability to carry them out, they were instructed to ask for independent outside contractors to attend” (*R v Lion Steel*: 9). The contradiction here is that even

though the evidence indicates that the victim was not adequately trained and was still asked to perform specific work, it was still his responsibility to speak up about potential hazards. The system at Lion Steel is also described by the judge as having “no precautions to the worker taking a short cut” (*R v Lion Steel*: 10). This choice of words is interesting, as it subtly suggests that workers are the ones taking risks or cutting corners on their own accord, with no thought of the systematic pressures inherent to work and to capitalism itself. The summary continues with: “the deceased was getting on with his work, and met his death when he took just the sort of chance which the advice and regulations are designed to protect against” (*R v Lion Steel*: 11). An additional contradiction is visible here, as the victim is blamed for essentially ‘ignoring’ the training that he *never received* in the first place. This is all consistent with the literature which states that the concept of a victim or scapegoat within sacrifice is paradoxical illusion whose effectiveness requires ignorance of its reality (Girard 2011).

It is unsurprising, then, that one important thing that separates these cases from the countless other safety crimes that are not prosecuted is the victim and how they are related to the notion of sacrifice. That is, what makes a ‘good’ victim in corporate manslaughter cases? As Girard (2011: 72) notes, a victim of sacrifice is equally guilty and divine, and this notion is consistent in corporate manslaughter cases. For example, the victim in the JMW Farm case is described as “a conscientious man and a hardworking man. This is the terrible reality of incidents such as this” (*R v JMW Farm*: 10). Similarly, the Pyranha Mouldings victim is described by the judge as follows:

He was a committed worker and had given 100% and more to his employers...he worked extra hours - for which he asked no thanks - to make things work. He was ever committed and was often summoned from home to sort out problems during his hours off” (*R v Pyranha Mouldings*: 2).

This discourse glorifies both the ultimate and the routine sacrifices that are demanded by workers from corporations. It appears as though what was so valuable about the victims was their devotion and sacrifice for capital, and *that* is what makes their death worthy.

Of course, the choice of victim in cases such as these is arbitrary (Pearce 2003: 68). As Pearce (2003: 51) notes, “to sacrifice an ordinary social member, one of those, for example, who pay the price of progress...usually retrospectively sacralises the victim while also affirming the sacred worth of the collective sacrificer”. Pearce is suggesting that the killing of this victim becomes defined after-the-fact as the sacrifice of a being with exceptional qualities; in these cases, (hard) working and sacrificing. From a victim perspective, the sacrifice is a way of redeeming the life that had been forfeited (Keenan 2005; Girard 2011; Bell 2002) – so portraying corporate manslaughter as a sacrifice prevents death at work from being understood as senseless killing or murder; constructing cold-blooded killing as a sacrifice is a means of redemption. Furthermore, having an ideal victim can also imply that the company suffered some kind of loss as well, since they lost a ‘good’ employee and the sacrifice of a good worker victim is more significant than others (Pearce 2003: 50). And if corporate manslaughter law reproduces sacrifice as a desirable trait of good workers, then it necessarily conceals it as slow systemic violence directed at them by employers.

Conclusion: Law, Power, and the Reproduction of Sacrifice

This data and theoretical framework have offered unique insight into what sacrifice means for the capitalist system; how it is understood, executed, and how it manipulates our understanding of violence. None of this happens on its own, it has to be constantly reproduced and sustained through ideology. While having the law means that at least some companies will be held liable for negligently killing workers and members of the public, the whole process is also

contradictory and dangerous. Not only does the law (re)produce particular understandings of sacrifice and violence that benefit the powerful, the law actually reproduces sacrifice itself.

Understandings perpetrated in corporate manslaughter law are ones that reinforce the notion that prosperity and freedom require sacrifice, and that this is an obligation rather than a choice. This idea of sacrifice is a set of 'truths' that helps organize consent and support of capitalism, while also deflecting blame away from corporate actors. It is a cycle, a reproduction of both ideologies and conditions that ensure the continuation of elite wealth and power by demanding sacrifice and convincing you that you want it. Working people are expected to sacrifice their time, their bodies, and their health for labour, and they are expected to do so happily. This was evident in the analysis where the routine sacrifices made by employees and the violence they faced were framed as accepted and common (even beneficial) business practices. Since we have established that risk and negligence are part of doing business, then that means violence and sacrifice are as well. Therefore, I argue that the end-game of the law cannot be to prevent safety crimes and hold powerful actors accountable when they do occur, because too many barriers hold corporate killings as non-criminal accidents that just happen. Instead, the reality of the law is one that secures capitalist hegemony through sacrifice and violence.

The hierarchal system of capitalist societies is based on inequality, and the interests of the mass of the population will almost always be sacrificed to and for those of privilege (Pearce 2010). However, every so often, a (small, relatively powerless) company is held accountable for killing one of its workers – though any sacrifice made by the privileged and powerful are usually met with overcompensation, while the powerless are undercompensated for their massive, routine sacrifices (Durkheim 1960). This process, while seemingly positive, helps reproduce sacrifice. By holding some corporations liable, the law is able to secure its position as neutral,

fair, and entirely beneficial. This minimizes opposition and potential social unrest by reinforcing the imaginary social order. In these cases, then, the law is actually sacrificing these companies in order to secure the system as a whole – an example of how systems can sacrifice part of themselves in order to remain mostly intact (Derrida, in Keenan 2005: 136). This type of sacrifice is one response to a structure characterized by struggle and conflict – capitalist work relations. Here, it is the small company that becomes the scapegoat chosen for sacrifice to remove the pressure placed on the law to control violence. However, like other sacrificial systems, the effects of ‘legitimate’ violence are always temporary, and the system will fall back into the same violent patterns (Girard 2011). As such, there is a continuous production of ideologies that convinces people to continue sacrificing themselves for a system that seems to be protecting them – when really it is simply ensuring their continued sacrifice.

In this sense, then, not only does corporate manslaughter law reproduce a certain understanding of sacrifice, but the *actual sacrifice*. The role of law in legitimizing sacrifice and, in the process, reproducing capital is one that both mystifies and secures the violence that is perpetrated against workers. Even if an individual was ‘wilfully’ self-sacrificing, how accepting can one really be to exposure to such harm? This is especially worth questioning since most people do not know the true extent of the risk that they are exposed to everyday, or that corporate actors are knowingly putting them at this risk to fill their own pockets. In the end, the fact that all of these elements are present in manslaughter cases and still companies and their directors are barely held accountable reinforces the belief that the sacrifice demanded of us by capitalism is for the best, and death at work is just the price that some have to pay.

Not only are workers sacrificed in overtly violent ways (death and serious injury), but the ideological force that is applied that makes them believe in sacrifice for the good of capitalism is

also violent. In fact, they reinforce each other. For example, when the notion of sacrifice is reproduced, it reinforces the belief that corporate violence is not ‘real’ violence. Ultimately, the power behind sacrifice is convincing the victim that they are willing. This illusion that workers are knowingly and willingly sacrificing for the system diminishes the seriousness of the crime perpetrated against them, removing liability from corporate actors. This ideological power behind the idea of sacrifice is important. Without that element of consent, it could trigger inquiries into the legitimacy of the system for which risk and sacrifice are undertaken in the first place – or at the very least a reassessment of whether the ‘benefits’ gained from sacrificing ourselves for the wealth and power of others justifies the violence endured. After all, millions of workers are certainly not dying worldwide every year for their own benefit.

This reproduction and preservation of capitalist hegemony is about class domination, but it is also about constructing a complex discourse and an understanding that produces a mystifying ‘common sense’: that sacrifice is required and beneficial, and perhaps even just in the way in which it is demanded through work. The process of constructing a common-sense involves conflicting social interests competing over descriptions of reality, and “those who are more powerful are better able to have their versions of reality becomes the dominant one” (Tucker 2006: 6). For example, the interests of the corporate elite appear as the general interest, leading to the widespread acceptance of the imaginary social order. One of the reasons that their interests are understood in this way is because they are reinforced in law, which is often held as the epitome of justice. The instinct sewn into the fabric of law and weaved into everyday consciousness is to protect key actors in the corporate world and preserve the financial system, even when those being protected are the greatest threats to our health, safety, and wellbeing. The deaths themselves do not naturally produce shifts in common-sense views, partly because the

violence seems normal or justified, but also because the notion of sacrifice is (re)produced through law. Therefore, adequately addressing corporate killing requires a restructuring of legal discourse and a reconsideration of the legal enterprise as a whole

A main goal of this work was to challenge the historically narrow paradigm that has made conventional the violence and sacrifice that workers suffer. Structural violence is very clearly not considered in the same way as ‘regular’ or ‘interpersonal’ violence. Even with the law in place, employers and corporate actors are able to extract wealth from the bodies of workers with relative impunity. It is important to understand violence not as some kind of catastrophic event, or tragic disaster, or ‘senseless’ interaction between individuals, but as ordinary processes that routinely and often overtime deteriorate our health (Cooper & Whyte 2017: 24), causing widespread devastation. In moving forward, it is essential that we continue to interrogate the legal, political, and social processes of defining what is violent, as well as those that determine how the state responds (or fails) to such events.

The critical analysis of corporate manslaughter law provided in this research is not to suggest that law offers nothing of value in relation to safety crimes. Even though it was constrained from the onset, and further constrained in practice through its reproduction of sacrifice, the symbolic value of such a law is important. The *CMCHAct* provides a different way of viewing and of discussing the corporation that contradicts hegemony and capitalist domination: they are capable of committing terribly violent crimes (murder). This can effectively transform the image of the corporation from benign, socially responsible employer to potential killer (Gobert 2005: 5). The evidence provided in this research demonstrates that the corporation is fundamentally negligent, greedy, and violent. The problem, however, is that their violence is sacralised and understood as necessary, beneficial, and more important than the harm inflicted on

the victim. Sacrificers will continue to sacrifice and inflict violence as long as there is reconciliation to their killing (Girard 2011), making the promises made by corporations to amend the dangerous working conditions that they produce and to make a better commitment to safety (usually to receive a more lenient sentence with a guilty plea) band-aid solutions at best. Examples from the cases analysed above demonstrate that not only are corporate actors likely to ignore health and safety warnings, but there are cases with multiple deaths and injuries over years. Obviously, corporations cannot be trusted to make good on their promises, and a more permanent or radical solution is required to stop corporate killing. Importantly, this research pushes for more work to be done that can help in thinking about undermining the very basis of the corporation.

It is unlikely that the *CMCHAct* will be responsible for transformative social change on its own, because law itself is violent and hegemonic. However, the legislation's existence exposes a crack in the imaginary social order – and those spaces and opportunities for struggle *are* what can cause change. Furthermore, the fact that the law can be critiqued opens the door for more discussion about what needs to be done to address and prevent corporate violence. Here, there is room for both reform and revolution. In the short and medium terms, this involves reforming the law to better protect workers and to place accountability where it should be. There are ways of disrupting the corporation and how it operates that can have a greater impact on health and safety crimes, including challenging the power of the corporation to operate as freely as it would otherwise prefer (Tombs 2016). The corporate structure can be undermined by pushing past the corporate veil and identifying effective ways of holding corporate actors accountable. It is also important to challenge the common understandings of corporations and their behaviour found in this research: that their harms are accidents, that their violence is not

‘real crime’, and that they are autonomous from the human elements that run and profit from them. Without this critical effort, corporate killing reforms are likely to have relatively few positive effects and, like the law, may even be counterproductive.

A further consideration is the need for a restructuring (dismantling?) of the legal enterprise and the ‘common sense’ understandings of sacrifice, violence, and harm that accompany it. As it stands, the law (re)produces an understanding of sacrifice which benefits the powerful, helping create an environment totally apathetic (even tolerant) to the most pervasive forms of violence. Although corporate killing law will undoubtedly hold some companies accountable, the primary causes of workplace death – the tension between profitable production and safety, competition and economic pressures, beliefs about the relative worth of workers versus owners – will continue in the midst of legislation that ignores these structural factors. Importantly, then, future reforms should be stepping stones to abolishing the corporate form itself, and ideally also the capitalist system.

While this research has a particular focus on safety crimes and the routine and systemic violence faced by workers, this is not the only form of violence and sacrifice inherent to capitalism. Most of us as workers, as consumers, and as members of the public, are sacrificing whether we know it or not. However, the burden of sacrifice is not equal and it is the sacrifice of the most vulnerable that is most often ignored (Cooper & Whyte 2017). The socially destructive impacts of capitalism reproduce inequality and oppression and then demand sacrifice from those who wish to gain a better life. Desperate and marginalized individuals are sacrificing the most to a system that oppresses them, in order to ameliorate the conditions that that system caused in the first place. For example, a disadvantaged person with limited options, from a community with high unemployment and low community resources may ‘sacrifice’ at a job with dangerous and

unhealthy conditions at the promise of better things, but “contrary to the ideological churn that ‘work pays’, people in low paid, low skilled employment have about the same chance of moving out of poverty as their unemployed neighbours” (Cooper & Whyte 2017: 12).

One of the consequences of understanding the link between sacrifice and corporate killing, and of the role that law plays in this relationship, is that we need to rethink how we understand, discuss, and how we can respond to the intrinsically violent foundations of a capitalist social order. The routine workings of corporations that kill and injure are seen as peripheral issues and “not an enduring aspect of the self-destructive tendencies of capitalism” (Cooper & Whyte 2017: 6). The ordinary and mundane sacrifice and violence here is organized and administered through legitimate means, and reinforced through the very law that was supposed to prevent and respond to it, which only strengthens its legitimacy. As such, “the systemic or normal machinery of corporate capitalism [is] not subject to any meaningful scrutiny or challenge” (Cooper & Whyte 2017: 6). The huge role that violence and sacrifice plays in everyday life has become taken for granted and ignored, to the point where the imaginary social order of capitalism has come to be understood as the only possible way to organize our lives. However, if capitalism is allowed to persist, it will be characterized by increasing violence. The rules of the game within capitalism can be challenged by building more egalitarian spaces, so alternative forms of producing and distributing goods and services that are more equal and just, such as community-based public offerings and co-operatives (Tombs 2016) deserve consideration.

The imaginary social order is a narrow and oppressive zone constructed from ideological claims and manoeuvres; the powerful are the ones who make these claims and are capable of making them stick much of the time. It is easy to confuse what *is* with what *should be*, especially

when what is has always worked in your favor (or, in the case of the less powerful, is promised to work in your favor eventually). But sacrifice and violence do not have to be understood as a natural or inevitable part of work or of life, and we must find real ways of addressing inequalities in the workplace and for holding the wealthiest and most powerful members of society truly accountable for the death and destruction they cause. Therefore, any effective counter-strategy to corporate violence must challenge the system at the symbolic level: undermine the system by identifying safety crimes and other corporate harms as acts of violence; challenge the logic of the ‘rule of law’ that reproduces sacrifice and violence and protects the most harmful actors in society; refuse to accept sacrifice as a ‘common-sense’ reaction to death.

The interpretation of corporate manslaughter law, sacrifice, and capitalist hegemony presented in this research hopes to offer new ethical judgments of violence and harm in society. It also supports imagining alternative forms of social arrangements that could produce different outcomes and conditions than what we have now – ones that would offer all people equal respect and equal protection. When a solution or a hope for an imagined future is utopian, it does not necessarily mean that it is not practical; in fact, being stuck thinking that it is impractical and that we have achieved the best that we can possibly do is precisely what gives so much strength to hegemonic structures like capitalism, the law, and the corporation. This is intimately related to the notion of sacrifice embedded and reproduced in the law, and more importantly to the idea of consenting to sacrifice in order to secure a better future. But what kind of future could this sacrifice possibly provide when the lives of hundreds of millions of people around the world every year is filled with injury and illness caused by negligent corporations – and for so many others, the future never comes at all?

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R v. JMW Farm Limited [2012] NICC 17 (Crown Court of Northern Ireland)

R v. Pyranha Mouldings [2015] ER 292 (Liverpool Crown Court)

Appendix A: Corporate Manslaughter Cases¹⁸

Cotswold Geotechnical (Holdings) Limited

Cotswold Geotechnical was the first company to be convicted under the *Corporate Manslaughter Corporate Homicide Act 2007*. It is a very small company that had eight employees at the time and a sole director. On 5 September 2008, Alex Wright was investigating soil conditions in a deep unsupported trench on a development plot when it collapsed and killed him. The company director was on site when the victim first entered the trench, but subsequently left him to work alone without supervision. The managing director, Peter Eaton, was initially charged with common-law manslaughter by gross negligence and under section 37 HSWA 1974, but the proceedings against Eaton were permanently stayed in October 2010 owing to his ill health. The company entered a plea of not guilty, but was nevertheless charged with this offence. In February 2011, Cotswold Geotechnical was fined £385,000 payable over 10 years.

JMW Farm Limited

JMW Farm Ltd was the second company to be convicted of corporate manslaughter, and the first ever in Northern Ireland. It employs around 60 people. In November 2010, Robert Wilson was killed after an unsecured metal bin fell off a forklift truck and crushed him. The bin was not secured because the forklift truck being used was inadequate for the job; it was a replacement vehicle being used while the usual truck was being serviced. Not only were the risks known to the company, but it was the company director who was operating the forklift. In May 2012 the company offered a guilty plea and was fine £187,500 along with £13,000 in costs.

Lion Steel Limited

Lion Steel was the third company convicted for manslaughter under the *CMCHAct*. At the time, it employed 142 employees. On 28 May 2008, Steven Berry was killed when he fell 13 meters through a fiberglass roof at the company's factory. The evidence proved that Berry was untrained, unsupervised, and was not provided with safety equipment for working at such heights. Furthermore, there were no safety precautions in place to prevent serious injury or death. In July 2012, the company offered a guilty plea, one which spared the company directors from accepting any criminal liability, and was fined £480,000 over four years, plus £84,000 in costs to be paid over two years.

Shortly before the trial, the Judge severed the corporate manslaughter charge and the trial proceeded against the company on health and safety charges, and against three individual directors on charges of gross negligence manslaughter and health and safety charges. Following a submission at the conclusion of the prosecution case, the cases of gross negligence manslaughter were dismissed against two of the directors. Following this, a decision was made by the company, with the agreement of the prosecution and the approval of the court, that the

¹⁸ Information on manslaughter cases was obtained through various online searches, most notably news media, case summaries, and law firm commentaries. See also Tombs 2017.

company would plead guilty to corporate manslaughter but that all charges against the directors would be dropped

J Murray and Sons

The Northern Irish Company was the fourth to be convicted of corporate manslaughter under the CMCHAct. The company is a small rural enterprise with about 16 employees. Norman Porter was killed when he was pulled into an animal feed mixing machine. The safety guards on the machine had been disassembled by the managing director. J Murray & Sons pleaded guilty to the charge of corporate manslaughter and was fined £100,000 plus £10,450 costs. Due to its poor financial circumstances, the company was allowed to pay the fine in five installments of £20,000. A similar charge (gross negligence manslaughter) against company director James Daniel Murray was not proceeded with.

Princes Sporting Club Limited

The company was charged with corporate manslaughter and an offence under section 3 HSWA (failing to ensure that persons not in their employment are not exposed to risks to their health and safety, and/or failing to give information relating to such risks) in February 2013. An 11-year-old girl died during a water sports activity at a birthday party organised by the company on 11 September 2010; she fell from a 6m inflatable banana boat and was then hit by the speedboat which was towing it. The Court heard that the driver of the speedboat had no UK recognised qualifications and that there was an overall lax attitude to Health and Safety by the club. Princes Sporting Club Limited pleaded guilty to corporate manslaughter was fined £134,579.69. The Court also imposed a Publicity Order against the company, requiring the company to publicise the details of its conviction.

Mobile Sweepers (Reading) Limited

The company was charged in March 2013 in relation to the death of an employee who was crushed to death while working on a repair underneath a road-sweeping truck. Malcolm Hinton had inadvertently removed the hydraulic hose which caused the back of the truck to fall onto him causing fatal crushing injuries. It is said that he was not trained in mechanics, there was no protection available and the light on site was poor. Mobile Sweepers Limited pleaded guilty to corporate manslaughter and was fined £8,000 and ordered to pay £4,000 in costs. The company's sole director, Mervyn Owens, was also charged with gross negligence manslaughter, as well as charges under s.2 of HSWA, and was fined £183,000 and was disqualified from being company director for 5 years.

Sterecycle (Rotherham) Limited

Sterecycle, a waste processing business, was convicted following the death of 42-year-old worker Michael Whinfrey in January 2011. Whinfrey was killed in an explosion in an autoclave, a pressure chamber used for sterilising, when the door exploded. The victim sustained fatal head injuries in the explosion and a second employee sustained serious life changing injuries. The explosion was the result of the failure of a screw connection to the autoclave locking ring which had secured the door to the machine. The subsequent investigation established that Sterecycle was aware of a problem with the door but failed to establish the cause, and instead continued

production. Sterecycle pleaded not guilty but was fined £500,000 following the guilty sentence. Charges under HSWA were brought against two managers and one director, but those charges were cleared during trial.

Cavendish Masonry

In February 2010, 23-year-old employee, David Evans, was crushed to death by a two-ton limestone slab that had fallen from its lintel as it was being lifted into position. The straps originally holding it in place had been loosened, so all that was keeping the top-heavy block from falling was its own weight. Mr. Evans died of catastrophic injuries to his chest and abdomen. Cavendish Masonry pleaded guilty to an offence under section 2(1) of the Health and Safety at Work Act 1974 and not guilty to corporate manslaughter. They were found guilty of corporate manslaughter in May 2014 for having committed a gross breach of their duty of care in their management and organization of work. The company was fined £150,000 plus legal costs of £87, 117.69

Diamond and Son Ltd

This timber company was charged with the September 2012 death of Peter Lennon, who was killed carrying out a repair to a large automated machine. The machine had not been isolated from all power sources, and during the work it moved and crushed the victim. This is said to have been allowed to occur even though repairs could have been carried out safely whilst the machine was removed from power sources. In addition, it is said that the safety guards preventing access to dangerous parts of the machinery had been modified and regularly bypassed for routine tasks. Diamond and Son pleaded guilty and was fined £75,000 plus £15,832 in costs.

Peter Mawson Ltd

On 3 February 2015, the company was convicted for death of Jason Pennington who was killed in 2011 when he fell almost 8 meters through a skylight onto concrete. The company, which pleaded guilty to the offence, was fined £200,000 as well as costs of £31,500 and a health and safety fine of £20,000. Alongside his company, its proprietor, Peter Mawson, also pleaded guilty to associated health and safety charges. He was sentenced to eight months in prison suspended for two years and required to carry out 200 hours of unpaid work. The Court also imposed a Publicity Order requiring the company to advertise the incident on their website for a set period and take out a half page spread in a local newspaper.

Pyranha Mouldings Limited

A manufacturer of kayaks and canoes, Pyranha Mouldings was a fairly small organization, employing up to 90 people. In December 2010, Alan Catterall died of shock following severe burns from being trapped inside an industrial oven. The oven had automatic doors that closed and locked, with no way to open or disable them from the inside. Furthermore there was no way to see inside the oven from the control panel. The design of this oven was Pyranha Moulding's own project, and being required to enter the oven in between moulds was a common occurrence in this work. The company pleaded not guilty to all charges, including health and safety breaches. Nevertheless, it was found guilty of corporate manslaughter and fined £200,000. Furthermore, the company and the director were asked to pay costs of £90,000 between them.

Huntley Mount Engineering Ltd

In January 2013, apprentice Cameron Minshull became entangled in a lathe which he was operating and was killed. The company and its senior management were charged with corporate manslaughter and gross negligence manslaughter, respectively. All pleas were not guilty. Huntley Mount Engineering Ltd was fined £150,000; Lime People Training Solutions Ltd. Was fined £75,000; Zaffar Hussain was sentenced to 6 months imprisonment and disqualified from being a company director for 10 years; Akbar Hussain was sentenced to 4 months imprisonment, suspended for 12 months, ordered to carry out 200 hours of unpaid work, and fined £3,000.

CAV Aerospace Ltd

In 2013, employee Paul Bowers was crushed to death under aeroplane parts at the company warehouse. It is a larger company, which employed around 550 staff across four sites. Despite entering a plea of not guilty, the company was found guilty of corporate manslaughter in December 2015, as well as guilty of failing to discharge its duty. CAV Aerospace was fined £600,000 in total and was also ordered to pay £125,000 in costs.

Kings Scaffolding

The company pleaded guilty to the corporate manslaughter of employee Adrian Smith in September 2012. Smith fell while working on a roof after the company failed to heed health and safety warnings or take reasonable steps to ensure the safety of employees. Kings Scaffolding was fined £300,000, ordered to be paid at £30,000 a year for 10 years.

Cheshire Gates and Automation

On 7 December 2010, Cheshire Gates and Automation Ltd was sentenced to a fine of £50,000 and a Publicity Order following the death of six year old Semelia Campbell, who was killed after she was trapped in a faulty electric gate at residential area. The company director was charged with gross negligence manslaughter but was found not guilty.

Baldwins Crane Hire Limited

In August 2015, an employee was killed in a collision on a quarry access road. Lindsay Easton was driving a heavy crane down a steep road which crashed into an earth bank and fell into the road as a result of the brakes failing. The crash was caused by failures in the crane's braking system which had not been properly maintained by the company. The company pleaded not guilty but was found guilty of corporate manslaughter and of breaching Sections 2(1) and 3(1) of the Health and Safety at Work Act. It was fined £700,000 and told to pay costs of £200,000.

Linley Developments

Employee Gareth Jones was crushed to death when a structurally unsound retaining wall collapsed on him on 30 January 2013. Linley Developments pleaded guilty to corporate manslaughter and was fined £200,000. Managing director Trevor Hyatt and project manager Alfred Baker were both sentenced to two concurrent six month prison terms and suspended for two years after pleading guilty to breaching safety Regulations. Hyatt was also fined £25,000

with £7,500 in costs. Hyatt and Baker also faced charges of gross negligence manslaughter, but they were not proceeded with after the pair pleaded guilty to the two CDM breaches.

Sherwood Rise Limited

This was the first corporate manslaughter conviction relating to a care home. Resident Ivy Atkins died in November 2012 from pneumonia due to neglect. The company was fined £30,000 for corporate manslaughter. Although the company no longer trades it was classed as a micro company in terms of the Definitive Guideline (turnover up to £2million). Three directors, who are owner-managers of the company, were charged with gross negligence manslaughter. The managing director of Sherwood Rise Limited pleaded guilty to gross negligence manslaughter and was sentenced to three and a half years in prison and was disqualified from being a company director for a period of eight years. Another was sentenced to one year imprisonment and suspended for two years for a breach of sections 3 and 37 under the Health and Safety at Work Act 1974. He was also disqualified from being a company director for 5 years.

Monavon Construction Ltd

The company pleaded guilty to corporate manslaughter and fined £500,000 following the October 2013 deaths of two men (members of the public) who fell 20ft into a half-built basement building site. The barricade that was supposed to prevent such falls was inadequate.

Bilston Skips

A “micro organization” under New Sentencing Guidelines, this company was found guilty of the manslaughter of 24-year-old site worker Jagpal Singh. On 28 June 2012, Singh fell eight feet from the top of a skip, where the machinery was in very poor condition. Company director Bikram Singh Mahli was sentenced to two years imprisonment suspended for a period of two years. The company, which is now in liquidation, was fined £600,000.

Nicole Enterprises

In February 2012, Thomas Houston was crushed to death when a static caravan fell on him. The company pleaded guilty to the charge of corporate manslaughter. Managing director Alan Milne represented two of his companies in this case. He pleaded guilty on behalf of one of his companies, Nicole Enterprises, to the corporate manslaughter of Mr. Houston and to breaching health and safety regulations by failing to “ensure the health, safety and welfare of employees”. However he denied a charge of manslaughter in a personal capacity in relation to the death. Additionally, as the managing director of Dieci Ltd, he pleaded not guilty to a count of corporate manslaughter and to a further charge of breaching health and safety regulations by failing to properly assess risks posed to employees. Given the mined pleas, the case was adjourned.

Martinisation London Limited

This company was found guilty of two counts of corporate manslaughter and two counts of failure to discharge a duty to ensure the health, safety and welfare of employees. The company director was found guilty of two counts of failure to discharge a duty to ensure the health, safety and welfare of employees, contrary to section 33 (1) and section 71 (1) of the Health and Safety

at Work Act 1974. The conviction holds that the director failed to undertake an adequate risk assessment and offer training to two construction workers who fell to their deaths lifting a sofa at height. Both workmen fell after railings on the balcony gave way whilst the furniture was being manoeuvred into premises.

Odzil Investments Ltd & Koseoglu Metalworks Ltd

In 2015, a worker fell to his death through the roof of a warehouse after he stepped onto a discolored skylight. Odzil Investments Ltd and two of its directors, Firat and Ozgur Ozdil, contested the charges, but all were found guilty following a four week trial. The company was found guilty of corporate manslaughter and an offence under s.3 HSWA. It was fined £660,000 with prosecution costs of £53,115.34. Both directors were found guilty of breaches under s.3(1) HSWA 1974 and each sentenced to a term in prison: Firat Ozdil 12 months; and Ozgur Ozdil 10 months.

Koseoglu Metalworks Ltd admitted corporate manslaughter and an offence under s.3 HSWA and was fined £400,000 with costs of £21,236. Its director, Kadir Kose, pleaded guilty to s.3 (1) Health and Safety at Work Act 1974 and was sentenced to 8 months' imprisonment.