

**Is It Any of Our Business?
Canadian Perspectives on
Transnational Corporate Accountability**

By

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ABSTRACT

This study explores conceptualizations of transnational corporate accountability in the responses of Canadian organizations to a crisis in global capitalism. Empirically this study focuses on discussion and debate concerning the involvement of Canadian retail companies in the Rana Plaza disaster, which killed over 1,100 Bangladeshi garment workers on 24 April 2013. Information was drawn from Canadian Parliamentary Committee sessions, documents published by Canadian retail companies, governmental departments and civil society organizations, and nine semi-structured interviews with individuals possessing professional knowledge about corporate governance in global supply chains. A critical discourse analysis method, theoretically informed by the corporate crime literature, Gramsci's concept of hegemony and Foucault's notion of knowledge and power, examined the economic, political, and legal assumptions that characterized discussions about transnational corporate crime and accountability. Overall, dominant voices reinforced neoliberal beliefs about the effectiveness of allowing corporations to develop and implement their own means of transnational regulation. Claims describing the social benefits of free markets and flexible regulatory regimes overshadowed concerns about the dangerous and exploitive practices inherent in the production of private capital, which effectively reproduced the (de)regulation of multinational corporations.

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Finally this thesis is dedicated to the memory of the 1,137 workers who were killed on 24 April, 2013, at the Rana Plaza garment factory in Dhaka, Bangladesh. Their suffering reminds us of the plight of workers everywhere.

Chapter 1: Introduction

The Collapse of the Rana Plaza Factory

On 24 April 2013 an eight-storey garment factory, known as the Rana Plaza complex in Dhaka, Bangladesh, collapsed, killing an estimated 1137 workers and injuring thousands more.

Approximately 150 workers are still reported missing and assumed to be buried amongst the concrete rubble (Aulakh, 2015). The day before the collapse workers complained of visible cracks in the building walls but were threatened by management with job termination and violence if they did not return to work. The multi-storey garment factory crumbled to pieces following a power outage that shook the building's poorly-built foundational structures, which according to a subsequent investigation by the Government of Bangladesh was built without proper permits and in violation of multiple safety codes (Associated Press, 23 May 2013).

Although the Rana Plaza disaster is the worst of its kind in Bangladesh, the country's garment manufacturing industry has a history of unsafe working conditions since the 1990s (Sethi, 2014).

The fast growth of the garment industry in Bangladesh owes much to the investment of North American and European multinational retail clothing companies, which annually source billions of dollars' worth of garments from Bangladeshi supplier factories (Claeson, 2012).

Amongst the recognizable fashion retailers to source from Bangladeshi suppliers are Wal-Mart, Sears, Joe Fresh (owned by the parent company Loblaw), Canadian Tire, Giant Tiger, the Hudson's Bay Company, GAP Inc., H&M and Forever 21 (Engel, 13 May 2013). Human rights advocates accuse these retailers, along with hundreds of other international brands, of contributing to the exploitive "fast fashion" industry by selling trendy clothes for low prices and high turnover rates that encourage consumers to regularly buy new clothes to keep up with the 'fast' pace of change within the fashion world (Hearson, 2006, p. 8). To meet retailer demands

for faster and cheaper orders, it is not uncommon for factory owners and managers to ignore safety procedures and labour standards (Tombs & Whyte, 2007, p. 126) – as was the case in the Rana Plaza factory, where most garment workers made less than US\$1 a day when the collapse occurred. At the time of this writing, the owner of the factory, Sohel Rana, as well as several factory managers and government officials, face criminal charges for causing the deaths related to this disaster (Associated Press, 1 June 2015).

Several months following the collapse, a number of multinational retail companies with major supplier relationships in Bangladesh – including several of the aforementioned Canadian-based businesses – promised to improve working conditions in the garment sector by signing corporate social responsibility (CSR) agreements. CSR agreements typically include standards for ethical conduct that companies voluntarily agree to uphold in their business practices (Albareda, 2008; Carroll, 1999). However, major retailers operating in Bangladesh already had CSR codes of conduct in place before the Rana Plaza disaster (Claeson, 2012; LeBaron & Lister, 2016; Sethi, 2014), and the embedded voluntariness of ethical corporate conduct outlined in these agreements enabled the widespread corporate negligence along retailers’ global supply chains¹ that contributed to the collapse (Hart, 2010; Shamir, 2004).

In several Parliamentary Committee sessions held between 2013 and 2015 to discuss the Rana Plaza collapse and global supply chain accountability, Members of Parliament (MP) and politicians received testimony from multiple officials representing various government departments, Canadian companies, retail industry associations and non-governmental organizations. Several topics about corporate accountability were discussed, including setting

¹ Western consumer goods are typically produced in global supply chains, where “large multinational companies typically outsource and subcontract the production of their goods to smaller low-cost, high-volume suppliers in developing countries” (LeBaron & Lister, 2016, p. 2).

mandatory labour standards over the production of goods sold in Canada, the implications these labour standards would have on international trade agreements and international development agendas, and debates about the effectiveness of CSR codes for regulating corporate conduct abroad. In spite of this, the Canadian government endorsed “tried and true” CSR efforts that essentially allow companies to regulate their own conduct abroad. As this study documents, the economic benefits of multinational retail companies operating in Bangladesh outweighed the dangerous working conditions in the country’s garment sector, which limited the options for holding these companies accountable for their offshore practices. Such an outcome would be unthinkable had the deaths and injuries from the Rana Plaza collapse occurred outside the realm of profit-seeking business. Within this context the commitment to capitalist principles helps to ensure “private capital as the only feasible response to crisis” (Bittle, 2012, p. xi).

Redirecting the Criminological Gaze towards Multinational Corporations

A number of labour organizations, human rights groups, investor associations and consumers have expressed concerns over vague definitions of corporate accountability provided in CSR agreements that enable companies to neglect dangerous and exploitive conditions in their global supply chains. Three years have passed since the signing of these CSR agreements developed in response to the Rana Plaza collapse, and yet multiple problems persist with their implementation. Garment factory workers have reported recurring violations of safety standards and disregard for their labour rights while NGOs report the majority of recommended factory safety repairs continue to suffer from prolonged delays.² In spite of persistent problems involving deplorable conditions in garment supplier factories, the ready-made garment industry in Bangladesh is well

² According to reports from the International Rights Forum (2015), Clean Clothes Campaign (2016), Human Rights Watch (2015), and the Canadian Labour Delegation to Bangladesh (2016).

on its way to meeting the industry-wide target set by the Bangladeshi government of generating US\$50 billion in revenue by 2021 (Leahey, 2015). The problematic circumstances leading to the Rana Plaza disaster – including widespread disregard for safety and labour standards, pressures to maximize production and little oversight of the production process – reflect the existing state of global capitalism. Similar problems of worker exploitation and abuses of labour rights arising from offshore production for multinational corporations also exist in countries with newly emerging manufacturing sectors, such as Vietnam, Cambodia, and Burma, underscoring the importance of studying the continued legitimization of global corporate capitalism in the face of its destructive potentials.

Currently, multinational corporations face little to no legal repercussions for their offshore practices, due in part to the liberalised trade policies endorsed by governments, businesses and intergovernmental political and financial organizations. The rise in power and influence of multinational corporations in recent decades was made possible through a convergence of political, social, and legal environments that adhered to neoliberal interpretations of capitalist systems and treated corporations as fundamentally necessary for capital markets to expand and thrive (Bruff, 2009; Jessop, 2009; Snider, 1987). Essentially, neoliberalism assumes that the most efficient means to maximise overall social welfare is to encourage the production of privately-owned capital (Crouch, 2011, p. 17; Harvey, 2007). Under these circumstances, the so-called productive forces of corporate capitalism – especially its profit generation and wealth accumulation – are seen to outweigh its *destructive* forces which, quite literally, kill people and often with impunity (Bittle, 2012, p. 49; Glasbeek, 2002, p. 17; Tombs & Whyte, 2009, p. 108). And yet issues of transnational corporate accountability remain largely ignored in justice systems and underexplored in mainstream criminology.

This project does not seek to determine the causes of industrial disasters, safety crimes, or transnational corporate negligence – these important issues have been discussed at length elsewhere (Bittle, 2012; Friedrichs, 2007b; Glasbeek, 2007; Gobert & Punch, 2003; Tombs & Whyte, 2009; Vaughan, 1982). Instead, the goal is to examine the processes that allow the deadly demands of corporate capitalism to continue with little public accountability. In light of growing competitive pressures to further expand capitalist production processes across the globe, it is now more urgent than ever to critically examine the voices that contribute to dominant understandings of transnational corporate responsibility and accountability, and corporate crime more generally. Throughout this study I seek to answer the calls from critical corporate crime scholars who argue the dynamic social transformations involving globalization presents an opportunity to expand the scope of criminology beyond national and jurisdictional borders to explore how dominant notions of crime, deviance and justice serve particular interests in an era of global capitalism (Michalowski, Chambliss, & Kramer, 2010; Friedrichs, 2007c; Friedrichs & Rothe, 2013; Gilbert & Russell, 2002; Mackenzie, 2006; Rothe & Friedrichs, 2015; Tombs & Whyte, 2009). In particular, using the Rana Plaza disaster and its aftermath as a case study, the research asks: How do Canadian state, corporate, and civil society groups respond to crises in global capitalism, and what social, economic, and political factors shape the responses regarding transnational corporate accountability measures involving Canadian companies?

Theoretical Framework and Method

The theoretical foundations of this study are taken from critical criminology, which recognizes the social relations in the constitution and enforcement of the law and criticizes mainstream criminology for failing to acknowledge the myriad harms not officially defined as ‘crime’

(Lynch & Michalowski, 2006, p. 14; Michalowski et al., 2010; Snider, 2000). Antonio Gramsci's concepts of hegemony guides the study's analytical framework to explore the link between hegemonic beliefs in shaping and reproducing economic, political, and legal 'realities' of global capitalist systems. The critical discourse analysis method, informed by Michel Foucault's concepts of power, truth and knowledge help deconstruct the processes through which particular knowledges about transnational corporate accountability are produced and legitimised as truth. This study draws upon both Gramsci's and Foucault's concepts to examine the reproduction of, and/or resistance against, neoliberal hegemony through discourse. To accomplish this, the responses made by the Government of Canada, Canadian businesses and civil society organizations in the wake of the Rana Plaza factory collapse are examined to unearth the dominant conceptualizations of transnational corporate accountability that shaped the (re)legitimation of CSR as the only available means to regulate multinational corporate activity.

As detailed in the following chapters, a fixation with the economic sustainability of the Bangladeshi garment industry identified corporate profitability as vital for the wellbeing of the industry's predominantly female workers – a concern which framed subsequent discussions of transnational corporate accountability. This situated the Canadian government's international trade agendas as necessary for the facilitation of social development efforts abroad. Challenges associated with enforcing binding standards on multinational companies undermined alternative viewpoints that questioned the effectiveness of voluntary CSR agreements. Overall, dominant voices from the Canadian state and corporate sectors confirmed a soft-law approach based on principles of voluntary CSR as the most reasonable means to regulate the conduct of Canadian companies operating abroad. These viewpoints reproduced hegemonic neoliberal ideals about the

socially beneficial and self-regulating capabilities of free markets, which shielded multinational companies from being subject to higher standards of accountability in their offshore operations.

Outline of Chapters

The remainder of the thesis is organized as follows. Chapter 2 provides background information about the Bangladeshi garment industry and outlines the study's research questions, methods and sources. Chapter 3 contextualizes the research in the criminological and corporate crime literature. Chapter 4 discusses the theoretical influences that inform the analytical framework of the thesis. Chapter 5 explores my analysis of the responses to the Rana Plaza disaster produced by Canadian state, corporate, and civil society organizations. Finally, Chapter 6 outlines the main thesis findings and discusses their theoretical significance.

Chapter 2: Background and Research Methods

Bangladesh and the Ready-Made Garment Industry

This section briefly explains the political and economic background of the garment industry in Bangladesh. The export-oriented Bangladeshi garment industry flourished throughout the 1970s and 1980s when the government of the newly formed nation opted in 1975 to liberalise its market policies by reducing barriers to international trade to encourage business from foreign investors (Ahmed, 2004). 1975 also marked the start of the Multi-Fiber Agreement (MFA), which aimed to allow North American and European garment manufacturers to compete with suppliers overseas by limiting the growing number of textile and garment exports produced in primarily Asian countries with low worker wages such as China, Korea and India (Claeson, 2012). Thus garment production in Bangladesh was quickly favoured by retailers as Bangladesh was exempt from the MFA and had an abundant, cheaply-paid and compliant supply of female labour. Bangladeshi women were typically restricted to traditional household roles of mothers, wives or domestic servants – until they were considered as a suitable surplus labour force to fill the production demands of the country's emerging export-oriented garment sector (Wahra & Rahman, 1995). Garment factories prefer to hire women because females in Bangladesh are typically undereducated and socialized from a young age to obey authoritative figures, resulting in a low threat of unionization or strike activity to speak out against low wages or unsafe work conditions (Alam, Blanche, & Smith, 2011; Ahmed, 2004; Siddiqi, 2000).

Suppression of Bangladeshi workers' rights contributed to the tolerance of dangerous factory working conditions. Driven by the desperation to compete with garment manufacturers of other countries, common industry practices to minimize costs in order to attract and maintain supplier contracts with foreign companies led not only to extremely low rates of pay but also

threats of violent suppression of union activity and cutting corners on safety (Hearson, 2009; Rose, 2014). Although these issues have plagued the industry for decades (Claeson, 2012; Sethi, 2014; Wahra & Rahman, 1995), the collapse of the Rana Plaza factory exposed consumers around the world to the deplorable conditions in which a majority of Bangladeshi garments are made.

Retail companies undertook a number of actions to address mounting public criticisms about safety concerns in their garment supplier factories. Several multinational retail brands, including the Walt Disney Company, opted to terminate their supplier relationships in Bangladesh altogether (Fox, 2013). And yet hundreds of retail companies maintained the most responsible way to improve labour conditions in Bangladesh was via voluntary CSR agreements. Canadian-owned grocer and retail company Loblaw (the parent company of fashion brand Joe Fresh) and a smaller Canadian active wear retailer, Bruzer Sportsgear Ltd., were among more than 200 company signatories to the Bangladesh Accord on Fire and Building Safety (the Accord). The Accord encourages retailers to adopt industry-wide standards for garment factory safety, facilitate safety training, conduct regular factory inspections and publically disclose the results of these inspections. Signatory companies agree to be held responsible if a safety standard violation is discovered in one of their supplier factories, and implement recommendations to improve working conditions made by an advisory body consisting of factory inspectors and representatives from the government of Bangladesh, local unions, NGOs and the International Labour Organization (Bangladesh Accord Foundation, 2013; Haar & Keune, 2014; Rose, 2014).

A separate group of 29 retailers, including Canadian companies Canadian Tire, Giant Tiger and the Hudson's Bay Company initiated the Alliance for Bangladesh Worker Safety (the Alliance), a separate CSR strategy aimed at improving safe work conditions through factory

inspections and safety training. The Accord differs from the Alliance in that the latter model does not involve the participation of external stakeholders, nor does it impose mandatory remedial requirements on signatory companies for violations occurring in supplier factories (Rose, 2014).

The Canadian government also responded to the criticisms from Canadian human rights and labour organizations about the failures to regulate the offshore conduct of Canadian companies sourcing from Bangladesh³. Two sessions were held by the Standing Committee on Foreign Affairs and International Development (Foreign Affairs Committee) and four sessions were held by the Standing Senate Committee on Human Rights (Human Rights Committee) between May 2013 and June 2015. These sessions examined the role of Canadian companies in the Bangladesh garment sector and the implications of Canadian foreign trade policies on labour standards and human rights in global supply chains. Witnesses representing an array of organizations including Canadian retail companies and industry associations, government departments, NGOs, academia and labour groups shared their insights and opinions about the Rana Plaza collapse and the Bangladesh garment industry before Committee members, who had the chance to direct specific questions to witnesses. As shall be discussed in the findings chapter, discussions in the Committee sessions were characterised by debates about the economic, political and legal implications of various transnational corporate accountability mechanisms.

These responses contribute to the rhetoric of transnational corporate accountability and form an important part of the empirical focus of the thesis, which will be discussed in further

³ In 2014 an Open Letter was sent to Prime Minister Stephen Harper's office by the Canadian Labour Congress and endorsed by over 50 Canadian "human rights, religious, international development, trade union, women's teacher, student, community and investor organizations" (Canadian Labour Congress, 2014). The Letter made several recommendations to the Canadian government, including calls to: urge Canadian retail companies to contribute towards a trust fund for the survivors and victims' families of the Rana Plaza collapse; require companies to adopt responsible and transparent purchasing policies for goods manufactured in Bangladesh; and replace the office of the CSR Counsellor with an independent ombudsperson with investigative powers over the conduct of Canadian businesses in the garment sector (Amnesty International, 2014).

detail following an overview of the research method.

Exploring 'Crises' in Hegemony through Critical Discourse Analysis

Discourses that endorse neoliberal common-sense assumptions enable capitalist systems to overcome dissenting criticisms that highlight the inequalities and destructive forces inherent in the capitalist drive towards profit maximisation (Bittle, 2015; Dahlberg, 2014; Parsons & McKenna, 2009; Snider, 2000; Tombs & Whyte, 2010). However, the reproduction of capitalism, and the neoliberal ideology that encompasses it, does not occur automatically.

Although ruling groups, including wealthy corporations and states, generally act to ensure their own interests, they must also answer to the voices emerging from a multitude of sources, some of which confront and resist neoliberal hegemony. The range of responses arising from any highly publicized crisis form a body of rhetoric which contribute to (re)conceptualizations of legitimacy in capitalist systems and may influence whether transnational corporate conduct remains wholly undisturbed or must adapt to mounting external pressures. In order to explore the processes of hegemonic reproduction or resistance against the status quo, it is necessary to examine the “truths” which enable it do so.

A critical discourse analysis (CDA) of the responses produced by Canadian sources (government officials, industry representatives, non-governmental organizations, labour-based organizations, politicians, and academics) regarding the Rana Plaza collapse can provide an understanding of the production of knowledge and relations of power involved in the (re)production of global capitalism. The majority of Canadians have limited access to direct knowledge about the Bangladesh garment industry and the extent of corporate activities occurring overseas, and yet Canadian consumers are a driving force behind the export-dependent

industry. As such, information about the industry and other offshore practices of Canadian companies can significantly influence how Canadian policymakers and consumers interpret notions of international corporate responsibility and accountability, which can in turn influence Canadian foreign trade and development policies as well as consumer purchasing practices. This study draws upon an integrated Gramscian-Foucauldian approach – the parameters of which are outlined in Chapter 4 – to explore the role of knowledge claims, encompassed within socio-political-economic factors, in reproducing or challenging the status quo of neoliberal global capitalism. The CDA method employed here applies this theoretical lens to examine the knowledge claims within the discussion, debate and policy responses in the wake of the Rana Plaza collapse (Jager, 2001). How particular knowledge claims come to be accepted and naturalized as ‘truths’ is central to CDA, which will help uncover the transnational relations of power that are involved in the reproduction and/or restructuring of neoliberal common-sense assumptions amidst a network of competing knowledge claims.

Discourse analysis research typically examines how the literal content communicated in discourses achieve broader social objectives in relation to ideological beliefs, societal structures and processes of social interaction (Wood & Kroger, 2000; van Dijk, 2005). Informed by Foucault’s ideas on the social processes involved in the production of knowledge, CDA modifies the traditional discourse analysis approach by emphasizing the role of discourse and knowledge in the (re)production of social relations of power, dominance and/or inequality. Various CDA techniques, ranging from micro-level analyses of surface content of the discourse, or macro-level analyses of broader social contexts, may be utilised to interpret discourses depending on the unique aims of individual research projects. For instance, linguistic analysis focuses on the semantic elements that comprise discourse objects, and the specific use of keywords or the

ordering of sentences can help interpret styles of neutralization, evasion (Rasiah, 2010), problematization, or framing of important concepts (van Dijk, 1993). Intertextual analysis is useful for grouping and comparing discourse objects to understand how ‘chains’ of knowledge claims can coalesce to reproduce or challenge dominant knowledges (Fairclough, 2010).

While the micro-focused levels of discourse analysis are important starting points to CDA this study will emphasize a contextual analysis, drawing from Foucauldian theories of power and knowledge to situate discourses within broader contexts involving relations of social power (Ruiz Ruiz, 2009, p. 15). A crucial aspect of understanding the sociological implications of discourse is to examine the discursive ‘rules’ that govern the ‘credibility’ of knowledge claims and legitimise particular assumptions over others, which can then shape prevailing rhetoric and yield significant influence over social, political, and economic practices (Fairclough, 2010; Foucault, 1980, p. 114; Foucault, 1981, p. 54; Peet, 2002, p. 57; van Dijk, 2005; Wood & Kroger, 2000). The formation of discursive regimes are dictated by relations of power between social groups, as some groups might systematically be excluded from participating in discourse networks, which illustrates the privilege awarded to authorized ‘knowers’ who have greater access than marginalized groups to participate in the production of knowledge (Downing, 2008, p. 76; Meyer, 2001; van Dijk, 1993). The goal of using CDA in this study is to identify the ‘regularities’ and the conditions within which they emerge (Blaikie, 2000, p. 109) in the data to develop an understanding of the processes through which discourses about transnational corporate accountability are organized within specific social, political and economic contexts to advance particular understandings of global capitalism. In this case, the discursive rules that dictate the credibility of knowledge claims made about global capitalism can provide insight into the transnational relations of power in the reproduction of, or resistance to, neoliberal hegemony

(Gill, 1993b; Gill, 2015; Pringle, 2005).

Research Question and Objectives

Using the Rana Plaza disaster as a case study, this research project directs the “criminological gaze” (Michalowski, 2010, p. 21) towards understanding how and why the harms perpetuated in the name of transnational business are not defined or treated as “true” crimes. The CDA method described here will be utilised to answer the research question: How do Canadian state, corporate, and civil society groups respond to crises in global capitalism, and what social, economic, and political factors shape the responses regarding transnational corporate accountability measures involving Canadian companies? The study’s overall objectives are threefold:

1. To examine Canadian-based initiatives aimed at holding Canadian companies accountable for multinational business practices in the Bangladeshi garment industry. What standards of workers’ rights and factory safety should Canadian companies adhere to, and how should they implement them? How do these initiatives compare to existing corporate governance strategies?
2. To examine the broader social, economic and political factors involving global capitalism that inform the conceptualization of transnational corporate accountability strategies in Canada. What factors related to global market economies shape assumptions over ‘feasible’ options for transnational corporate accountability?
3. To compare and contrast the viewpoints put forth by various Canadian private sector, public sector, and civil society organizations. How do conceptualizations of corporate accountability produced by voices from various sectors differ, if at all? Finally, which perspectives towards

corporate accountability reign dominant, and through what means?

Data Sources: Discourse Objects

The responses produced by Canadian organizations in the wake of the Rana Plaza collapse contain varying assumptions about transnational corporate harms and accountability, the role of Canadian businesses and the Canadian government in international trade and global capitalism generally. The data for this study includes testimony provided by various individuals appearing before Parliamentary Committee sessions regarding the Rana Plaza disaster, documents published by Canadian organizations about the Bangladesh garment industry and in-person interviews.

The first information source is the transcripts of two sessions held by the Standing Parliamentary Committee on Foreign Affairs and International Development (Foreign Affairs Committee), in which eleven witnesses offered testimonies to Members of Parliament (MPs), and produced approximately four hours of verbatim transcripts. The second contains four sessions held by the Standing Senate Committee on Human Rights (Human Rights Committee) in which eighteen witnesses offered testimonies to Senators, and produced approximately ten hours of verbatim transcripts. A full list of the MPs on the Foreign Affairs Committee, the Senators on the Human Rights Committee and the witnesses who participated in these sessions can be found in Appendices A-D. The information produced in the Committee sessions is important for this study because they illustrate the capacity of the state to grant access to and facilitate spaces for the exchange of ideas amongst various social groups to an important social issue. The combination of voices, representing Canadian political, corporate, labour and non-governmental organizations present an opportunity to examine how these groups interact and

negotiate various conceptualizations of transnational corporate accountability and globalization. The data also includes the Senate Report, *Fast Fashion: Working Conditions in the Garment Industry*, published by the Human Rights Committee in July 2015 summarizing the main discussions and recommendations heard during the Committee sessions. The Report concluded “[m]ore testimony is needed for the Committee to fully understand the role of the various actors in the sector...and to identify the most effective measures the Canadian government needs to take to help improve safety and working conditions in the garment industry worldwide.” (Jaffer & Atallahjan, 2015, p. 11).

The second information source is drawn from an Internet search of statements published by Canadian organizations about the Bangladesh garment industry following the Rana Plaza collapse. The search parameters included key terms such as “Rana Plaza”, “Bangladesh garment industry/sector”, and “Canadian companies” while secondary terms such as “accountability”, “regulation”, “health and safety”, and “CSR” helped narrow these results. Documents and statements published after the date of the Rana Plaza collapse (23 April, 2013) to 30 June, 2016 were included in the dataset. These statements provide additional insight on how various Canadian state, corporate, and civil society institutions disseminate information to Canadian consumers and the wider public. The Internet is also useful for tracking the progress of the Accord on Fire and Building Safety in Bangladesh and the Alliance for Bangladesh Worker Safety, the two major CSR strategies that emerged following the Rana Plaza collapse. Additionally, Joe Fresh and Hudson’s Bay Company released CSR reports following the collapse detailing their supplier codes of conduct agreements and Canadian Tire published one statement regarding the company’s sourcing practices. The Canadian Apparel Federation and the Retail Council of Canada, both of which represent several Canadian retail companies, and the

Shareholder Association for Research and Education, an investor association, released official statements regarding the sourcing practices of its member companies, including how these companies are involved in the Alliance or the Accord. One challenge in this regard is identifying which Canadian companies source garments from Bangladesh, as many companies do not publically list the locations of their suppliers online or disclose the terms of their supplier contracts. Although remaining silent or avoiding to speak or act upon particular social issues in which one is implicated is a form of rhetoric in itself (Brummett, 1980; Dimitrov, 2015; Glenn, 2004), the focus of this study is the public statements by Canadian organizations concerning corporate accountability and responsibility in global supply chains.

In addition to statements produced by the corporate sector, the National Contact Point of Canada, a sub-department within the department of Global Affairs Canada (at the time of the Rana Plaza collapse, the Department of Foreign Affairs, Trade and Development), released two updates detailing the Canadian government's efforts to advance considerations for human rights and the labour laws in the Bangladesh garment industry. Several Canadian civil society groups, including labour and development-based organizations, also commented on the involvement of Canadian institutions in Bangladesh in response to the news of the collapse. These internet sources are useful for understanding how each social group communicates its own understanding of transnational corporate accountability and the measures needed to combat corporate harms occurring outside of Canada.

Finally, interviews were conducted with nine individuals purposively selected for their familiarity with the Rana Plaza disaster, global supply chains and/or transnational business. Some interview participants included representatives from several of the organizations that participated in the Foreign Affairs Committee or Human Rights Committee sessions, and some

participants represented Canadian organizations that did not appear before the Committees but who nonetheless possess considerable expertise in the Bangladesh garment industry and/or global supply chains (see Appendix E for a full list of interviewees). Participants are identified by their general position title to protect their privacy and confidentiality. Representatives of retail companies based in Canada were contacted, however none agreed to participate in an interview for this project. Difficulties in gaining access to interview members of corporate staff compounds to the myriad obstacles related to piercing the corporate veil in researching the crimes of the powerful (Tombs & Whyte, 2003b). All interview participants were deemed as a minimal risk for experiencing harmful effects as a result of participating in the research project (see Appendix G for the Research Ethics Approval Notice).

Interviews allowed for additional insight regarding the varying conceptualizations of transnational corporate accountability that were not necessarily or immediately available through other data sources. The interviews followed a semi-structured format to allow for an exploration of various conceptualizations of transnational corporate accountability (see Appendix F for the interview guide). The interviews were conducted between December 2015 and March 2016. The average interview length was approximately one hour. The longest interview lasted just over ninety minutes and the shortest was thirty minutes. With the exception of two cases the interviews were audio-recorded with the permission of the participants. For interviews that were not recorded, important notes were taken during the interview and supplemented with additional notes taken immediately afterwards to capture the essential information provided by the participants. Key notes were also taken during the audio-recorded interviews, which were then manually transcribed as soon as possible following the completion of each interview. Approximately sixty single-spaced pages of transcription were produced from the recordings.

Data Analysis

The data analysis for this project involved several cycles of reading the documents and transcripts alongside note-taking to identify the ‘regularities’ or recurring patterns that emerged from the data, and forming key codes to categorize important pieces of information and identify the themes that dominated each document or interview. Doing so facilitated easier cross-data comparisons to form an understanding of the dominant and dissenting themes that emerged throughout the data. For instance, in the first reading of the Committee transcripts, notes and markers were used to identify important issues that were raised in the sessions. The second reading involved comparing these notes across similar and contrasting claims made in the same Committee sessions and in other sessions. For the third reading, recurring patterns of knowledge claims or assumptions were categorized into broad themes to help organize a general overview of the dominant claims that emerged from the data. Subsequent readings involved comparing and contrasting these themes across the entire data set, and referring to the concepts raised in the Literature Review and Theoretical Framework to help interpret the data and answer the research questions. A similar process helped to analyse the internet publications and interview transcripts. This process allowed me to compare and contrast the many opinions and perspectives found in the responses to the Rana Plaza collapse which, when taken together, formed a ‘narrative’ of how transnational corporate accountability is conceptualized by social groups in Canada. The theoretical considerations of this study were applied throughout the analytical process to interpret the extent to which dominant conceptualizations that emerged in the data reproduced and/or challenged hegemonic assumptions of global capitalism. The following chapter contextualizes the thesis in the criminological and corporate crime literature and details the significance of neoliberalism in global capitalism and transnational corporate crimes.

Chapter 3: Literature Review

Introduction

Academics from multiple disciplines have explored issues of corporate crime since Edwin Sutherland's influential writing on the subject in the 1940s (Sutherland, 1940; Sutherland, 1949). At a time of growing concern about the power of the wealthy elite, Sutherland urged criminologists to examine the wrongdoing of the rich and powerful who were not often the subjects of criminological inquiry. Seventy years after the publication of Sutherland's work, there is a vast body of research about corporate crime and its control. This chapter situates the study within the corporate crime literature, particularly in terms of the challenges of regulating corporate crime within global capitalism.

Section I examines the Rana Plaza factory collapse within neoliberal capitalism. Section II discusses the implications of neoliberalism for corporate crime and its regulation, including dominant treatments of occupational safety offenses. Section III explains the economic and political factors that underpin transnational corporate crimes in the context of global capitalism. Section IV describes the dominance of CSR frameworks to regulate and control the conduct of multinational corporations. Finally, Section V details how particular discourses about crime and wrongdoing can reproduce neoliberal ideologies about corporate 'crime', its regulation and the expansion of global corporate capitalism. An examination of the existing literature suggests additional research is needed regarding the political and economic contexts of transnational corporate crime and, in particular, the ideologies that shape conceptualizations of corporate responsibility within the global supply chain.

I. Contextualizing the Rana Plaza Disaster in Neoliberalism

Repeated disregard for workers' rights and workplace safety standards by factory owners, hesitancy by regulators to inspect supplier factories and enforce national labour standards, and negligent oversight of the conditions in which multinational retail companies produce their goods are commonplace within the Bangladesh garment industry (Alam, Blanch & Smith, 2011; Claeson, 2012; Claeson, 2015; Human Rights Watch, 2015). This Section focuses on the (neoliberal) ideals that underpinned these circumstances and the ways in which they helped produce the dangerous working conditions related to the Rana Plaza disaster.

Capitalism rests on the assumption that the private ownership of goods that are bought and sold between individuals (and companies) in the free market is the most efficient mechanism to control the equitable distribution of material resources in society (Glasbeek 2002, p. 18; Jenks, 1998, p. 383). Allowing private owners to freely compete ensures healthy competition that will maximize profits, "naturally produce winners and losers" (Glasbeek 2002, p. 19) and spur profit-seeking entities to offer consumers the best goods and services at the lowest possible price (Resnick & Wolff, 2010, p. 172). Accordingly, profit-oriented market systems are sufficient for meeting social demands for the 'fair' distribution of resources as "fully competitive markets enable those who contribute to wealth production to receive rewards (income) exactly equal to the size of their contribution" (Resnick & Wolff, 2010, p. 172). Glasbeek succinctly summarizes the logics at the centre of modern capitalism: "Capitalism's strongest argument is that the accumulation of wealth for its own sake is a worthwhile economic, and, therefore, meritorious social and political goal" (2002, p. 17).

However, capitalist crises such as the Great Depression of the 1930s demonstrated that markets can self-destruct without policies in place to ensure stable conditions. The period

between the 1940s and 1960s saw the adoption of policies with more prominent state presence in markets, based on Keynesian welfare principles of providing people with some protections from the rapid fluctuations of the market to produce confident consumers and to sustain stable market conditions (Crouch, 2011, p. 12). Governments played a major role in facilitating economic growth through state-owned industries, careful controls over the mobility of capital, support for trade union power, and expanded public expenditures and social welfare policies (Harvey, 2005, p. 11).

Following a wave of global economic crises throughout the 1970s, characterised by rapid inflation and stagnating rates of employment (Bittle, 2015, p. 137; McBride, 2005), the previous Keynesian model was displaced in favour of neoliberal interpretations of capitalism, which denounced state interventionism in markets and prioritized “ideals of individual freedom” to govern markets (Harvey, 2005, p. 2; see also Crouch, 2011, p. 15; Soederberg, 2006, p. 11). According to neoliberalism the “trickle-down effects” of privately accumulated capital will eventually spread throughout the social hierarchy to benefit even the most poor and marginalized groups, which has considerable impact on policies for regulating market activity. (Friedrichs, 2007c, p. 169; Harvey, 2007; Soederberg, 2006, p. 12). Neoliberal capitalism assumes markets effectively self-regulate by means of competition where commercial entities will naturally watch over their own conduct and adhere to social, moral, and legal obligations in order to ensure competitive advantage over other businesses (Bittle, 2015, p. 137; Glasbeek, 2002, p. 19; Sethi, 2003, p. 23; Soederberg, 2006, p. 11; Tombs & Whyte, 2015, p. 13). In contrast with Keynesian capitalism, external regulations are thus perceived as unnecessary, redundant, overly burdensome and even harmful to social welfare unless they “preserve an institutional framework” geared towards “strong private property rights, free markets, and free trade” (Harvey, 2005, p. 2; see

also Crouch, 2011, p. 72; Resnick & Wolff, 2010, p. 171; Soederberg, 2006, p. 11; Tombs & Whyte, 2003a, p. 13). The result of dominant political and economic rhetoric ingrained with neoliberal mentalities is the current era of deregulation, where state interventions in matters of business are encouraged only to allow for private profit-seeking enterprises to operate freely under ideal conditions (Gobert & Punch, 2003, p. 284; Harvey, 2007, p. 23; Tombs & Whyte, 2009).

Neoliberal logics, based on assumptions of efficiencies and benefits of free markets, underpinned the expansion of capitalist systems to non-capitalist countries, including impoverished nations like Bangladesh where it was assumed that encouraging wealthy multinational corporations to set up commercial activities would develop robust and stable economies and therefore alleviate social inequalities (Friedrichs, 2007b; Sharma, 2008; Soederberg, 2007). However, the circumstances leading to the Rana Plaza disaster offer evidence that the self-regulating qualities of market systems according to neoliberalism are hardly verifiable. As we shall see in the following Sections, the critical corporate crime literature suggests corporations are ultimately profit-seeking enterprises formed solely to prioritize the financial bottom-line over all other considerations and leaving markets to self-regulate allows companies to neglect legal and moral obligations in order to maximize profits. Furthermore, the “trickle-down effects” of capitalism produces benefits for some – unsurprisingly, the majority of these benefits are enjoyed by the strongest proponents of neoliberalism – and hardly so by “everyone, everywhere” (Harvey, 2007, p. 24). Still more concerning is that neoliberal logics continue to dominate discussions and practices towards global capitalist systems, which has profound effects on how harms perpetuated in the name of business are treated – or not – in society.

II. Neoliberalism and Corporate Crime

The Rana Plaza factory collapse is just one example of the harms that follow the assumptions about the efficiencies of self-regulating and profit-driven enterprises. For instance, financial sector manipulation schemes leading to national and international economic crises seem to occur at least once every generation (Pontell, Black, & Geis, 2014; Rosoff, Pontell, & Tillman, 2007). Yet the common outcomes of such debacles – after, of course, governments spend taxpayer dollars to bail out bankrupt companies and banks and legislate ‘revolutionary’ reforms – is not to punish the instigators of such disasters but to rely, once again, on free-market principles to fix failing economies (Snider, 2011; Soederberg, 2008). Critical corporate crime scholars argue that the underlying reasons for the persistence of neoliberalism despite widespread knowledge about the harms perpetuated in the name of business can be found in the wider political, economic, and social contexts of modern corporate capitalism. This Section contextualizes corporate crimes within the structure of the modern corporation and the wider implications of neoliberal capitalism on the regulation of corporate crimes. In so doing, occupational safety crimes are discussed as a form of corporate crime that remains under-regulated by states and under-explored in criminology.

First, it is important to understand the internal structures of the modern corporation. In modern capitalism, the corporation is deemed to be the most efficient vehicle for maximizing wealth production, incorporating the wealth of multiple shareholders with the expertise of specialized personnel to produce more profits than a market participant acting alone (Glasbeek, 2002, p. 257). To encourage shareholders to take risks and invest their money in private enterprises, corporations are granted the legal rights necessary to participate in the market as legal persons. Additionally, the limited liability status of corporations offers legal protections to

shareholders from suffering any risks and responsibilities beyond their financial investments in a company (Glasbeek, 2002, p. 15; Pearce & Tombs, 1998b, p. 569). The task of managing the corporation is delegated to directors and executives, who are obligated to make decisions on behalf of the entire corporation to ensure that shareholders will be rewarded with a profitable return on their investments (Glasbeek, 2007, p. 258; Hills, 1987a; Vaughan, 1982). The criminogenic problem with the limited liability corporation lies in the diffusion of responsibility across investors, directors, and managers for the harms perpetuated to maximise corporate profits.

While the pursuit of financial success alone does not automatically lead to corporate wrongdoing, pressures to “ensure the long-run profitability of the company” can encourage wrongful business practices (Hills, 1987a, p. 190). To compete with rival companies and meet shareholder demands for greater and faster returns on their investments, corporate directors often place downwards pressure on supervisors and managers to maximize production levels, which can (and does) lead to cost-cutting practices even if rules and laws are violated in the process (Friedrichs & Rothe, 2013, p. 49; Glasbeek, 2002; Gobert & Punch, 2003; Pearce, 2001). As was the case in the Rana Plaza collapse, decisions made at the top of the corporate hierarchy to maximize production were imposed on mid-level managers and then on the low-level factory employees who actually produced goods for retail companies (Tombs & Whyte, 2015, p. 32).

Beyond the inherent propensity for corporations to prioritize profit-seeking concerns (Pemberton, 2005; Tombs & Whyte, 2015, p. 146), corporate crime scholars also problematize the broader contexts of neoliberal corporate capitalism that contribute to the institutional tolerance and legitimation of corporate harms. Market systems where wealth is generated and accumulated by individuals and corporations alike depend enormously on economic, political,

and legal structures organized by the state “to create the conditions for profit making” (Lynch & Michalowski, 2006, p. 53). For instance, states create legal rights and economic structures centred on private property and wealth, grant licenses to individuals and corporations to freely participate in the market, and legislate the terms under which commercial enterprises operate (Aulette & Michalowski, 1993; Lynch & Michalowski, 2006, p. 53; Michalowski & Kramer, 1987; Tombs & Whyte, 2003a). Thus state interventions in markets are not always purely antagonistic to capitalist interests, as government policies are essential for profit-seeking entities to survive (Snider, 1987; Tombs & Whyte, 2009). At the same time, the relationship between private capital and state institutions is not one-sided in that states also rely on the activities of private businesses to provide society with various goods and services, employment opportunities, and financial income from taxation to spur economic activity and fund public development (Jessop, 2002).

According to critical corporate crime scholars, the dominance of neoliberal ideologies in the symbiotic state-corporate relationship plays a significant role in shaping regulations over market activity. Proponents of neoliberalism argue that strict regulatory policies are antagonistic to corporate profitability, could threaten local and national economic growth, and, as such, are harmful to social welfare at large (Hills, 1987a; Soederberg, 2006, p. 11). Fuelled by wide-reaching corporate and private industry lobbying efforts that circulate market-based neoliberal rhetoric, legislators are pressured to adopt business-friendly policies to facilitate capital accumulation in favour of robust regulatory policies (Miller & Mooney, 2010, p. 460; Snider, 2000; Tombs & Whyte, 2003a, p. 13; Rothe & Friedrichs, 2015, p. 73). However, states can and do regulate corporate capitalism by some means or another, for corporate capitalism must be tamed somehow to maintain its overall legitimacy, especially following ‘crises’ when profit-

seeking endeavours are seen as having overstepped socially acceptable moral boundaries by seriously injuring and/or killing workers and/or members of the public (Bittle, 2012, p. xi; Bruff, 2005; Glasbeek, 2002, p. 145; Jessop, 2009; Jones, 2006, p. 95; Meyer, 1986, p. 67; Soederberg, 2010).

According to structuralist Marxists, the myriad attempts to respond to corporate wrongdoing are undertaken by the state to “strengthen the system more than to control the depredations of private firms” (Meyer, 1986, p. 67). In the case of industrial disasters that bring to the fore the consequences of excessive ‘corporate greed’, public agitation typically leads to the introduction of reforms in corporate accountability mechanisms to assure society at large that corporate capitalism can be sufficiently tamed and therefore trusted on paper – yet significant aspects of these regulatory ‘reforms’ are shaped by neoliberal ideologies (Friedrichs, 2007c; Snider, 1987, p. 40; Tombs & Whyte, 2015, p. 154).

Take, for example, the enactment of the Westray Act in Canada, which emerged out of pressures from labour unions, members of the public, and political lobbying for reform in workplace safety standards following the deaths of twenty-six miners in 1992 (Bittle, 2012; Bittle, & Snider 2006; Glasbeek, 2002). A public inquiry into the mining explosion brought to the fore the extreme negligence for miners’ safety that was typical at the Nova Scotian mine, where a number of safety violations including a series of cave-ins and dangerously high levels of methane gas were reported to the Department of Labour before the explosion (Glasbeek, 2002, p. 62). With this knowledge, the passage of the Westray Act in 2004, known officially as Bill C-45, amended the *Criminal Code* to hold employers criminally liable if they fail to “take reasonable steps to ensure the safety of workers and the public” (Bittle & Snider, 2006, p. 470).

Early versions of Bill C-45 sought to direct criminal responsibility to company directors

and executives for recklessly tolerating dangerous conditions in worksites. However, these proposals were undermined by dominant fears about the impact of the proposed legislation on the global competitiveness of Canadian companies (Bittle, 2012, p. 180). As such, the final version of the Bill remained fixed to narrow conceptions of individual responsibility for corporate harms and failed to challenge the structural problems related to dangerous working conditions, including imbalances of power between workers and employers and the privileged legal status of limited liability organizations (Bittle, 2012, p. 112). An estimated 1,000 workers are killed in Canada annually (United Steelworkers, 13 April 2016; Canadian Centre for Occupational Health and Safety, 28 April 2016), yet since its enactment in 2004, Bill C-45 has only led to approximately sixteen criminal charges, three convictions, and two guilty pleas against companies and/or employers for violating occupational safety standards in cases of worker fatalities (Bittle, 2015, p. 453; Canadian Centre for Occupational Health and Safety, 16 January 2014; Rhodes, 2015). Weak law and poor enforcement under the Westray Act represents one example of the ways in which capitalist interests can undermine attempts to regulate powerful corporations (Bittle, 2012, p. 185; Snider, 1987; Glasbeek, 2002, p. 145).

Neoliberal ideologies do more than denounce strict regulations over businesses for impeding economic prosperity – market-based beliefs also emphasize the supposed benefits of “soft-law” approaches to corporate accountability. In soft-law approaches to the enforcement of business regulations, regulatory authorities encourage and guide companies to comply with existing laws, which is framed as cheaper than relying on routine inspections and more ‘efficient’ given the presumed self-regulating nature of competitive markets (Ainslie, 2006; Khanna, 1996; Slapper & Tombs, 1999, p. 169; Snider, 1990). Within this approach, regulatory authorities typically warn companies of their violations and insist that they mitigate the harms

caused or impose administrative or civil sanctions that can include monetary penalties. Rarely are violating companies charged and tried in courts of law for facilitating or tolerating corporate harms even when options for proceeding criminally are available (Beale, 2009; Laufer, 2006; Tombs & Whyte, 2007, p. 114). However, soft-law approaches based on neoliberal mentalities towards corporate accountability are not automatically indoctrinated in the processes of corporate regulation. After all, corporate criminal liability legislation exists in a number of Western jurisdictions including Canada (Bittle, 2012), the United States (Laufer, 2006; Schott 1988), and the United Kingdom (Almond, 2009; Gobert & Punch, 2003, p. 126), illustrating the range of mechanisms available to states for controlling corporations. At the same time, soft-law approaches are socially constructed as the most feasible option for accountability within modern capitalism (Hills, 1987a; Snider, 2000; Stolz, 1984).

This situation is especially true for the regulation of “safety crimes”, defined by Steve Tombs and David Whyte as knowing or reckless tolerance of dangerous working conditions by employers that lead to violence against workers in the form of deaths or injuries on the job (Tombs & Whyte, 2007). Employers – especially large corporations – are rarely convicted for acts of commission or omission that lead to worker fatalities (Benson, 2000; Slapper, 1999; Tucker, 1995). A common argument against corporate criminal responsibility for safety crimes is that the criminal law is founded upon notions of *mens rea*, or a ‘guilty mind’ for proving criminal responsibility, whereas safety crimes are rarely the result of a guilty mind to endanger the lives of their workers (Benson, 2001, p. 385; Khanna, 1996; Pemberton, 2005; Tombs & Whyte, 2015, p. 82). The pressing issue is whether companies should be held accountable for prioritizing profits over the lives and safety of workers. In especially competitive industries or during times of economic uncertainty, it is not uncommon for corporate directors to pass down

pressures from shareholders to mid-level managers to increase profits by any means necessary, including wilfully ignoring “unnecessary” costs like safety procedures (Hills, 1987a; Pearce, 2001; Reutter, 1987; Tombs & Whyte, 2007). Thus safety crimes are the product of a complex set of commands made across the corporate hierarchy, which spreads responsibility for workplace safety throughout the corporation and makes it difficult to identify any single individual in the corporation as responsible for workplace fatalities (Hills, 1987a, p. 194; Pearce, 2001, p. 44; Tombs & Whyte, 2015, p. 116; Vaughan, 1982, p. 326).

In an effort to circumvent the issue of locating direct responsibility or the guilty mind altogether in cases of safety crimes, strict liability offenses have come to dominate efforts to regulate occupational health and safety (Frank, 1983; Mokhiber, 1988; Nanda, 2011). Strict liability offenses require lower standards of proof than criminal offences and place an absolute obligation on companies to comply with particular laws, regardless of intent to cause harm, allowing for simpler and faster sanctioning procedures (Frank, 1983, p. 540; Larsson 2012). The complexity through which health and safety legislation against corporations is regulated is illustrated in the 2009 case of Metron Construction (Metron), when the scaffolding of a high-rise building in Toronto snapped during a construction project and sent four workers plummeting thirteen floors to their deaths. An investigation by the Ministry of Labour found that fall-protection safety measures were not in place when the scaffold broke, and Metron failed to keep proper training records of employees or ensure the scaffold was properly maintained (Keith, 2014). Early in the case Crown prosecutors sought criminal charges against both the company and the company’s president and director Joel Schwartz for the deaths. Metron pleaded guilty under the Westray Act for criminal negligence leading to the deaths of the workers and was ordered to pay \$250, 000, which was increased to \$750,000 on appeal (Van Alphen, 2012). The

criminal charges against Schwartz were dropped by prosecutors “because they believed there was no reasonable chance of conviction” and on the condition that he plead guilty to breaching the Occupational Health and Safety Act, the provincial (strict liability) legislation safeguarding workplace safety conditions in Ontario. Meanwhile the on-site project manager, Vadim Kaznelson, was found guilty of criminal negligence leading to the workers’ deaths and sentenced to three and half years in prison (Wong, Wells, Wong, & Harper, 2016). Evident in this case is the preference for monetary penalties to punish violating companies, and criminal charges for mid-level managers who may have more direct control over the safety conditions in worksites, but who may be simply following directives from higher-level directors to meet productivity deadlines and quotas. Critical corporate crime scholars have argued that these measures lack lasting deterrent effects on corporate practices (Bittle, 2012, p. 51; Laufer, 2014; Steinzor, 2014, p. 220) and relying on monetary penalties to control corporate conduct reduces the loss of human life to *financial costs* that are easily absorbed by a company’s overall profits (Spurgeon & Fagan, 1981, p. 427).

Preference for strict liability offenses towards the enforcement of occupational health and safety legislation are not based exclusively on reasons for legalistic convenience – economic and political factors also impact safety regulation. During times of fiscal uncertainty, state funding for regulatory bodies may be reduced in favour of projects that aim to ‘grow’ economic activity, which can limit the number of safety inspectors available to conduct routine inspections (Hills, 1987a; Tucker, 1995). Political environments can also impact the pursuit of criminal charges against businesses, as political trends and ‘moral panics’ over particular forms of social problems may influence the priorities of prosecutors and judges when determining which types of cases merit full criminal proceedings (Carson & Henenberg, 1989; Hier, Lett, Walby, & Smith, 2011;

Snider, 2000; Young, 2009). In combination with neoliberal assumptions about self-regulating markets and the social benefits of economic activity, criminal penalties against companies for safety violations are seen as simply not worthwhile to pursue by prosecutors and judges, especially when wealthy corporations are armed with significant financial resources to prolong trial proceedings and challenge criminal charges, while administrative strict-liability type sanctions are easily deployable (Beale, 2009; Benson, 2001; Hills, 1987a; Mokhiber, 1988; Nanda, 2011; Snider, 2000; Tombs & Whyte, 2010).

Critical corporate crime scholars urge criminologists to move beyond the idea that criminological study be restricted to crimes that are mandated as such by states, as this places many social harms beyond the reach of critical inquiry because they are not (yet) defined or treated by the state as ‘criminal’ (Kramer, 2013, p. 156; Friedrichs & Rothe, 2013). Most corporate crimes are differentiated from “real” crimes by treating violations of business regulations as strict liability offenses, which holds lower standards of proof of *mens rea*, or intent. Corporate conduct is therefore rendered less serious than criminal proceedings in relation to traditional street crimes (Bittle, 2012, p. 202; Carson, 1974; Glasbeek, 2002, p. 156; Hills, 1987b, p. 3; Slapper & Tombs, 1999, p. 174; Tombs & Whyte, 2007, p. 115). The treatment of corporate crimes as violations of strict-liability offenses symbolically removes the negative stigmas attached to corporate criminality and converts processes of wilfully negligent corporate decision-making into ‘minor’ mistakes or mere oversights (Bittle, 2012, p. 43; Tombs & Whyte, 2007, 2015). In this sense, specific state responses (or lack thereof) to corporate offending reproduce conceptualizations of corporate harm as existing outside the realm of “real” crime, and legitimates the neoliberal doctrine that the capitalist goal of profit-accumulation is worth pursuing at any cost. The following Section focuses on the circumstances surrounding global

capitalism that contributed towards the reckless tolerance of dangerous working conditions in the case of the Rana Plaza collapse, including the influence of neoliberalism in shaping international efforts to control transnational capital through CSR frameworks.

III. Global Capitalism and the Multinational Corporation

Defined broadly, globalization is the international flow of material goods, services and capital, as well as the social exchange of cultures, knowledges and ideologies between people and nations across the world (Friedrichs, 2007b; Jessop, 2002; McBride, 2005; Sharma, 2008). Although social interaction and trade across regional and national borders have been common human practices for millennia, this project considers globalization within the modern context, wherein breakthroughs in transportation and communication technologies throughout the 1980s enabled cheaper transaction costs and faster exchanges of capital and labour, allowing the rapid globalised expansion of capitalism (Baram, 2009; Hosseini, 2006; Pakes, 2013; Sharma, 2008). While technological advancements were a contributing factor towards globalization, integrating political and economic structures of previously exclusive markets into a globalised system of capitalism relies significantly on the mutual interests of varying states and economies (Gill, 1993b, 2015; Harvey, 2007; McBride, 2005).

Enter, once again, neoliberalism. Neoliberal rhetoric emphasizes global capitalism as the modernized ‘saviour’ to alleviate material and social inequalities regardless of race, class, or gender through political, economic, and legal systems organized around capitalist notions of freedom to participate in markets and accumulate private wealth (Gibson-Graham, 1996, p. 7; Henry, 2003; Sharma, 2008). Vast changes in social policies to incorporate ‘fringe’ economies into a globalised market system that enable capitalist trade across the world are significantly

shaped by international discussions and negotiations among business groups, non-governmental organizations, financial organizations, and perhaps most importantly, states. Critical scholars claim efforts to integrate previously excluded or newly emerging economies, such as those from Asia, Eastern Europe, and Africa, into capitalist markets are significantly underpinned by Western neoliberal rhetoric praising the efficiency and socially productive ‘trickle-down’ benefits of liberalised trade (Friedrichs, 2007b; Harvey, 2007; Sharma, 2008; Soederberg, 2006). International financial institutions (IFIs) such as the International Monetary Fund, the World Bank, and the World Trade Organization actively participate in intergovernmental discussions focusing on global economic and political agendas, as witnessed in the 1970s and 1980s when IFIs actively supported global trade liberalization strategies, claiming that open markets would benefit countries of both established capitalist economies and newly emerging ones (Friedrichs, 2007b; Miller & Mooney, 2010; Soederberg, 2006, p. 10). For Global North⁴ countries, liberalised markets allow access to cheap labour and untapped natural resources in regions across the world. Meanwhile, Global South countries benefit from the transnational capital flows through new employment opportunities and foreign direct investment (Baram, 2009; Gilbert & Russell, 2002).

Practical applications of neoliberal rhetoric occurred in Bangladesh throughout the 1970s when the country’s government offered low tax rates and reduced barriers to international trade to encourage foreign investment (Ahmed, 2004). Market reforms in Bangladesh occurred against the backdrop of global economic restructuring initiatives developed by the World Bank and the International Monetary Fund to transform closed domestic markets into “more liberalized, open

⁴ “Global North” countries will be defined here as wealthy nations with established and advanced economies, while “Global South” countries will be defined as nations with newly emerging or lesser developed economies (Reuveny & Thompson, 2007).

and export-oriented economies” (Mahmud & Kabeer, 2003, p. 24). As such, during the 1980s the World Bank and Bangladeshi government collaborated to create tax incentives, commercial credit loans and duty-free import facilities to help expand the country’s growing economy and with the hopes of improving the quality of life in Bangladesh (Siddiqi, 2000).

Perceptions of market-based and free trade policies as the most efficient means of achieving global gender, racial, and cultural equality have also come to dominate international development efforts (Bergeron, 2010; Eschle, 2004; Soederberg, 2006). Of particular relevance for this research project are the claims that we can achieve worldwide gender equality through the expansion of liberalised markets in developing countries. Scholars describe a trend towards the “marketization of empowerment” (Bergeron, 2010, p. 410) underpinned by claims that providing greater access to labour markets through globalised systems of value production grants women more opportunities to accumulate their own income and, in the process, achieve empowerment (Potrafke & Ursprung, 2012; Roberts & Soederberg, 2012, p. 960).

Rothe and Friedrichs (2015) argue Western states have vested interests in ensuring that neoliberal approaches to transnational value production dominate popular discourses and practices towards capitalist markets – especially under the benevolent guise of international development and alleviating global poverty. While international development projects purport to achieve global unity and equality through the participation of intergovernmental organizations such as the United Nations and IFIs, these transnational agendas effectively give Western states (and their corporate supporters) the upper-hand in governing matters of globalised business and international ‘development’ (Beder, 2010; Soederberg, 2006, p. 8; Rothe & Friedrichs, 2015, p. 76). For instance, IFIs that extend loans to Global South countries are structured on the rate of monetary donations contributed by individual nations, which means states with higher financial

contributions (read wealthy nations) are granted more voting seats and thus hold greater influence over the management and decision-making processes (Rothe, 2010, p. 465).

Unsurprisingly, G7 nations hold 45 percent of the voting power within IFI's, thereby ensuring the interests of wealthy Global North nations are well-represented in discussions over international political and economic relations (MacKenzie, 2006, p. 166).

Considering the clout Global North states exercise within intergovernmental negotiations, neoliberal assumptions that encourage the expansion of global liberalised markets and value production, under the semblance of international development and worldwide poverty reduction, become accepted as "truths" (Rothe & Friedrichs, 2015, p. 71). Corporate crime scholars describe this situation as rooted in a neoliberal *hegemony*, in which dissenting arguments that question the actual realities of the "trickle-down" benefits of corporate capitalism are dominated by "truths" that legitimate the expansion of capitalist systems by any means necessary. As a result, it is increasingly difficult to conceptualize social harms as crimes if they are perpetuated by multinational corporations or financial institutions under the pretexts of economic growth and development (Friedrichs & Friedrichs, 2002; Rothe, 2010).

For instance, the mass employment opportunities offered by multinational retail companies to female workers, who make up 85 percent of the 4 million workers employed in the Bangladesh garment industry, is often praised for socially empowering women in Bangladesh. Meanwhile, the dangerous conditions in which these women work, earning meagre wages while facing gross violations of internationally-recognized labour and human rights standards, are ignored (Rose, 2014; Siddiqi, 2000), at least until disasters like Rana Plaza highlight the realities of working in supplier factories for multinational companies. Although the country's gross domestic product has increased and the poverty rate improved since Bangladesh became a key

contender in the global garment industry in recent decades (Belal, Copper, & Khan, 2015, p. 47), data from 2011 estimates 43.3 percent of the population remains below the poverty line, while 18.8 percent are living near poverty and 21 percent of the population are living in severe poverty (United Nations Development Programme, 2015, p. 6). Driven by the desperation to remain competitive vis-à-vis garment sectors of other countries, common industry practices to cut costs to attract and maintain production contracts with foreign companies have led to extremely low rates of pay, threats of violent suppression of union activity and tolerance of dangerous working conditions (Rose, 2014). Cases of factory fires and unsafe work conditions have been recurring issues since the rapid growth of the industry in the 1990s, yet they continue to be addressed as isolated “unfortunate incidents” by the foreign retailers who rely on production operations in Bangladesh for their consumer goods (Claeson, 2012; Sethi, 2014). Adding to these challenges is the cut-throat demands of the “fast fashion” industry, which often leads suppliers to contract out work to unregistered factories where undocumented workers are paid wages that are even lower than the national minimum standard and safety procedures are almost non-existent (Wahra & Rahman, 1995).

A concerning aspect of neoliberal rhetoric is the failure to acknowledge that the trickle-down “benefits” of global capitalism often only benefit a select few, leaving the majority of the Global South vulnerable to exploitation. Critical scholars problematize global capitalism for amplifying the “criminogenic tendencies” of modern corporations, especially those that operate multinationally (Friedrichs, 2007c, p. 164; Friedrichs & Rothe, 2013; Sharma, 2008; Tombs & Whyte, 2003a). There is an urgent need to study the growing trend towards transnational corporate crimes, which will be defined here as any harmful conduct perpetuated by corporate entities with the knowledge, support, or reckless tolerance of company owners, executives, or

high-level managers in business operations across national borders (Friedrichs, 2007a; Friedrichs & Rothe, 2013, p. 50; Gilbert & Russell, 2002). Rothe and Friedrichs offer this conceptualization of transnational corporate crime which goes beyond studying traditional legal definitions of crime and focuses on the prevailing problematic structures of capitalism:

It is not typically the specific intent of those who engage in crimes of globalization to cause harm. Rather, the devastating harm to vulnerable people in the Global South countries is a consequence of the skewed institutions and entities which favor the interests of the powerful and the privileged. (2015, pp. 26-27)

Given that multinational companies now have easier access and stronger political and economic influence over a growing number of regions worldwide (Beder, 2010), there are greater opportunities for corporations to maximize wealth accumulation at the expense of socially harmful consequences, including: environmental degradation and depletion of natural resources (Pearce & Tombs, 1998a; Shover & Routhe, 2005; Radavoi & Bian, 2014; White, 2003), political corruption and financial exploitation (Cooley & Sharman, 2015; Findley, Neilson, & Sharman, 2014; Rothe & Mullins, 2009; Rothe, 2010), child labour (Collins, 2014; Mookerjee & Orlandi, 2004; Zutshi, Creed, & Sohal, 2009) and human rights and labour violations (Gordon & Weber, 2008; Siddiqi, 2000). Rarely are these harms defined or treated as criminal acts under local or international laws, due in part to the ‘common sense’ view that businesses, especially multinational corporations that stimulate economies in impoverished nations, are an inherent good that benefit everyone (Rothe & Friedrichs, 2015, p. 7). This study seeks to expand the criminological gaze towards the injustices and social harms that are encompassed by transnational imbalances of wealth and power and obscured by narrowly conceptualized notions of “crimes” based on legal definitions (Lynch & Michalowski, 2006, p. 65; Tombs & Whyte, 2009, p. 104; Pakes, 2013, p. 6). Rothe and Friedrichs’ definition of transnational corporate crime guides this study to “follow the global harm, not the local law” (Pakes, 2013, p. 6).

A significant factor underpinning transnational corporate crimes is the inconsistency of regulatory and accountability systems to oversee multinational corporate activity around the world (Bair & Palpacuer, 2015; Friedrichs & Rothe, 2013), which enables companies to “shift criminogenic and potentially lethal aspects of their business operations” to countries with weak regulatory capacities (Gobert & Punch, 2003, p. 147). While many nations have domestic laws outlining environmental standards, human rights and labour rights (Radavoi & Bian, 2014), the standards for reporting, investigating, and sanctioning corporate misconduct vary widely from country to country. This situation has produced what some scholars describe as a “governance gap” in the regulation of globalised trade (Bair & Palpacuer, 2015, p. S2; Delaney, Montesano, & Burchielli, 2013, p. 69). In particular, although strict liability regulations or even criminal laws may exist on paper to regulate corporate conduct, so-called developing nations may allow corporations “impunity from legal liability” (Gobert & Punch, 2003, p. 160) as a bargaining chip to compete against other countries (Koenig-Archibugi, 2004; Sum, 2009).

Furthermore, intense global competition to attract foreign investments, especially amongst Global South countries, leads to what scholars describe as a “race to the bottom”, in which multinational companies “shop” around for countries that can offer better incentives, including lenient regulatory systems, cheaper production costs, and low taxation (Baram, 2009; Friedrichs, 2007b; Gilbert & Russell, 2002; Sharma, 2008). Herein lays the possibility for multinational businesses to exploit “criminogenic asymmetries between the regulated North and the less regulated South” (Passas, 1999, as quoted in Pakes, 2013, p. 4). The detrimental effects of the “race to the bottom” are evident in the Bangladesh garment industry. As suppliers in manufacturing-heavy nations must compete for short-term contracts from foreign retailers, factory managers are pressured to fulfill larger production quotas by increasing work intensity

and wilfully ignoring safety procedures (Hearson, 2009). Retail companies can also easily cut ties with supplier factories if violations of safety standards or other poor labour practices are discovered, and then move production processes to another factory or to another host country when it is economically and legally convenient for them (Haar & Keune, 2014).

In recognition that Global South nations have difficulty enforcing universal standards of human rights and labour standards over foreign companies, several jurisdictions of the Global North have developed alien tort laws or extraterritorial powers to pursue legal sanctions in cases of transnational corporate crimes (Stewart, 2014). However, prosecuting offshore corporate crimes are difficult due to the legal intricacies involved with securing cooperation between jurisdictions and differing definitions of criminal liability (Gobert & Punch, 2003, p. 157). It is also challenging to identify direct responsibility for wrongdoing or negligence in the complex processes of offshore production which may involve hundreds of people across a number of countries around the world (Sikdar, 2006), and there are financial burdens with launching legal proceedings against wealthy corporate defendants (Gobert & Punch, 2003, p. 323; Snider, 1997, p. 49). Take, for example, the challenges identified in the transnational criminal case launched against the American company Union Carbide following the 1984 explosion of a Union Carbide India Limited (UCIL) chemical factory in Bhopal that caused the deaths of upwards of 20,000 workers and civilians and injured a great deal more (Mannan, Varma & Varma, 2005). First, American courts rejected a request from the Indian government for the parent company Union Carbide to be tried in the United States, and then efforts to summon Union Carbide to trial in an Indian criminal court were also rejected due to a supposed lack of jurisdiction over the parent company headquartered in the United States. To deny claims of responsibility in the explosion, Union Carbide asserted that the negligence for safety procedures at the UCIL factory that led to

the explosion were the responsibilities of local managers and regulators in India, which were attributed by the parent company to “cultural backwardness” and “worker incompetence” in India (Pearce & Tombs, 1998a, p. 197). The legal obstacles involved with extraterritorial judicial mechanisms to hold multinational corporations accountable for the responsibilities of its offshore subsidiaries illustrates the difficulties faced by the victims of transnational corporate harms when seeking justice. The following Section explores the overwhelming preference towards regulating global markets through CSR as the ‘answer’ to the global regulatory gap.

IV. The CSR Imperative

Rather than assuming that states lack the jurisdictional powers to regulate transnational corporate conduct, it is important to acknowledge the relations of power amongst South and North states that encompass the “global regulatory gap” (Soederberg, 2006, p. 67). For instance, the United Nations (UN) made several attempts to introduce legally-binding responsibilities on businesses for international human rights obligations throughout the 1970s and 1980s (Soederberg, 2006, p. 14). After shows of support from Global South countries, in 1974 the UN Commission on Transnational Corporations (UNCTC) sought to establish a Draft Code to identify binding responsibilities for businesses and states to regulate multinational corporate conduct (Soederberg, 2006, p. 61; Voiculescu, 2011, p. 12). However, the movement to develop a legally-enforceable international code of business conduct was met with resistance from industrialized nations during the height of the Reagan and Thatcher administrations in the U.S. and U.K. respectively, which pushed for laissez-faire policies based on *deregulating* global markets as a means to advance economic competitiveness and “improve” global economic growth (Crouch, 2011, p. 14; Soederberg, 2006, p. 62). In 1992, at the apex of neoliberal global

economic and political restructuring, the UNCTC was abandoned and discussions about ‘enhancing’ transnational corporate accountability *and* “win the war on poverty” (Soederberg, 2007, p. 502) led to several international agreements based on CSR, voluntariness, and self-regulation to resolve the global regulatory gap (Soederberg, 2006, p. 70).

In 2000 the UN launched the Global Compact, a “voluntary initiative that relies on public accountability, transparency, and disclosure to complement regulation” by encouraging signatory companies to respect principles of human rights, labour rights, the environment, and anti-corruption wherever they conduct business (United Nations Global Compact, 2014, p. 2). In 2011 the UN Guiding Principles for Business and Human Rights (the “Ruggie Principles”) were developed to provide governments with opportunities to prevent and remedy harms involving offshore business practices (Baram, 2009; Bittle & Snider, 2013). In Canada, there is an emphasis for Canadian companies to adhere to the Guidelines for Multinational Enterprises developed by the Organisation for Economic Co-operation and Development (OECD), which draws upon the UN Guiding Principles to set out specific duties for states and businesses to fulfill in order to protect developing nations from harmful business practices. For each OECD country, a National Contact Point (NCP) cooperates with companies to guide them towards compliance and also acts as the intermediary between multinational companies and foreign complainants in overseeing all cases brought forth regarding violations of the Guidelines (Cernic, 2008; Voiculescu, 2011).

Intergovernmental projects aiming to close the global regulatory gap rely on companies to voluntarily interpret and incorporate social and environmental responsibilities throughout their business practices by adopting CSR codes of conduct. International bodies can recommend standards for CSR, but companies are left to their own discretion on what constitutes their social

responsibilities, and how these standards are implemented (Mahmud & Kabeer, 2003; Sethi, 2014). Many multinational retail companies with offshore production in Bangladesh had CSR codes of conduct in place before the Rana Plaza collapse, and many companies reported that conditions were “positive” in their supplier factories (Vena, 2013). Among those CSR projects aiming to improve working conditions in garment factories was the Worldwide Responsible Accreditation Program (WRAP), which enables private auditing firms to inspect and certify supplier factories according to a set of global industry-wide standards. However, these audits conducted by private accreditation firms are exclusively confidential to auditors and companies, and “they have no obligation to share their deadly secrets” to workers, governments, or the public (Claeson, 2012, p. 26). Neoliberal-based rhetoric that recurring harms involving multinational corporations cannot simply be the product of wilful disregard for workers’ lives, and that markets can effectively improve social conditions if left to their own devices, is so deeply ingrained in the mindsets of private industry that corporate-led CSR agreements were once again developed as the solution to negligent corporate oversight in the wake of the Rana Plaza collapse.

Retail companies sourcing from Bangladesh developed the Accord and the Alliance, two separate CSR agreements which promised to improve working conditions in Bangladeshi supplier factories and prevent disasters like the Rana Plaza. Although the Accord and the Alliance demonstrate the willingness of multinational companies to address public concerns about garment worker safety in the global supply chain, they both suffer from the same limitations of voluntary and non-binding CSR strategies that were already in place preceding the Rana Plaza disaster. Academics and NGOs have raised concerns that without measures to externally enforce voluntary strategies like the Accord and Alliance, there is little incentive for

signatory companies to actually comply with these terms (Bittle & Snider, 2013; Claeson, 2012; Haar & Keune, 2014; Sethi, 2014). Despite concerns with CSR-based strategies, they continue to dominate, especially the notion that *coaching* companies into compliance can “make globalization work for all” (Soederberg 2007, p. 502). Some scholars remain skeptical that implementation efforts of voluntary CSR codes will be difficult to track because companies are not required to publicly disclose audit or inspection reports, nor are they required to follow through with remedial procedures after violations have been discovered (Baram, 2009; Newell, 2005). There is also doubt that companies will properly self-regulate if adhering to CSR guidelines will have a negative impact on productivity and profits (Gobert & Punch, 2003; Koenig-Archibugi, 2004).

This situation leaves the question of whose interests voluntary and self-regulated CSR efforts best serve, given that they remain the preferred method of regulating transnational corporate conduct in spite of their limitations. With little surprise, corporate-led self-regulatory mechanisms typically benefit the corporations that publically agree to develop and implement CSR-based corporate codes of conduct – rather than the local communities and vulnerable populations CSR codes conspicuously set out to protect. First, having CSR codes in place minimizes and absolves the need for external monitoring and accountability mechanisms (LeBaron & Lister, 2016). Second, CSR codes produce the appearance of corporate willingness to commit to socially responsible business conduct, which helps to mitigate critical voices that highlight the adverse consequences of deregulated global market systems (Sklair & Miller, 2010; Shamir, 2004) and allow companies to maintain favourable reputations with consumers, investors and the public (Harris, 2011; Soederberg, 2006). Finally, the widespread acceptance of CSR ultimately secures neoliberal beliefs of corporate fundamentalism and free markets by

positioning the production and accumulation of private wealth as essential to maintain a “sustainable” global economy and achieve social equality (Roberts & Soederberg, 2012, p. 956; Soederberg, 2007).

The key to understanding the dominance of neoliberalism, which seems to gain popular support in spite of criticism, is to explore the reproduction of neoliberal beliefs that provide the foundations for laissez-faire market policies that govern the current state of global corporate capitalism. Legitimacy and widespread support for policies that ultimately benefit the narrow interests of the corporate elite and capitalist states must somehow be presented in ways that obscure the privileged interests of neoliberalism and position such policies as beneficial for everyone. Power and dominance of the wealthy is not granted *through* neoliberalism; rather, powerful voices that *support* neoliberalism and its assumptions about how the world ‘works’ become accepted as the way to view the world (Dahlberg, 2014; Gill, 2015, p. xvii; Soederberg, 2010, p. 47). In other words, legitimacy in the hegemony of neoliberalism must be reproduced to maintain popular support, and a significant aspect of this lies in the processes through which discourses shape popular understandings of social phenomena (Simon, 2015, p. 17; Soederberg, 2006, p. 24; Tombs & Whyte, 2003a). Social understandings about harm, crime, and accountability – which may be informed by particularly ‘persuasive’ arguments based on neoliberal assumptions – can greatly influence how societies act upon transnational corporate crimes. As David Harvey writes, “For any system of thought to become dominant, it requires the articulation of fundamental concepts that become so deeply embedded in common-sense understandings that they are taken for granted and beyond question.” (2007, p. 24).

V. The Discourse of Corporate Crime

This Section examines the influence of neoliberal ideologies over conceptualizations of corporate crime and social responses to it, including how it is regulated and controlled (Bittle, 2012; Glasbeek, 2002; Snider, 2000; Tombs & Whyte, 2007). Legal definitions of crime produce and reinforce powerful rhetoric about what is considered to be criminal and therefore unwanted in society. For instance, the criminalization of particular types of drug use helped perpetuate a decades-long “war on crime” which emerged in part out of social anxieties throughout the 1980s and 1990s that attributed the drug trade to the ‘epidemic’ of violent street crimes (Braithwaite & Geis, 1982; Reiman, 2004, p. 38). Whereas in the 1990s and 2000s, spectacles of corporate scandals, including financial fraud⁵, insider trading, and the marketing of unsafe consumer products⁶, elicited widespread public scrutiny about the failure of governments to regulate massive corporations. However, no “war on corporate crime” seeking to equip states with greater regulatory and controls over corporate conduct has ever come to fruition (Laufer, 2014). Although cases of corporate misconduct typically do not result in criminal convictions against corporations, the harms they produce and the ways in which they are perpetuated and institutionally tolerated merit criminological inquiry.

A glaring difference between drug users, the typical targets in the aforementioned “war on crime”, and ‘rogue’ corporations is the ability for private businesses to participate in the complex networks of knowledge claims that form social ideologies – particularly those that

⁵ For example energy giant Enron was accused of several fraudulent practices including tax evasion, manipulating financial records, and price gouging throughout the 1990s. On a related note, the accounting firm hired by Enron, Arthur Andersen, was found criminally guilty for helping facilitate these practices by producing falsely reporting Enron’s financial data in audit reports (Friedrichs, 2007, pp. 73-76; Soederberg, 2008).

⁶ Take for instance the faulty Ford Pinto car, which was designed to be produced cheaply at the expense of considerations for passengers’ safety. Despite knowledge of the risk to passengers, Ford Motor Company failed to withdraw the Pinto from sales floors until several Pintos were involved in collisions of a similar nature that caused the car’s rear gas tank to explode and burn the passengers inside the vehicle (Friedrichs, 2007a, p. 67; Spurgeon & Fagan, 1981, p. 418).

contribute towards definitions of criminality. Private businesses and the corporate sector have at their disposal enormous financial resources to spend on corporate lobbying, think-tank groups, corporate philanthropy, and policy planning groups that build influence in economic and political decision-making processes (Miller & Mooney, 2010). A disconcerting fact is that wealthy elites and private sector organizations make significant efforts, often successfully, to share their concerns about proposed government policies for regulating business in public and private forums (Bittle, 2015, p. 137; Snider, 2000; Soederberg, 2006, p. 92; Stolz, 1984). In this regard the privileges bestowed to corporations to influence public policy is evident, while in contrast, interest groups representing individuals convicted or at risk for street-level criminal offenses are rarely ever consulted for their input on the policies that aim to regulate their behaviours (Gaucher, 2002; Stolz, 2002, p. 57).

Discourses produced solely by the private sector are not alone in influencing conceptualizations of corporate harm, however. A myriad of sources, including the mass media, can reinforce perceptions that differentiate corporate harm from notions of ‘real’ crime. News media coverage of industrial disasters causing death often relies on narratives of “tragedy” and “chaotic accidents” in lieu of conventional descriptors typically found in portrayals of traditional crimes and violence. In turn, this reporting frames corporate wrongdoing as unfortunate yet “a routine part of corporate and business practice” (Machin & Mayr, 2012, p. 80) and fails to recognize the wilfully negligent decision-making processes that generate the event, and absolves corporations from responsibility in the matter (McMullan & McClung, 2006; Wright, Cullen, & Blankenship, 1995). Norman Fairclough (2010) writes that neoliberal political and economic ideals which are perpetuated in popular discourses are vital for the survival of market-oriented economic, political, and legal policies in our global capitalist world.

Although persuasive neoliberal rhetoric may dominate popular understandings of corporate harm and corporate accountability, this does not suggest discourses of resistance against global capitalism and corporate harm do not exist. Many groups, ranging from NGOs and civil society organizations, trade unions, charities, and rights-based advocacy groups have long expressed concerns about the social, economic, and environmental harms associated with the widespread reach of corporate power. For example reports published by Amnesty International (2014), Human Rights Watch (2015), and the International Labor Rights Forum (2015) highlight problems with the garment industry in Bangladesh and urge for greater external oversight of multinational retail companies within the global supply chain. In this respect, discourses of social justice present alternatives to the status quo and are just as vital when examining processes of domination and/or social change.

Conclusion

A growing body of literature suggests that the development and implementation of transnational business regulations must be examined within the contexts of neoliberalism and the dominance of free-market principles over globalised social, political and economic systems. Of particular concern is the ways in which neoliberal hegemony reinforce the widespread reliance on self-regulatory and voluntary CSR codes to fill the ‘global regulatory gap’ in spite of recurring cases involving failures of CSR-based regulations to prevent catastrophic transnational corporate harms. As such, we need to better understand the dominant discourses and underlying relations of power in the production of ‘knowledges’ about global capitalism that allow for the “non-death” of neoliberalism and its related corporate regulatory frameworks (Crouch, 2011, p. viii).

With the immense public attention and outcry directed at unethical and negligent

corporate conduct in the international garment trade following the collapse of the Rana Plaza factory, the garment industry in Bangladesh is a suitable case study from which to explore the responses produced by the private sector, Canadian government, and civil society organizations to address the consequences of corporate harm occurring in the Global South. Recent developments in the regulatory climate of the garment industry in Bangladesh have led to ongoing deliberation regarding efforts to hold Canadian companies accountable in this industry. This presents a timely opportunity to explore and contribute to the body of research about the role of host states in upholding transnational corporate accountability amidst the complexities associated with global capitalism. In light of these considerations about the importance of discourse in reproducing neoliberal market ideologies and practices, a critical discourse analysis of dominant conceptualizations of corporate accountability within global capitalist systems can provide insight into the articulation of, and resistance against, global neoliberalism. The following chapter details the Gramscian-Foucauldian theoretical framework employed for this undertaking.

Chapter 4: Theoretical Framework

Introduction

This study builds from the critical corporate crime scholarship to develop an understanding of crime, law and its formation that extends criminological inquiry beyond traditional myopic constructions of crime and deviance (Bittle, 2012; Friedrichs, 2007b; Lynch & Michalowski, 2006; Snider, 1987; Tombs & Whyte, 2007, 2015). The concepts of hegemony and power discussed in the works of Antonio Gramsci and Michel Foucault will inform the analysis of the responses to the Rana Plaza disaster. Gramsci will help make sense of important concepts related to global capitalism, including the dominance of neoliberalism and state-corporate relationships through an understanding of how capitalist beliefs and policies are sustained and/or challenged through ideological negotiations, which become especially prominent in the wake of industrial ‘crises’ (Bittle & Snider, 2011; Tombs & Whyte, 2007). Foucault’s approach to discourse, knowledge, and power will provide insight on how emerging discourses of corporations shape popular conceptualizations of regulation and reproduce and/or challenge the social, political, and economic conditions of global capitalism.

A combined Gramscian-Foucauldian framework enables me to explore the mutually reinforcing discourses produced by Canadian actors in response to the Rana Plaza disaster. Ultimately, this joint framework combining critical theorizations of power, knowledge, and hegemony will provide insight into whose beliefs and interests ‘shape’ dominant notions of transnational corporate crime and accountability.

Gramsci’s Theory of Hegemony

Gramsci’s writings were largely inspired by the ebb and flow of the European socialist movement (Jones, 2006; Schwarzmantel, 2009). This, of course, was informed by the Marxist

paradigm, which problematized the fundamental relationship of capitalism between the *owners* of private capital (the bourgeois) and the *producers* of private capital (the proletariat) for inequitably appropriating the labour power of the working class and keeping them in positions of social insubordination (LeBlanc, 1996; Marx & Engels, 1848/2012). The Marxist tradition aims to dismantle the exploitive capitalist relationship and class structures in the production of private wealth that undermine workers' wages, and advocates for greater worker empowerment in the production and distribution of surplus values (Bittle, 2015, p. 135; LeBlanc, 1996). The Marxist approach highlights that the persistence of capitalism relies on specific economic, legal, and political systems that are conducive to its (re)production (Dahlberg, 2014; Bittle, 2015; Glasbeek, 2002; Tombs & Whyte, 2007, p. 109). Because of the inherent instability of capitalism, the bourgeois class strain to preserve exploitive social formations by influencing political processes as an extension of their economic power to maintain class-based relationships that facilitate the most profitable production processes (Jones, 2006; LeBlanc, 1996; Reiman, 2004).

Gramsci, and many Neo-Marxists, reject the deterministic assumption that the state always serves the interests of the wealthy, emphasizing instead the capacity of the state to act autonomously in some instances to achieve social unity (Gill, 1993b, p. 23; Howarth, 2009, p. 88; Jones, 2006, p. 28; Pearce & Tombs, 1998b, p. 568; Schwarzmantel, 2009, p. 3). Gramsci, who believed any social revolution would require fundamental changes in cultural attitudes towards existing social structures, developed a theory of hegemony emphasizing the role of cultural beliefs and ideologies in the formation and reproduction of capitalist social orders (Gill, 1993b). Gramsci's theory of hegemony is premised on the belief that, "Man is not ruled by force alone, but also ideas" (Bates, 1975, p. 351). According to Gramsci, political leadership over any

group is grounded in the “consent of the led”, which can only be secured once the ideologies of the ruling class come to be accepted by the majority (Bates, 1975, p. 352). Although the ruling class may exercise its power through coercion (such as via the government, law, police, and military), the key for attaining and *maintaining* hegemonic rule is to secure a sense of legitimacy in the eyes of the public. The state therefore undergoes a continuous process of balancing the competing interests of *all* social groups, including those of the dominant class and subordinate groups (Gramsci, 2000, p. 205; Simon, 2015, p. 70). For Gramsci, politics, culture, and the economy are organized in “a relationship of mutual exchange with one another, a constantly circulating and shifting network of influence” (Jones, 2006, p. 5). Various social groups including the media, schools, industries, trade unions, political parties, and non-state groups possess their own assumptions and worldviews about society. In the struggle for hegemonic dominance, once the worldviews of any particular group are deemed persuasive enough to be endorsed by a majority of smaller social groups, they become adopted as “common sense” understandings for thinking about and acting upon the social world (Peet, 2002, p. 56; Simon, 2015, p. 62). Only through the widespread adoption of a ruling group’s values, customs, and ideals among individuals can legitimacy and consent to rule be achieved and then articulated in state policies and institutions that govern social behaviours (Howarth, 2000, p. 89; Jones, 2006, p. 32; Schwarzmantel, 2009, p. 3).

Gramsci describes the ongoing “war of position” between competing and allied social groups, whose worldviews struggle in constant negotiation to achieve hegemony (Jones, 2006, p. 31). The task of ideological (and thus political) reform is “the struggle over key concepts that shape the way people think” (Simon, 2015, p. 109). Within this context, capitalist systems must actively promote market-oriented ideologies and policies – including exploitive processes of

value production and accumulation – as being in the best interests of the state and the majority, therein gaining legitimacy to dominate over dissenting viewpoints and ensure its survival (Bates, 1975; Bittle, 2012, p. 69; Bonfeld, 2006, p. 53; Burnham, 2006; Howarth, 2000, p. 90; Tombs & Whyte, 2007, p. 209).

Gramsci coined the term ‘passive revolution’ to describe a strategy used by hegemonic classes to create the *appearance* of reform as a way to ensure threats to hegemony are resolved in favour of the ruling group (Cox, 1993; Jones, 2006, p. 98; Simon, 2015). Passive revolutions are characterised by high levels of activity from ruling groups to adapt existing social systems in ways that address and neutralize dissenting views and re-establish legitimacy in the new ‘form’ of old structures (Gill, 2015, p. xvi; Jones, 2006, p. 96; Simon, 2015, p. 48). For instance, it is not uncommon for public and private institutions to introduce regulatory reforms, new legislation or amendments to the law, and produce new socio-political-economic discourse to steer counter-hegemonic discussions towards rhetoric that are more favourable towards dominant interests (Jessop, 2015, p. 264; Vaara, 2014). Gramsci’s concepts can be applied to examine the formation and legitimation of social ideologies regarding corporate crimes generally and in the context of global capitalism.

Gramsci and Transnational Corporate Crime

Gramsci’s theory of hegemony is useful for deconstructing the ideological constructs attached to societal notions of crime and deviance to explore how social meanings of ‘criminality’ reflect and reproduce particular attitudes about what constitutes appropriate and inappropriate behaviours (Ward & Green, 2000). Legal and criminal justice policies aimed at controlling specific types of behaviours legitimate abstract notions of deviance and confirm dominant

conceptualizations which view specific forms of wrongdoing as “crimes” for transgressing hegemonic norms (Hall, Critcher, Jefferson, Clarke, & Roberts, 1978). Gramsci’s theory of hegemony is especially relevant to the study of corporate crimes, which often elicit *competing* responses from various groups that can reproduce or challenge hegemonic beliefs about crime and accountability generally (Pearce & Tombs, 1990). As was discussed in the Literature Review, a common response for states to address corporate offending is to apply a “soft-law” approach in the form of administrative sanctions which symbolically define corporate harms as non-crimes and different from ‘real’ crimes (Glasbeek, 2002, p. 156; Slapper & Tombs, 1999, p. 174; Tombs & Whyte, 2007, p. 207).

However, some cases of corporate harm are viewed as especially heinous and have elicited numerous demands from various social groups including NGOs, politicians, labour unions, and members of the public to place higher standards of accountability over the private sector. From this perspective, the state can and must intervene with capitalist processes to address dissenting voices in order to re-stabilise legitimacy in the capitalist system as a whole in the eyes of the majority (Pearce & Tombs, 1990). In such instances the state can respond to these pressures by introducing legislation for more stringent corporate regulatory measures (Bittle, 2012; Tombs & Whyte, 2007, 2015; Vaara, 2014), which illustrates the role of legal reforms as a means for states to adapt existing forms of accountability to reflect cultural shifts about what society perceives as illegal (Almond, 2009; Hall et al., 1987, p. 203; Snider, 1987; Tombs & Whyte, 2015, p. 152). However there are also numerous incidences where legal reforms enacted in response to corporate harms produce a passive revolution, in which the appearance of initiating changes to problematic capitalist structures was obvious, but actual reforms were not (Bittle & Snider, 2011, p. 374; Soederberg, 2008). Readers should recall the myriad promises

made to improve transnational corporate conduct through CSR agreements on paper, the results of which are rarely evident in practice.

The Neo-Gramscian critique contends that the dominance of neoliberalism did not simply emerge as an uncontrollable and inevitable force, but was and continues to be actively shaped and reproduced as ‘common sense’ through political, economic, and cultural beliefs informed by neoliberal ideologies (Gill, 1993b, p. 23; Soederberg, 2006, p. 25). As capitalist systems expand to “peripheral” nation states in the Global South, neoliberal ideals of private wealth and open markets must first be accepted by the leaders of these nations as aligning with their own national political and economic interests (Bieler & Morton, 2006, p. 16; Cox, 1993, p. 58; McBride, 2005; McNally, 2009, p. 71). These exchanges aiming to convince nation states that free-market policies are worth adopting occur throughout international meetings and discussions among representatives of states, international financial institutions, academic and religious institutions, intergovernmental bodies (such as the UN and OECD), multinational corporations and NGOs, to name a few (Gill, 1993b; Schwarzmantel, 2009). The outcomes of these discussions can institutionalize neoliberal expansion through the enactment of foreign trade agreements and “Structural Adjustment Programs” that aim to liberalise markets in the Global South and integrate newly emerging economies with global economic systems (Bieler & Morton, 2006; Sikdar, 2006; Soederberg, 2010, p. 113; Rothe & Friedrichs, 2015, p. 72).

As with any hegemonic order, neoliberal dominance over international political and economic matters has been challenged by a number of NGOs, rights-based civil society organizations and labour groups. Complaints of recurring corporate human rights violations (Bittle & Snider, 2013; Rothe, 2010), environmental degradation (Shover & Routhe, 2005), and growing financial inequalities (Pakes, 2013; Rothe & Friedrichs, 2015) in the Global South

contributed to the anti-globalization movement. Throughout the 1990s and early 2000s a growing number of interest groups around the world questioned the legitimacy of neoliberal economic policies, especially the alleged trickle-down benefits provided through globalised market-oriented agendas, which erupted into a number of protests and demonstrations against corporatized control of international political and economic policies (Ayres, 2004; el-Ojelli & Hayden, 2006, p. 187; McNally 2009). These public resistances posed threats to neoliberal hegemony and corporate power, and so the benefactors of free-market policies (mostly consisting of, unsurprisingly, Global North states and corporate interest groups) moved quickly to re-establish their legitimacy.

To mitigate the concerns about the growing inequalities and exploitation occurring in the Global South, neoliberal rhetoric re-directed its focus towards economizing international development agendas as the prime ‘selling point’ of market-oriented policies. For instance, the Washington Consensus, adopted in 1997, encouraged the integration of international development and environmental protection strategies with policies geared towards economic growth in impoverished areas to reduce global poverty rates (Bergeron, 2010). Enter, once again, private-led CSR projects, which have not only been used to regulate corporate conduct, but in recent decades have been closely associated with international development agendas under the ‘common sense’ that foreign investment injected by multinational companies into impoverished nations are *necessary* for the improvement of global social and economic conditions (Bergeron, 2010; Rothe & Friedrichs, 2015; Soederberg, 2006). Thus the intersection of CSR and international development, shaped according to neoliberal rhetoric of free markets and trickle-down benefits of capitalism, grants multinational businesses with “social licenses to operate” and enables the anticipation, absorption, and silencing of counter-hegemonic critiques

against apparent ‘crises’ in global capitalism (Bair & Pulpacuer, 2015, p. S10).

The Gramscian approach is useful for exploring how existing social orders came to be through material and ideological social changes, and deconstructs the means through which hegemony is maintained, for whom, and for what purposes (Gill, 1993a, p.9). In the same way that dominant hegemonic orders must undergo adaptive changes to adjust to the diverse and constantly changing conditions in society, it is important to bear in mind that relations of power similarly exist in states of flux. The Neo-Gramscian literature on the global dominance of neoliberal capitalism illustrates the importance of ‘common-sense’ assumptions and knowledges in the reproduction of hegemonic notions of transnational corporate crime. An integrated analytical approach towards examining the intersection of transnational relations of power, knowledge, and hegemony is thus warranted, and the following Section examines Foucault’s contributions to these concepts.

Knowledge, Power, and Ideology

Foucault’s analysis of power, truth, and knowledge will help supplement Gramsci’s concepts of hegemony to explore relations of power in the production of truth claims that contribute to the construction and reproduction of neoliberal capitalism. Foucault emphasizes that negotiations of power exist in every discourse object (any spoken and written act of communication): “We are subjected to the production of truth through power and we cannot exercise power except through the production of truth” (Foucault, 1980, p. 93). The current study takes an expanded conception of discourse that considers discursive practices as containing ideas, policies, and social activity in addition to oral and written texts (Howarth, 2000; Laclau & Mouffe, 1985; Ruiz Ruiz, 2009). Foucault rejects the notion that power can be possessed or exercised by any single group simply

because they are ‘powerful’, and instead directs the focus towards the processes in which ‘powerful’ groups can *become* influential over other social actors through strategic uses of discourse that constrain ways of thinking and acting (Foucault, 1980, p. 118; Pringle, 2005). By shaping what constitutes ‘acceptable’ ways of understanding the world through the production of social meaning, discourses can influence how individuals think and, by extension, act upon particular social, economic, and political phenomena (Mills, 2003).

Foucault’s argument that all discourses exist within “conditions of possibility” which govern the production of discourses is of particular importance for this study (Foucault, 1980, p. 112). When analysed, the “discursive regimes”, or rules of discourse that dictate what truth claims are considered ‘acceptable’ and therefore ‘legitimate’ ways of understanding social phenomena, can uncover multi-layered relations of power in the process of generating knowledge (Dahlberg, 2014; Downing, 2008; Mills, 2003). Foucauldian analysis seeks to understand how discourse and legitimated knowledge claims become “useful” for the interests of particular groups, and act as the primary mechanisms through which relations of power are established, incorporated, or resisted in the larger social whole (Foucault, 1980, p. 101; Mills, 2003, p. 72).

Foucault denounces the understanding of power as an absolute force and instead suggests all exercises of power are subject to contestation: “There are no relations of power without resistances” (Foucault, 1980, p. 142). Foucault asserts that the production of discourse and ‘acceptable’ knowledges are exercises of power over subordinate groups, but they can also present entry points for resistance (Howarth, 2009, p. 316; Mills, 2003, p. 35; Pringle, 2005). In theorizing power as a contestable process, it is possible to develop an integrated approach combining aspects of Foucauldian and Gramscian theories to examine the struggle for global

hegemony through the production of competing discourses. The following section outlines an integrated Gramscian-Foucauldian approach for studying state and corporate responses to the Rana Plaza disaster.

Towards a Gramscian-Foucauldian Approach

The relations of power that constitute the formation of discursive regimes, and by extension the production of ‘truth’, are bound within the political, economic, and cultural circumstances of society (Foucault, 1980, p. 131; Foucault, 1981, p. 54). Incorporating Foucauldian and Gramscian theories can help understand the vital role of discourses and knowledge claims in the formation of hegemony: “In broader social and political terms, ‘hegemonic projects’ will attempt to weave together different strands of discourse in an effort to dominate or structure a field of meaning, thus fixing the identities of objects and practices in a particular way” (Howarth, 2000, p. 102). This integration can aid researchers in avoiding discourse analyses that are fixated on reducing the social world to ideas and language, as well as Marxist-based theories that are deterministic in their economic-based explanations (Gill, 2015, p. 4). Bruff (2009) suggests Gramscian theory can provide a ‘middle-ground’ to polarized approaches which identify any *singular* source for explaining social practices by incorporating considerations for economic, political, and historical realities in the formation of common sense beliefs and norms, which in turn shape social practices.

Drawing upon cultural political economy to examine the formation of hegemonic orders, Jessop describes the semiotic dimension as consisting of the discourses, language, and social practices involved in forming cultural ‘imaginaries’ or social meanings (2009, p. 344). The particular imaginaries selected as the prevailing mode of thought and which become

institutionalized as social practices are shaped by extra-semiotic processes involving social negotiations of political and economic power (Jessop 2009, p. 352). Dahlberg (2014) identifies the link between hegemony and discourse as “discursive totality”, in which hegemonic logics frame particular assumptions about concepts, roles, and practices as ‘natural’ and therefore possible, thereby excluding the claims put forth by dissenting discourses as impossible. Similarly, critical discourse theorist Norman Fairclough (2013) describes ideological domination as the “discursive naturalization” of constructed meanings and identities, in which constructions of knowledge are adopted by the popular masses as acceptable and therefore feasible ways to organize social life (Fairclough, 2013, p. 192).

Corporate crime scholars have used Gramscian-Foucauldian frameworks to study the implications of neoliberal hegemony on the treatment of corporate crimes. According to Pearce and Tombs, the “perceived legitimacy of corporations” reinforces knowledge claims that differentiate corporate crimes from “typical” crimes, and accordingly renders corporations beyond the reach of the criminal law (1990, p. 428). Bittle and Snider’s analysis of the discourses that contributed to the enactment of the Westray Bill in Canada suggests neoliberal ideals of corporate fundamentalism dominated the legal reform process and ensured “corporate actors and interests must be protected from corporate criminal liability” (2006, p. 487) in the final version of the Bill. The present study builds upon these works to apply a Gramscian-Foucauldian framework in the analysis of transnational corporate harms.

An integrated Gramscian-Foucauldian approach is also useful for the analysis of neoliberal hegemony in global capitalism. Sum (2009) describes the dominance of neoliberal hegemony as a ‘knowledge brand’ constructed as the most appropriate way of thinking and acting upon global capitalism. The ‘knowledge brand’ is reproduced through discursive

exchanges involving knowledge ‘experts’ including industry consultants, professional and academic think-tanks, intergovernmental authorities and organizations, media professionals and political leaders. Neoliberal hegemony is achieved when dominant discourses endorsed by knowledge brands are institutionalized into market-based policy frameworks across multiple locales and sectors (Sum, 2009, p. 191).

As was discussed in the Literature Review, capitalism as a whole requires constant “repair work” to sustain its dominance, especially at moments of crisis (LeBlanc, 1996, p. 26; Gibson-Graham, 1996; Kramer, 2013; Peet, 2002, p. 57; Snider, 1987). From a Gramscian-Foucauldian perspective, it is imperative to examine how capitalist principles are “reinvented” to suit the varying cultural, political, and economic circumstances in projects of global capitalist expansion. In the case of “repairing” neoliberal dominance following crises in global capitalism, ruling groups produce discourses that ensure market-based logics remain the prevailing mode of thought and action (Fairclough, 2013; Jessop, 2009; Sum, 2009). Take for instance the dominant logic governing current notions of international development, which positions liberalised global markets and active participation of multinational corporations as necessary for social welfare (Bergeron, 2010). The production of knowledge is necessary for the re-articulation of global hegemony, as the “winners” of capitalism must surmount criticisms about the *inequalities* of market-based systems and produce claims to convince the public of the social *equalities* achieved through free markets to once again secure – however temporary – hegemonic rule and a return to “business as usual” (Bittle, 2012; Fairclough, 2013, p. 189).

An integrated approach to examining hegemonic formations through the production of knowledge can provide an understanding of the mechanisms through which capitalist systems must accommodate the ever-changing social conditions of globalization in order to achieve

legitimacy and expand its wealth-seeking horizons. Given the current state of global capitalism, in which neoliberal principles have faced numerous critiques, especially following cases of transnational corporate harm, an analysis of the “maintenance work” of neoliberal hegemony seems especially prudent. The thesis draws upon a Gramscian-Foucauldian theoretical framework to analyse the knowledge claims produced in a ‘moment of crisis’ that can act to reproduce, or challenge, neoliberal capitalism (Bittle 2012, p. x; Jessop 2009). The following chapter discusses the findings of the thesis, analysed using the critical discourse analysis method, to examine the competing discourses produced in the wake of the Rana Plaza disaster.

Chapter 5: Findings

Introduction

This chapter presents the dominant concerns regarding the regulation of workplace health and safety in global supply chains that emerged from the data. Individuals representing Canadian retail companies and associations, governmental departments, NGOs, labour-based organizations, and academia all agreed that the Rana Plaza collapse demanded urgent attention concerning the role of Canadian companies in unsafe working conditions in Bangladeshi garment factories. Several key assumptions about the economic, political, and legal contexts of global capitalism shaped discussions of transnational approaches to supply chain accountability. Together, these assumptions set particular conditions over the constitution of ‘reasonable’ options for reforming workplace safety regulations in offshore factories, which ultimately reinforced the status quo of relying on voluntary CSR measures to regulate transnational corporate conduct.

This chapter is divided into three sections that document the dominant knowledge claims regarding the regulation of transnational corporate conduct. First, economic-based concerns about the financial impacts of the Rana Plaza disaster suffered by multinational retail corporations reinforced beliefs that the *financial* sustainability of the garment sector in Bangladesh should remain a central priority so as to not endanger the employment opportunities provided to the sectors’ vulnerable and predominantly female workforce. Second, political arguments regarding the relationship between the Canadian and Bangladeshi governments perpetuated the belief that the duties of the Canadian state should be limited to those that facilitate rather than regulate transnational trade between countries. Finally, arguments that emphasized the legal hurdles of setting binding regulations over transnational business reproduced beliefs that the “global regulatory gap” could be sufficiently addressed through

voluntary CSR codes.

I. Financializing Social Harms

This section outlines the dominant knowledge claims that couched the Rana Plaza collapse and its aftermath in economistic terms that stressed the importance of protecting the financial profitability and reputation of retail companies to ensure the flow of capital into Bangladesh. Numerous individuals representing various corporate, state, and civil society organizations discussed the economic assets of the Bangladeshi garment sector as the essential lifeblood of the country's economy, defining it as key to improving the quality of life for Bangladeshi women. Members the Committees and the state and corporate representatives appearing before them struggled with the fear that imposing higher expectations of socially responsible business practices might create *too much* financial burden for retail companies, which would then threaten the economic sustainability of the garment sector in Bangladesh. These claims shifted attention away from the concerns made by representatives of labour organizations and NGOs that highlighted the responsibility of retail companies for demanding faster and cheaper production in supplier factories.

Corporations rely significantly on favourable reputations to appeal to consumers, investors and the general public to maintain financial success. This is especially so in the current information-sharing era, in which globalised business practices are theoretically more susceptible to public scrutiny (Koenig-Archibugi, 2004; Sethi, 2002, 2003; Shamir, 2004). Private businesses and state institutions alike make significant efforts to mitigate public outcries following highly publicized 'disasters' such as the Rana Plaza collapse (Breeze, 2012; Harris, 2011; Ice, 1991; McMullan & McClung, 2006, p. 78; Tombs & Whyte, 2015, p. 124) and retail

companies in particular rely on positive brand reputation to successfully market their products to consumers, attract investors and enhance their overall value (Jones, Temperley & Lima, 2009; Miller & Merrilees, 2013). Making promises of responsible business practices is a typical strategy by companies to develop positive brand reputation (Sethi, 2003; Shamir, 2005). Although these promises may be undertaken with good intentions, there is a concern that they essentially enhance a corporation's brand reputation and neutralize criticisms against controversial business practices (Shamir, 2005; Tombs & Whyte, 2015, p. 119). Serious doubts are raised about whether businesses can fulfill these promises for responsible corporate practices without independent monitoring for compliance, especially when corporate social responsibilities are promoted for their financial appeal (Bittle & Snider, 2013, p. 189; Newell, 2005; Tombs & Whyte, 2015, p. 122).

Assurances of the responsible 'global corporate citizens' acting to improve qualities of life around the world by injecting foreign capital into newly emerging economies reinforce beliefs in market fundamentalism, which reason that societies can only move forward through economic innovation and growth (Glasbeek, 2002, p. 17; Tombs & Whyte, 2003a, p. 10; Rothe & Friedrichs, 2015, p. 71). Neoliberal reasoning that emphasizes the virtues of private wealth dominates mainstream capitalist practices, including how societies regulate and hold accountable profit-seeking actions by private enterprises (Bittle, 2015; Sklair & Miller, 2010; Soederberg, 2007). Policies that are believed to disrupt transnational flows of capital – including political barriers to liberalised trade or regulatory policies that place too much 'burdens' on business (Tombs & Whyte, 2015, p. 19) – are discredited for hindering efforts to maximize economic productivity and therefore 'improve' the social conditions of Global South nations (Soederberg, 2006, p. 11; Peet, 2002, p. 63). Neoliberal rhetoric circulating the transnational 'trickle-down'

benefits of global capitalist systems for the people living in Global South nations was evident in the economic-based conceptualizations of transnational corporate accountability and international development efforts expressed by Canadian state, corporate, and civil society groups in response to the Rana Plaza collapse.

Repairing Corporate Reputational Damage

While all Committee members and individuals who appeared before them as well as interviewees stated that the Rana Plaza collapse was an unacceptable tragedy, the dominant rhetoric concerning the disaster fixated on the financial repercussions faced by the retail garment industry, not the deaths of more than 1,100 workers, thousands of injuries and untold emotional strains brought upon the victims' families. Representatives from the retail industry and state institutions emphasized the importance of developing some type of response to restore consumer and investor faith in the Bangladesh garment industry following the negative publicity associated with the Rana Plaza collapse. For instance, in a meeting of the Human Rights Committee, a government representative from the Department of Foreign Affairs, Trade, and Development (DFATD) noted, "The government [of Bangladesh] is very keen to get on top of this and, as in many other places around the world, the reputable, serious, long-term players in the industry understand that their markets are under threat" (Jeff Nankivell, Foreign Affairs Committee, 28 April 2014, p. 5). Similarly, a Director General from DFATD described the Rana Plaza collapse as a "wake-up call" to the Human Rights Committee and emphasized the important tie between brand reputation and the financial value of the garment sector in Bangladesh:

We've seen many examples that have made this clear but most recently with the Rana Plaza collapse: Canadians don't want to buy from businesses that are complicit, I'll say, in terrible situations abroad. [...] We advise companies — and the Rana Plaza collapse is a good example — about how to avoid their brand being associated with those negative

things. [...] So companies need a much higher level of due diligence where they find trusted outside parties to validate for them that they are not inadvertently being complicit in activities that could harm their reputation or brand afterwards. (Duane McMullen, DFATD, HR Committee, May 12 2014, pp. 17-18)

An industry spokesperson explained corporate reputation is a necessary component of enhancing brand competitiveness:

Some companies are actually competing on the point that they have adopted state-of-the-art industry practices on CSR, and are marketing themselves as such. [...] Companies are very concerned about their brand reputation, and they want to address a way that's going to enhance their brand and not get caught in a situation where they are basically caught unawares. (Interview #1, Industry Spokesperson)

Similarly an Investor Brief published by the Shareholder Association for Research and Education (SHARE Canada), a group that encourages corporations to adopt socially responsible business practices (and whose Executive Director participated in a Foreign Affairs Committee meeting in May 2013), described “reputational factors such as negative publicity related to poor labour practices at supplier factories” as a “risk inherent in global sourcing practices.” The statement also noted that “poor management of labour and environmental risks in global supply chains can have financial impacts on sales here in Canada, and on the company’s longer term value for investors”, and reinforced the urgent need for companies to assure Canadian consumers and investors that efforts are being made to improve factory safety conditions (SHARE Investor Brief, April 2015, p. 1). A representative from SHARE Canada highlighted the economic benefits of corporate due diligence considerations in business practices:

The consensus is growing amongst institutional investors that ESG [environmental, social, and governance] factors such as supply chain oversight are important components of risk management and a potential source of value creation over the long term. (Peter Chapman of SHARE Canada, Foreign Affairs Committee, 28 May 2013, p. 2)

Corporate representatives and government officials speaking at the Foreign Affairs and Human Rights Committees adamantly raised concerns that human rights violations threaten the financial

outcomes of the retail garment industry. A government official from DFATD provided the following suggestion about persuading corporations to adopt due diligence practices as a form of risk management and to mitigate reputational harm:

[T]he way I've been telling the story when I've been working with companies abroad is it's like your fire insurance. The Rana Plaza collapse pictures with the Joe Fresh brand are really good to show because then they get it. That's the damage to your brand if you allow yourself to get into this kind of thing, so you need to put the effort and the resources into making sure all the things that I mentioned. To slack off is like not paying your fire insurance premiums; there might be a short-term gain, but you open yourself up to huge risk. (Duane McMullen, Human Rights Committee, 12 May 2014, p. 24)

Similarly a representative of Export Development Canada, the country's export credit rating and loaning agency for multinational companies based out of Canada, offered the view: "Generally, the circumstances under which you have poor human rights conditions, you also have bad conditions for business" (Human Rights Committee, 8 June 2015, p. 66). A recurring pattern of understanding workers' endangerment in supplier factories as inherent 'risks' to corporate profitability reinforced the importance of maintaining *economic* sustainability in the garment industry as the top priority.

Representatives from the private sector and government departments were not the only people who spoke highly of the fiscal advantages of adopting socially responsible business practices. For instance a spokesperson of the International Labor Organization discussed the competitive advantages for corporations that adopt CSR initiatives:

This demand for improvement is very much part of the competitive edge in this industry and it's becoming more so. If you look, for example, at Bangladesh, over 200 global brands have joined the Bangladesh Accord, almost the entire industry in North America is engaging through the Alliance. This is a further sign that the drivers at the top to industry want to ensure there's safety and health at work and there is more incentive for good working conditions. The trick is to articulate that in terms of price and competitiveness within the industry. My second response is this: Our evidence from the Better Work program shows clearly that those companies in our program that have better working conditions are more profitable. [...] In fact, there is a competitive edge to doing

decent work and doing it well. It might sound counterintuitive, but there's a growing body of evidence that it's good for business in the longer term. (Dan Rees of the International Labor Organization, Human Rights Committee, 18 June 2015, p. 109)

The general consensus was that dangerous working conditions in the Bangladeshi garment industry are important to address because they not only pose risks to the safety of factory workers, but more importantly threaten the economic sustainability of the industry. However, the main impetus to protect corporate reputational value treats social harms and risks to human *life* as risks to financial *profits*, which undermines the range of physical, emotional and social damage suffered by the workers and families who are victimized by gross violations of safety standards (Hills, 1987a; Moore & Mills, 1990). Dangerous factory environments, or “regrettable labour conditions” (Chris MacDonald, Foreign Affairs Committee, 28 May 2013, p. 11) were accepted by dominant voices from industry and state institutions as inherent ‘risks’ in global supply chains, and not the outcomes of corporate negligence or unreasonable demands from retail companies for fast production of cheap goods. However, as Tombs and Whyte argue, dangerous working conditions are not “intrinsic qualities”; instead, most work-related fatalities are the product of workplaces that are “dangerously organized” to prioritize efficient production over workers’ rights and safety (2009, p. 111).

Furthermore, the commercialization of socially responsible business practices situates ethical and moral considerations in business as economically advantageous, but ultimately optional for businesses. Repeated appeals to the economic incentives of corporate social responsibility reproduces neoliberal common-sense assumptions that corporations are capable of rational thought and that any competitive business would naturally adhere to socially responsible obligations, despite recurring ‘debacles’ of corporate misconduct that suggest otherwise (Bittle & Snider, 2013; Braithwaite & Geis, 1982; Herzig & Moon, 2013; Pearce, 1993). And yet, the lack

of external monitors over businesses and adherence to free-market principles that encourage profit maximization at any cost are factors that typically lead to negligently unsafe working conditions – as was the case leading to the Rana Plaza collapse and countless other cases of safety violations leading to worker deaths (Aulette & Michalowski, 1993; Bittle, 2012, p. 5; Glasbeek, 2002, p. 62; Pearce & Tombs, 1998a; Tombs & Whyte, 2007, p. 126). An aspect of the neoliberal-based argument about competitively-driven ‘rational corporate actors’ that failed to reach the ears of Committee members was the concern that corporations are only motivated to act responsibly when there is an economic incentive, or significant deterrent to do so (Gobert & Punch, 2003, p. 36; Tombs & Whyte, 2015, p. 124). This raises the crucial question of whether businesses will follow voluntary due diligence practices when doing so is not financially productive, or where there is little risk of being caught (Laufer, 2006b; Matten, Crane, & Chapple, 2003; Pearce, 2001; Sethi, 2002).

Finally the continued adherence to the belief that corporations are willing to self-regulate advocated by powerful corporate and state voices, even when multiple instances of corporate negligence leading to deadly consequences prove otherwise, illustrates the systemic privilege granted to commercial enterprises (Bittle, 2012; Glasbeek, 2002, p. 18; Snider, 2000; Tombs & Whyte, 2015, p. 122). Allowing corporations to negotiate their own terms of ethical compliance stands in stark contrast to the ‘get tough on crime’ mentality aimed to combat street-level and ‘conventional’ crimes that tend to dominate political discourses, despite growing evidence that punitive-based policies to lower crime rates are both costly and ineffective (Christie, 2000; Fournier-Ruggles, 2011; Reiman, 2004; Webster, Doob, & Zimring, 2006). It is important to note the nature of corporate crimes should be differentiated from individual-based crimes – punitive-based and zero-tolerance policies do little to deter and prevent street-level offenses

because they fail to address the systemic issues that precipitate these crimes, such as economic and social inequality (Davis, 2003; Eriksson, 2009; Lynch & Michalowski, 2006, p. 14; Morris, 2000; Mathiesen, 2006). In contrast, structural factors that lead to corporate crimes could theoretically be addressed through stricter laws and their enforcement, as doing so would confront the acts and omissions within organizations that prioritize profits over worker health and safety (Beale, 2009; Bittle, 2012, p. 51; Braithwaite & Geis, 1982; Steinzor, 2014, p. 220).

The next section describes how efforts to protect the industry's financial assets were reinforced by the popular assumption that the garment industry in Bangladesh plays a significant role in supporting the country's social development, especially for the women employed in supplier factories. The result was a confirmation of market fundamentalism that justified poor labour standards on the basis that any employment opportunities provided by the garment industry, no matter how dangerous, is better for factory workers and the social development of the Bangladeshi people.

Women's Empowerment through Fast Fashion

Concerns about the profitability of the ready-made garment industry reinforced common-sense views that claim "the market, left to its own devices, will resolve social justice issues" (Soederberg, 2010, p. 149). Voices representing corporate, state, and civil society sectors widely circulated claims that any employment income offered by the garment sector was better for Bangladeshi women than the alternative of not having any job at all. Similar sentiments praising the economic benefits of transnational capital in developing countries has dominated national and international policies regarding foreign trade, development, and international relations (Portafke & Ursprung, 2012), especially within intergovernmental development agendas that

encourage liberalised trade as key for alleviating global social and economic inequalities (Bergeron, 2010; Bittle & Snider, 2013; Soederberg, 2006; Soederberg, 2007).

Research by non-governmental and non-corporate sources suggests market-based ‘solutions’ to gender inequality do little to actually support the women these initiatives purport to benefit. For instance, Roberts and Soederberg (2012) critique the UN Global Compact, which relies on the assumption that market-led policies can create equal advantageous opportunities for women and businesses alike, for allowing partnering businesses to define and implement their own understandings of gender equality with little input from local governments and community-based civil society groups who are more familiar with the social and cultural aspects of gender inequality. While market-led development strategies that encourage economic growth can provide *some* employment opportunities for women who were previously excluded from mainstream labour markets, only low-level or unskilled labour jobs are typically made available to female workers, such as manufacturing work in supplier factories. These positions often pay very low wages, do not offer legal protections in accordance with international labour standards, (Ahmed, 2004; Claeson, 2012, p. 28) and are especially vulnerable to volatile changes in global market conditions which may lead female workers to face even more exploitation and abuses by their employers in times of economic desperation (Eschle, 2004; Hearson, 2009, p. 54; Wahra & Rahman, 1995). Critics claim economic-based strategies that incorporate gender equality in international development agendas do more to facilitate the entrenchment of capitalist owners than they do to benefit the vulnerable communities that so often make up the public image of development-based projects (Bergeron, 2010, p. 410; Roberts & Soederberg, 2012, p. 956). In the case of the Bangladesh garment industry, the economic flow via the transnational business of multinational retail companies was understood as being vital for the country’s developmental and

gender equality progress, which limited the options for holding accountable the “good corporate citizens” that are supposedly so vital for improving global economic and social prosperity (Glasbeek, 2002, p. 17; Sethi, 2003; Soederberg, 2006).

In a meeting of the Foreign Affairs Committee, two industry representatives described the employment opportunities in the garment sector as a “significant contribution” to the empowerment of women in Bangladesh. (Diane Brisebois, p. 2 and Bob Chant, p. 3, Foreign Affairs Committee, 28 May 2013). A representative from Loblaw Companies told Foreign Affairs Committee members:

Now, it may seem easier to simply pull production from Bangladesh. Loblaw believes that the apparel industry can be a force for good. When I've travelled to Bangladesh over the past year, one message that we received loud and clear from day one from every single individual we met was ‘please don't leave’ or ‘thank you for not withdrawing your production from this country’. Helping victims and their family members find and hold a job is a critical piece of the recovery process, because jobs in the garment industry do help lift people out of poverty. (Bob Chant of Loblaw Companies, Foreign Affairs Committee, 28 April 2014, p. 11)

Mr. Chant of Loblaw Companies also made the following point on the role of the retail garment industry for empowering women:

In countries like Bangladesh, the garment industry provides unprecedented opportunities for economic empowerment, particularly for women [...] this large and growing sector is critical to Bangladesh's economy and is responsible for significant increases in women's employment and economic empowerment in the country. (Human Rights Committee, 15 June 2015, p. 59)

Although representatives of the private sector naturally focused on the financial contributions of multinational retail companies operating in Bangladesh, representatives from civil society organizations also described the socially empowering effects the employment opportunities offered through the garment sector. A representative from the NGO Human Rights Watch told Committee members that for Bangladeshi women, having a job in a garment factory can help

“delay the age of marriage and delay child-bearing”, and provide them with enough economic income to enable them to “avoid or to leave abusive relationships [...] There is no doubt that having a steady source of income can be very empowering for workers.” (Nisha Varia, Human Rights Committee, 15 June 2015, p. 86)

Witnesses also spoke about the dangers female garment workers would face without garment sector jobs. A spokesperson of the Canadian Apparel Federation, a business association that represents hundreds of Canadian retail companies, described to the Human Rights Committee the advancements in “income, health, [and] life expectancy” in Bangladesh as a result of the garment sector:

[I]t is because those people have those jobs that they wouldn't have had otherwise, and it is those women that previously were living in rural areas, and no matter how bad it is, it's better than that. It's a very difficult thing to balance. You don't want to give carte blanche to companies to misuse their role in society, but at the same time, you have to step back and say that Bangladesh didn't go into the toilet. It's doing better than ever before economically, in health, in education, and it has the potential to keep going that way provided that some of these initiatives take hold and they build a stable, sustainable industry. (Bob Kirke, Human Rights Committee, 8 June 2015, pp. 82-83)

Claims of social benefits made possible through the flow of capital from multinational retail companies to garment workers also buttressed the warnings against strict sanctions that would apparently stifle progress for gender equality in Bangladesh. Barry Laxer, the president of a Canadian-based retail company with production operations in Bangladesh, generally agreed with Kirke and suggested “that making an embargo or nationally sanctioning them would not be a solution, because they certainly are better, somehow or other, than they probably were 15 years ago.” (Barry Laxer of Radical Design Ltd, Human Rights Committee, 8 June 2015). Although the meagre and dangerous working conditions in garment factories were acknowledged, the struggles of producing goods for retail companies were neutralized by claims about the many supposed social benefits from these employment opportunities.

However, this does not suggest neoliberal assumptions about global capitalism were unquestionably accepted. Several witnesses, Senators, and MPs alike expressed skepticism towards the apparent ‘trickle-down’ effects enjoyed by the female garment workers. For instance an academic witness questioned whether workers at the bottom of the global supply chain actually enjoy as much benefits from multinational companies as were claimed by private sector actors (Ananya Mukherjee-Reed, Human Rights Committee, 8 June 2015, p. 43). Witnesses from civil society organizations and one representative of a Canadian retail company raised concerns that the highly competitive nature of the global garment industry and its cost-cutting measures can force workers in supplier factories to work at faster intensities to meet ever-increasing production quotas for retail companies, where safety procedures and labour standards are given little priority (Barry Laxer, Human Rights Committee, 8 June 2015, p. 71; Nisha Varia, Human Rights Committee, 15 June 2015, p. 85).

Proposals were also made in the Committee sessions to reform the overall production and distribution processes of the industry. Numerous NGO representatives urged the Canadian government to develop binding standards in global supply chains to ensure that factory workers are being paid fair living wages rather than the extremely low ‘starvation-wages’ that are currently the norm.⁷ Moreover, the importance of promoting and enforcing workers’ rights to collective bargaining and unionization were also described by numerous witnesses and interviewees across sectors as indispensable components of improving workers’ wellbeing by protecting workers’ voices to negotiate safety conditions as well as rates of pay with factory

⁷ Tom Smith, Foreign Affairs Committee, 28 April 2014, p. 10; Bob Jeffcott, Human Rights Committee, 8 June 2015, p. 89; Barry Laxer, Human Rights Committee, 9 June 2015, p. 77; Nisha Varia, Human Rights Committee, 18 June 2015, p. 97.

managers and retail companies.⁸ Finally, several suggestions were made to the Human Rights Committee that companies should consider diverting some of the surplus value created in supplier factories to funding much-needed factory building repairs and renovations.⁹

These suggestions posed to the Canadian government and Canadian businesses that could help ensure the ‘trickle-down’ effects of the country’s garment sector actually improve the lives of Bangladeshi workers were dominated by fears that placing strict standards over the production practices in supplier factories would pose a threat to factory workers’ employment opportunities. For instance, a professor from the Ted Rogers School of Management advised:

To be blunt, Canadian workers enjoy high pay and high labour standards because we can afford them. Other countries are not there yet, but the fact that their labour is cheaper is precisely what attracts foreign business and foreign investment to their shores. Insisting on Canadian standards for developing nations would be deadly both to national economies and ultimately to the employment prospects of the citizens of those nations. (Chris MacDonald, Foreign Affairs Committee, 28 May 2013, p. 11)

Similarly a government official stated “the reason women were employed is because they were making the lowest of the low paid” and further explained that as wages for garment workers were increased, some female garment workers were replaced by male workers seeking the same, now higher-paying positions (Interview #4, Government Official). Members of the Committees and witnesses appearing before them were made aware of both the empowering and exploitive qualities of employment opportunities offered in the garment sector, but were convinced that without these jobs – no matter how low-paying – the vast majority of working women in Bangladesh would have few alternate options. Senator Atuallahjan, the Deputy Chair of the

⁸ Senator Ngo, Human Rights Committee, 12 May 2014, p. 28; Jane Stewart, Human Rights Committee, 12 May 2014, p. 34; Bob Jeffcott, 8 June 2015, p. 89; Shawn Bader-Blau, 8 June 2015, p. 91; Bob Chant, Human Rights Committee, 18 June 2015, p. 72; Dan Rees, Human Rights Committee, 18 June 2015, p. 102; Interview #3, Union Representative; Interview #9, NGO Representative.

⁹ Syed Rahman, Human Rights Committee, 12 May 2014, p. 41; Ananya Mukherjee-Reed, Human Rights Committee, 12 May 2014, p. 51; Barry Laxer of Radical Design Ltd, Human Rights Committee, 8 June 2015, p. 72

Human Rights Committee, pointed out the few opportunities left to Bangladeshi women for gaining independence outside of the garment sector:

In Bangladesh, the majority of the workers are women, over 3 million. What does it mean to the empowerment of women in Bangladesh? I also realize that if these women did not work in the garment factories, a lot of them would not have jobs. It seems to be that in Bangladesh, women working in the factories is welcomed and not frowned upon, and it is easier for the families to let their girls go because the majority of females are working in factories. If they were not working in the garment industry, what other things could these women do? (Senator Ataulhjan, Human Rights Committee, 15 June 2015, p. 86)

A politician active in global gender equality efforts explained that careers in the garment industry “is a safer environment for them to work. We do hear they [female garment workers] face discrimination – discrimination and sexual discrimination, but compared to other places it is a relatively safer environment for them.” (Interview #5, Politician) The following exchange reminded Committee members of the so-called social benefits provided through transnational capital:

Senator Ataulhjan: It’s a \$20 billion export-oriented industry. Who benefits? What’s the trickle-down effect to the poor of the country?

Syed Rahman: There is the question of the benefits to women. It is incredible. It is so empowering that it's hard to believe. They're exploited, no question. The wages they are paid are very small. They should be paid way more, but look at the opportunity cost of this argument. If this employment was not there, where would they be? Most of these women, by the way, are displaced; they come from villages, they are migrants in the sense of rural-urban migration, they have practically no land to speak of. From a family's vantage point, they really have nothing to go back to. [...] Have they been exploited? Yes. Could they have been treated better? Yes. But we must always remember what the alternative is.

(Exchange in Human Rights Committee, 12 May 2014, p. 46)

Speaking out of fear that strict regulations might deter retail companies from operating in Bangladesh or raise the costs of production and in consequence would threaten the employment income provided to factory workers, Committee members hesitated to formally regulate

transnational corporate conduct. Senator Jaffer, the Chair of the Human Rights Committee, reiterated these concerns:

There's always a challenge when we look at these issues and we think it's so easy to say if companies in countries don't comply with human rights, maybe we should boycott the goods and the countries that do not enforce health and safety standards on garment workers that work in these countries. Would their welfare improve due to better working conditions or would they be laid off? Is this issue a lack of political will for enforcement or lack of resources? I'm hesitant to say this, but if there are no garment factories there, many women in those places that have semi-empowerment will have nothing. (Senator Jaffer, Human Rights Committee, 8 June 2015, pp. 81-82)

Lois Brown, a MP representing the Conservative Party, asked witnesses about the impact strict regulations might have on production costs:

[W]here does the price point hit, that it no longer becomes viable or that we start increasing the prices to the purchasers here? [...] [I]t becomes a very fine balancing act from the point of view of a business active in Bangladesh. You say that Bangladesh wants you to stay there, Mr. Chant. So how do we make that happen, that we hit that happy medium where we are providing the safety and security for the people in Bangladesh, and yet you are still able to operate there and we still find Canadian retailers who want to sell to Canadian purchasers who want to purchase at that price? (Lois Brown, Foreign Affairs Committee, 28 April 2014, p. 18)

Losing business was identified as a significant factor to consider in negotiating reasonable expectations for corporations in improving labour conditions in their supplier factories. As one politician put it, imposing higher standards over offshore business processes would have a ripple effect over the entire global supply chain:

[I]t comes down to the many people... from where it's manufactured to when it comes in the store. Each person makes a profit. There's shipping, marketing... my understanding is, most stores put at least 100% markup. It has to be worth their while also. (Interview #5, Politician)

Thus industry sales was prioritized by dominant voices in considerations over how to encourage – not mandate or legislate – companies to adopt higher standards in supplier factories. As one witness stated:

The most fundamental way in which Canadians can help, of course, is to buy goods made in countries in which the economy badly needs the help. The thing that will ultimately raise wages and safety standards in developing nations is competition driven by demand. [...] Economic development is the key, and economic development cannot be legislated. Canada needs a balanced policy that encourages Canadian companies to invest in and do business with developing nations but to do so in ways that both respect human rights and make reasonable steps towards continuous improvement in working conditions. (Chris MacDonald, Professor and Director at Ted Rogers School of Management, Foreign Affairs Committee, 28 May 2013, p. 11)

The economic income provided to Bangladeshi women through garment manufacturing jobs was discussed by representatives across state, corporate, and civil society sectors as providing enough socially empowering effects to justify the low pay, human rights abuses and unsafe working conditions. Recommendations to restructure the garment production process to ensure safe working conditions and fair wages were rebuffed by arguments which claimed anything that created additional costs to retail companies would only worsen conditions for the workers at the bottom of the supply chain. The claims presented above demonstrate the resilience of neoliberal ‘myths’ that claim private wealth and free capitalist systems are vital to alleviate economic and social inequalities in Global South communities (Bergeron, 2010; Bittle & Snider, 2006, p. 487; Parsons & McKenna, 2009, p. 197; Snider, 2000, p. 182) despite evidence that the supposed benefactors of market-based development strategies face a very different reality.

Research conducted by rights-based NGOs and academics on the impacts of trades-based international developmental agendas suggest the main ‘winners’ of global capitalist systems are the loudest supporters of free trade agreements – namely, multinational corporations and political elites (Rothe & Friedrichs, 2015, p. 19). Multinational corporations have a vested interest in keeping production operations in Global South countries where wages and resources can be kept at very low costs to enable the highest profit yields possible (Baram, 2009; Hearson, 2009, p. 31; Pakes, 2013; Tombs & Whyte, 2003a). This is not to suggest that the Bangladeshi economy has

not reaped some positive outcomes from the garment sector – the country’s GDP has grown between 1991 and 2013 (Rahman 2014, p. 3). However garment factory workers’ minimum wages are still astonishingly low, increasing from US\$39 per month to US\$68 per month in December 2013 only after violent struggles by garment worker trade unions (Human Rights Watch, 2015, p. 18). Still this amount is lower than the minimum wages paid to workers in competing export-oriented countries, and far below the living wage in Bangladesh which is calculated based on the minimum amount required to provide an average family with adequate shelter, food, and education (Wright, 2014; War on Want, 2015). Instead of ‘trickling down’ to the workers at the bottom of the supply chain, a large portion of the transnational capital flowing through the garment sector remains in the hands of the commercial elites and (usually corrupt) government officials in Bangladesh, who often either own, manage, or are responsible for ‘inspecting’ garment supplier factories and therefore have similar vested interests as the retail companies to keep production costs low and compliance with workers’ rights non-binding (Claeson, 2012, p. 10; Mahmud & Kabeer, 2003, p. 28).

Another important factor that raises doubt about how much female factory workers actually benefit from the financial performance of the garment industry is the deplorable conditions workers must face as a result of the desperate need to keep costs low to compete for contracts. In addition to cutting corners on safety and resisting pressures to pay factory workers fair living wages, it is not uncommon for factory owners to withhold workers’ wages temporarily or lay off workers when supplier contracts are scarce (Ahmed, 2004, p. 41) or when workers begin to demand for better wages or improved rights (Claeson, 2012; Frynas, 2000; Rose, 2014). Deadly competition for supplier contracts is an effect of the global ‘race to the bottom’, in which multinational corporations are able to freely pick and choose which suppliers to source from

based on the financial bottom-line (Baram, 2009; Gilbert & Russell, 2002, p. 222; Mahmud & Kabeer, 2003, p. 26). The result is the treatment of production workers as “disposable workers” (Claeson, 2012, p. 10) whose primary function is to produce goods for Western consumers as cheaply as possible and whose fundamental rights are treated as advantageous for corporate reputations, yet optional considerations (Baram, 2009; Friedrichs & Friedrichs, 2002; Hale, 2002; MacKenzie, 2006). Unfortunately, the problem of prioritizing corporate profitability over workers’ rights is systemic to the garment industry in Bangladesh and capitalist systems generally, but remains *unproblematized* under the neoliberal rhetoric which relentlessly adheres to the belief that any business – no matter how exploitive or meagre – is good for society and therefore should not be subject to strict regulation (Bittle & Snider, 2006, p. 486; Harvey, 2007, p. 42; Tombs & Whyte, 2003a, p. 10). As Tombs and Whyte argue, “[A] key feature of neo-liberalism is that it ideologically undermines socially protective laws by promoting values of profit accumulation and maximization above social values.” (2009, p. 108)

The concern for gender equality in Bangladesh through the country’s garment sector, steeped in economized beliefs of market fundamentalism and the social benefits provided through good corporate citizens, consolidated capitalist interests and neoliberal hegemony in matters of international development (Soederberg, 2012). The following section discusses the ways in which the claims made about the trickle-down benefits of global capitalist systems also contributed towards positioning the Canadian state as the facilitator – not regulator – of transnational capital.

II. Restructuring the Nation State in Globalization

Framing the Rana Plaza collapse in market-centric terms reinforced the predominant notion that

the most appropriate way for the Canadian state to support the vulnerable workers of Bangladesh is through facilitating, rather than regulating, transnational capital. In sharing mutual interests with corporations, states actively reproduce global capitalist interests under the guise of promoting social equality to increase domestic economic wealth and gain international political leverage (Burnham, 2006, p. 43; Jessop, 2002, p. 109; Soederberg, 2010, p. 7). In this case, Bangladesh's status as a Least Developed Country (LDC) has resulted in a number of intergovernmental "preferential market access initiatives" to give the country a competitive edge, including the Generalized System of Preferences which allows Canadian companies to operate in Bangladesh with duty-free privileges (Rahman, 2014, p. 17).

It is important to consider that while states adopt policies to facilitate transnational capital, they are also responsible for ensuring that capitalism remains socially sustainable and therefore legitimate, especially following debacles that highlight the consequences of deregulated markets (Bittle & Snider, 2006, p. 475; Bruff, 2008). The capitalist state therefore occupies a "contradictory role" in which it must balance efficiency in private capital accumulation with the need to maintain the sustainability of the system as a whole, which involves, at times, regulating against the interests of private capital (Bittle, 2015, p. 136; Bruff, 2009, p. 336; Gibson-Graham, 1996, p. 154; Tombs & Whyte, 2007, p. 109). According to the claims expressed by dominant voices from corporate and state sectors, the most efficient means to regulate and simultaneously enable capitalist systems is through non-binding, "soft-law" regulatory approaches that do not substantially disrupt market productivity and trade-based development agendas.

Facilitating International Development through Trade

Open market access to the Bangladesh garment sector was framed as a vital entry point through which Canadian commercial and government initiatives could gain access to improve the socio-economic conditions in the impoverished country. A representative of the Canadian Apparel Federation spoke highly of the liberalised trade relationship between Canada and Bangladesh:

There is a reason the Canadian government extended tariff-free access to Bangladesh in 2002. At the end of 2004, all import quotas on garments were being eliminated. I think there was a general perception that if we didn't give Bangladesh a leg up, they would collapse as a manufacturing centre. [...] Prime Minister Chrétien decided that's what he wanted to do because we thought that Bangladesh would go bankrupt. The Europeans, the same thing. The European initiative was called "Everything But Arms"; ours was the LDC [Least Developed Country Tariff]. [...] Having said that, that's what saved the industry in Bangladesh and allowed it to grow. Did it grow in ways that we don't always like? Yes. Nonetheless, [...] In 16 or 17 years, it has gone from the lowest of the low, the worst of the 47 poorest countries in the world, and it will go up in terms of income, health, life expectancy. (Bob Kirke, Canadian Apparel Federation, Human Rights Committee, 8 June 2015, p. 82)

Among public sector actors, there was a general assumption that having Canadian companies active in impoverished countries provides better opportunities for developmental efforts than ceasing multinational commercial activity in vulnerable communities. A government official raised the concern that local working conditions would only worsen if Canadian companies pulled offshore production from countries like Bangladesh:

What we're seeing is that our companies might leave, but someone fills that vacuum. Is it better for them to leave, and leave it to a Chinese company – which is particularly evident in the extractive sector – or have them stay, and work in a difficult environment with slightly better practices? (Interview #4, Government Official)

A politician similarly criticized policies that require Canadian extractive companies to cease production in regions with records of gross human rights violations and environmental degradation, as strict policies might force Canadian companies to relocate their offshore operations, and “then other companies who are of not-such-great countries such as China” will

fill the void left by Canadian companies, which raises the question: “So what’s achieved here?” (Interview #8, Politician). The belief that Canadian companies can be motivated to practice *better* moral leadership than corporations of other nations simultaneously legitimises privatized international development strategies and the global corporate ‘race to the bottom’ on the basis that certain companies will automatically seek to promote positive brand reputations through socially responsible conduct (Bittle & Snider, 2013, p. 187). However, corporations of any sort and size are “legally committed to uphold the laws of the market, not human rights standards” (Bittle & Snider, 2013, p. 188), raising doubts about how Canadian companies could be compelled to respect non-market obligations unless legally required to do so.

Still, no consensus was formed over whether the Canadian government should mandate Canadian businesses to adopt socially responsible business practices overseas. The following quotes summarize opposing viewpoints made in a meeting of the Foreign Affairs Committee between two representatives from the retail industry. Peter Iliopoulos representing Gildan Activewear, a Canadian retail company with offshore productions in Bangladesh, proposed the following:

[W]e believe Canada should play a leading role in corporate social responsibility by establishing mechanisms to ensure all products entering the commerce of Canada originate from manufacturers that adhere to internationally recognized labour standards, and health and safety practices, in working conditions. In fact, Canada has typically included labour agreements along with free trade agreements. (Peter Iliopoulos, Foreign Affairs Committee, 28 May 2013, p. 4)

Iliopoulos also suggested the Canadian government should revoke Bangladesh’s status under the Least Developed Country Tariff agreement “as a means of pressuring manufacturers in Bangladesh to improve safety standards to an acceptable level” and advised that “the imposition of strong labour and safety standards will not hurt the competitiveness of the country as they can still compete effectively without tariff concessions” (Peter Iliopoulos, Foreign Affairs

Committee, 28 May 2013, p. 5). According to NGOs and some academics, international trade legislations that legally require imported goods sold in Global North countries to be made under acceptable labour conditions can ensure multinational businesses comply with international standards of workplace safety in whichever countries they operate (Interview #3, Union Representative; see also Amnesty International, 2014; Delaney, Montesano, & Burchielli, 2013, p. 85; Rose, 2014, p. 317). Iliopoulos' suggestion to amend Canada's preferential treatment towards Bangladeshi goods would enable the Canadian government to place labour condition requirements on Canadian businesses when they import from Bangladesh.

Diane Brisebois speaking on behalf of the Retail Council of Canada, which represents hundreds of Canadian retail brands and companies, posed a contrasting view:

I disagree with the gentleman from Gildan. While he suggests that there probably should be import duties for Bangladesh, I think that in fact would work against the development of Bangladesh. I don't think we should use tariffs to, in fact, give one supplier or country an advantage over another developing country. [...]

In fact, we believe that would make the work we are now initiating more difficult and it would be a burden on the workers in Bangladesh. The fact that they can, in fact, export their products without tariffs in Canada is allowing us to be more active in the country and ensuring we can help with worker safety as well as building safety. (Diane Brisebois, Foreign Affairs Committee, 28 May 2013, pp. 7-8)

The conflicting suggestions for imposing mandated standards of labour conditions over the production operations of Canadian companies created an apparent impasse in which Canadian policymakers were torn between a dichotomized understanding of state-sanctioned regulations as being either supportive of better working conditions for garment workers or dangerously burdensome for financial outcomes. Still the need to protect the employment prospects of supplier factory workers remained the focus of improving conditions in offshore production processes, which became the dominant frame to discuss appropriate measures for transnational corporate accountability. The Chair of the Human Rights Committee remarked:

My question is what should Canada be doing? There are all kinds of questions. One is that when these abuses happen maybe we should boycott the garments or the manufacturers of these garments and have sanctions against them or we should move to another country. My bias is I don't want to do either of those things because I have met with those young women and I know that this is their livelihood. (Senator Jaffer, Human Rights Committee, 15 June 2015, p. 91)

As a result the appropriate role of Western states was deemed to be the facilitator, rather than regulator, of global capital in order to advance international development agendas.

The general hesitancy for governments to intervene *too much* in matters of transnational capital out of fear that strict labour requirements over offshore business might disrupt corporate profitability and threaten the employment prospects of workers at the bottom of the global supply chain left little room to consider binding accountability measures in response to harms by multinational corporations. Dominant knowledge claims established corporate economic interests as being in the best interests of workers and society at large, and legitimated state policies geared towards market liberalisation (Bergeron, 2010; Bittle & Snider, 2006, p. 487; Parsons & McKenna, 2009, p. 197; Snider, 2000, p. 182). However, opposing viewpoints shared about the role of the Canadian state in regulating transnational capitalism illustrate the nature of the state as a contested discursive site, where groups participate in ideological struggles to define 'truths' about important concepts such as crime and punishment (Snider, 2000, p.180).

Reproducing the Neoliberal State

The amalgamation of the former Canadian International Development Agency and the Canadian Department of Foreign Affairs, which in March 2013 formed the Department of Foreign Affairs, Trade and Development (DFATD), likely presents a contributing factor to the dominance of knowledge claims advocating for trade-based state initiatives to promote international development. Peter MacArthur, Director General of the newly incorporated DFATD, provided

several examples of the strategies undertaken by the DFATD to promote foreign trade policies alongside international development efforts in Bangladesh:

Our Canadian High Commissioner to Bangladesh, Heather Cruden, is a member of a group of ambassadors resident in the country, which meets monthly with the deputy ministers of labour, foreign affairs and commerce, specifically on ready-made garment industry issues. [...] The Canadian High Commission also participated in stakeholder consultations regarding the minimum wage law in this sector and a needs assessment of the victims of the Rana Plaza. [...] The Government of Canada has also tabled statements through our high commission in Dhaka to two separate Government of Bangladesh standing parliamentary committee hearings that addressed safe work environments and proposed amendments to the Government of Bangladesh's labour law. Canada also intervened at the International Labour Organization's committee on the application of standards in June 2013, in Geneva. (Peter MacArthur, Foreign Affairs Committee, 28 April 2014, p. 2)

In addition to the work of the Canadian High Commission in Bangladesh, Committee members were made aware of the numerous trade-related international development initiatives undertaken by the Canadian government, including: the advice and guidance services offered by the Canadian National Contact Point to Canadian companies operating abroad (Duane McMullen, Human Rights Committee, 12 May 2014, p. 25); the monetary donations and policy advice given to the ILO Better Work Programme and the Bangladesh National Tripartite Plan of Action (Jane Stewart, Human Rights Committee, 12 May 2014, p. 36; Bob Kirke, Human Rights Committee, 8 June 2015, p. 85); and the corporate due diligence conditions attached to loans extended to Canadian businesses operating abroad through the state's export credit agency, Export Development Canada (Signi Schneider, Human Rights Committee, 8 June 2015, p. 50).

In October 2015 the leaders of the G7, including the Prime Minister of Canada, met in Germany to discuss intergovernmental action to support fair labour practices in global supply chains. The following statement from the G7 Summit Declaration confirmed the sentiments expressed in the Committee meetings presented above:

Trade and investment are key drivers of growth, jobs and sustainable development. Fostering global economic growth by reducing barriers to trade remains imperative and we reaffirm our commitment to keep markets open and fight all forms of protectionism, including through standstill and rollback. To that end, we support a further extension of the G20 standstill commitment and call on others to do the same. At the same time, we remain committed to reducing barriers to trade and to improving competitiveness by taking unilateral steps to liberalize our economies. (G7 Leaders Summit Declaration on Responsible Supply Chains, June 2015, pp. 3-4)

The statements shared here legitimise neoliberal privatized approaches towards international development, which presented private commercial activity as the only means for states to promote labour conditions and human rights abroad. The co-dependent relationship between the state and private corporations is vital for the reproduction of capitalist processes (Jessop, 1997), but there is a concern that shared interests between the private and public sphere can produce circumstances that position non-economic considerations as non-essential (Kramer et al., 2002; Michalowski & Kramer, 1987; Tombs & Whyte, 2015). The government initiatives mentioned herein are all non-binding in nature – Canadian companies are *encouraged* to seek advice from the Canadian government or to adopt recommended labour standards when operating abroad; however there are no legal or administrative penalties for failing to do so.

Under neoliberalism the mutual interest between states and corporations to maximize economic productivity position soft-law approaches as the most efficient means to achieve some sense of corporate accountability while at the same time support shared economic goals between the state and commercial enterprises. Although governments do not outright condone negligent or reckless business practices, market-oriented political and economic environments may produce circumstances where profit-seeking practices that endanger the lives of workers or members of the public are recklessly tolerated, as with the Rana Plaza disaster (Abelvik-Lawson, 2014; Bittle, 2015; Kramer, 2013; Rothe & Mullins, 2008; Raymond & Aulette, 1993). For example, the open market access to Global South nations that prioritize private wealth

production as the most efficient means to promote international development leaves little capacity for state agencies, NGOs and community-based civil society groups to resist multinational corporations that provide *some* economic income to impoverished communities, albeit under terrible working conditions and human rights abuses (Deegan & Islam, 2014; Soederberg, 2006, p. 91; Rahim & Alam, 2014). The following section discusses the implications of the urge to prioritize economic efficiency centralised in the state-corporate nexus, which reinforced corporate-led and voluntary CSR strategies as the best option for transnational corporate accountability.

III. (Re)defining Accountability

State regulations over business evolve to reflect dominant beliefs about the private sector that emerge within specific political-economic-cultural contexts (Dahlberg, 2014, Bittle, 2012; Howarth, 2009; Snider, 2000). In the case of the Bangladesh garment sector, state interventions over matters of transnational business were considered to be either unfeasible or out of place, unless they encouraged international trade. Issues of national sovereignty and conflicting cultural differences among nations have long been argued as significant challenges for legislating and applying standards over labour and human rights across national borders (Bair & Palpacuer, 2015; Gilbert & Russell, 2002; Koenig-Archibugi, 2004; Michalowski & Kramer, 1987). At the same time, there are a growing number of cases involving extraterritorial applications of civil and criminal law to extend legal responsibilities to corporations to respect human rights (Kohl 2014; Muchlinski, 2011; Stewart, 2014). For instance, a Toronto law firm on behalf of several Bangladeshi survivors of the Rana Plaza collapse recently filed a civil lawsuit against Loblaw Incorporated, the parent company of the Joe Fresh fashion brand of which some garments were

produced in the Rana Plaza factory. The lawsuit claims Loblaw was aware of the “extremely poor record” of workplace safety and the “significant and specific risk” to workers in their Bangladeshi supplier factories before the Rana Plaza factory collapsed, and “breached the duty of care [...] to take any reasonable steps to ensure the safety of the workers” (Rochon Genova LLP, 22 April 2015, as quoted in CBC News, 30 April 2015).

However, such cases are rare and often met with pushback from states and corporations which argue the ‘global regulatory gap’ – characterised by supposed stark differences in state enforcement capacities between regulatory authorities in Global North and South countries (Bair & Pulpacuer, 2015; Soederberg, 2006) – is best resolved through soft-law and non-binding approaches to regulate transnational capital. According to neoliberal common sense, extraterritorial cases against multinational corporations are unfeasible, overly complicated or too costly to achieve useful outcomes (Delaney, Montesano, & Burchielli, 2013). Meanwhile, compliance-oriented approaches that coach and guide ‘naturally self-regulating’ businesses are understood as more legally and economically efficient than legally-binding requirements (Tombs & Whyte, 2003a; Sethi, 2003). Compliance approaches towards regulation are based on the premise that states can encourage multinational corporations to voluntarily adopt rights-based due diligence practices as the best strategy to achieve “good corporate practices” globally (Bittle & Snider, 2013; Soederberg, 2006, p. 87).

Ironically, states of the Global North are typically in the best position to leverage their political and economic influence and develop legal accountability mechanisms to ensure corporations obey internationally-recognized standards of human rights and labour conditions (Beale, 2009; Bittle, 2015; Michalowski & Kramer, 1987). However, rhetoric opposing binding transnational accountability strategies is particularly prominent from the same voices that

advocate for closer trade-based ties among countries. For instance, some developing countries are obligated to restructure their political and economic systems to facilitate open access for Western businesses and encourage capitalist growth as a requirement for accepting loans extended by the IMF, WTO and World Bank institutions (Friedrichs & Friedrichs, 2002; Friedrichs & Rothe, 2013; MacKenzie, 2006; Rothe, 2010). Evidently global capitalist systems do not signify a complete loss of state powers, but rather a change in the roles of states to *enable* transnational capital; but it is the commitment to beliefs that states *are* powerless to regulate private industry where the supposed ‘global regulatory gap’ – an essential component of neoliberal capitalism – is reproduced.

Constructing the Global Regulatory Gap

In the case of the Bangladesh garment sector, Canadian businesses and government institutions suggested extraterritorial laws over Canadian businesses are too difficult to enforce in offshore supplier factories, especially in places like Bangladesh where, according to dominant perspectives, the culture of labour standards are not yet at par with Canadian standards. From this perspective state authorities in Bangladesh are unmotivated to enforce labour code standards out of fear that doing so would drive foreign business away from the country’s vital garment sector. These claims left compliance-oriented, corporate-led regulation as the most appropriate means to fill the ‘global regulatory gap’ in the Bangladesh garment industry.

MP Lois Brown of the Conservative Party of Canada described the cultural differences of working conditions she observed on a trip to Bangladesh:

I noted that the construction is done with bamboo scaffolding. It was an eye-opener to me because I've worked in workplace safety for a number of years. So when I see people on scaffolding made out of bamboo and wearing flip-flops, you recognize that we're dealing with a completely different set of circumstances. Do you think that the Government of

Canada can have an encouragement to the Government of Bangladesh to change some of these, and how hopeful are you that there are people there who are willing to listen? (Lois Brown, CPC MP, Foreign Affairs Committee, 28 May 2013, p. 6)

One particular exchange noting the differences in work cultures between Canada and Bangladesh also stood out in a meeting of the Human Rights Committee between Senator Eaton, Bob Kirke (a representative from the Canadian Apparel Federation), and Barry Laxer (the president of a Canadian-based clothing company with offshore suppliers in Bangladesh):

Senator Eaton: How effective are the steps they're all taking?

Mr. Kirke: As Barry said, these are significant steps. They are looking at the two primary factors in Bangladesh: fire safety and structural integrity. So they are good. Are they perfect? Well, this is Bangladesh. They are a significant step forward, for sure.

Senator Eaton: What you're saying is that, basically, there is nothing we can do.

Mr. Laxer: There is. If you want to dedicate —

Senator Eaton: But Mr. Kirke is saying that he hasn't laid out anything positive he could recommend we do. It's very, 'Well, you know . . .'

(Exchange in Human Rights Committee, 8 June 2015, p. 79)

As illustrated in Senator Eaton's abrupt rejection of Mr. Laxer's proposal, the dominant understanding attributed dangerous factory conditions to the weak regulatory system in Bangladesh, and ignored the responsibility of retail companies for knowingly purchasing from supplier factories with unsafe working conditions. Another politician argued it was too difficult to compare the working conditions in Canada versus those in Bangladesh because of the cultural differences between the nations:

This is the issue between a developed country and a developing country. Workers do not enjoy the same rights that we have in Canada. [...] I think that's the difference – one is a developed country that's already been through all this, and it's taken us a certain amount of time to get there. [...] How do you change the mindset of the people responsible? The factory owners, the managers, to treat their workers with dignity? [...] The conditions have existed, and continued, and it's kind of accepted. (Interview #5, Politician)

An academic with a background in international development also expressed doubts whether

local authorities could be coerced to adopt standards arising from a foreign culture:

Canada can, without a doubt, help in setting the standards, but the second, more critical question is whether the government of Bangladesh is willing to impose or implement or enforce the standard. That is a more difficult political question, and, on that, the answer rests outside of Canada. There has been no instance in history where external actors have been able to enact fundamental governance reforms in a country. That willingness has to come from the country itself. (Professor Syed Rahman, Human Rights Committee, 15 June 2015, p. 77)

Concerns were also raised that the “extremely corrupt [political] environment” (Peter MacArthur, Foreign Affairs Committee, 28 April 2014, p. 3) of Bangladesh poses a significant challenge for effective enforcement of local and national laws on factory safety and labour standards (Chris MacDonald, Foreign Affairs Committee, 28 May 2013, p. 11; Interview #4, Government Official). In spite of these concerns, the question of whether Canadian companies should even conduct businesses in foreign locales where corruption is rampant and there is no guarantee for the safety of workers was raised in the data in only one instance, by a representative of a NGO who suggested:

I think a lot of those arguments are an excuse. I can't speak for all sectors or all companies, but ultimately, if you can't be a profitable business without abusing peoples' rights, maybe you shouldn't be a business. I think ultimately there is a way to create a world and an international trade system and local economies that do not rely on exploiting workers, the environment, or abusing the people in communities. (Interview #9, NGO Representative)

According to Canadian government officials, efforts to impose external pressure on authorities Bangladesh to meet and enforce labour standards equivalent to those in Western workplaces were futile and not worth encouraging. By attributing weak regulatory enforcement to culturally-based differences between Global North and South countries, multinational corporations and Western states are absolved of any responsibility to prevent exploitive and dangerous working conditions abroad (Harris-Short, 2003; Soederberg, 2012, p. 956). As Pearce

and Tombs suggest regarding the case of the Union-Carbide factory explosion in Bhopal, India, blaming cultural ‘backwardness’ for poor regulatory frameworks in developing countries is tinged with racism and perpetuates the idea that unsafe working conditions in the Global South are inevitable ‘risks’ in global capitalism, for which Global North states and corporations are relatively powerless to prevent (Pearce & Tombs, 1989).

Transnational legalistic and jurisdictional issues were also raised by both private and public sector actors as posing considerable obstacles in the development and implementation of extraterritorial standards on Canadian companies operating abroad. A government official raised the concern that enforcing Canadian labour standards in other nations infringes upon national sovereignty, and provided the following example:

[W]e wouldn’t want Saudi Arabia to apply their standards of law to the Canadian legal system. I wouldn’t want them coming over and causing a company that’s operating in Canada under Canadian law doing everything perfectly fine, to shut down and pay the Saudi government millions of dollars because they’re not applying gender segregation laws. For us, we may think, ‘Well everybody should be doing this anyway’. But that is imposing our values on another country and they may see things differently. (Interview #4, Government Official)

Issues of respecting local cultures and national sovereignty in Global South countries are common arguments made against enacting new legislation to enforce internationally-recognized human rights and labour standards across jurisdictions (Friedrichs, 2007b; Harris-Short, 2003; Gilbert & Russell, 2002). Unfortunately, existing global political and economic frameworks that institutionalize world trade fail to consider the potential to also legislate international human rights, which suggests trade policies are not so much about improving social conditions worldwide as they are about facilitating capitalist ventures in the Global South (Soederberg, 2006).

Highlighting supposed contrasts in workplace cultures between Canada and Bangladesh

also implies that workplace safety conditions in Canada are significantly better than those in Bangladesh; while this is true, labour/unions and critical corporate crime scholars argue efforts to enforce labour rights in Canada and other countries in the ‘developed world’ are constantly undermined by neoliberal arguments which claim that imposing responsibilities on businesses to comply with labour standards is costly, legalistically complicated and anti-business (Bittle & Snider, 2006; Almond, 2013; Laufer, 1996; Nanda, 2011). Thus arguments against state interventions in markets – even those that pertain to workers’ safety and wellbeing – are relevant to not only discussions of regulating global capitalism, but of neoliberal capitalism generally.

An example of neoliberal-based arguments against state regulations over labour conditions was expressed by a Canadian public sector official:

How do you investigate? Do you send the RCMP over to Bangladesh to undertake or investigate whether or not they’ve been following fire safety standards? [...] The issue that happened in Indonesia about a fire that killed 50-60 people, that was a fire safety issue. They didn’t have enough doors and escape routes, and the doors were locked. That’s the kind of granular level you’d have to get into for creating this law. So, do you send in the RCMP to investigate a possible breach of this, for how many thousands of Canadian companies working abroad? (Interview #4, Government Official)

One MP representing the Conservative Party expressed concern that setting state-mandated CSR requirements within international trade agreements would create a liability for the Canadian government in the event that violations of such mandates do occur:

Don't get me wrong, I think the responsibility for workers' rights and construction quality does rest with the government, but it's not the Canadian government. I don't think we want to be in the position of policing the actions of nations around the world in a global economy. Frankly, this sounds like business, which generally looks for greater freedom to conduct its business, now scurrying for government protection to double-check or review when things do go horribly wrong. [...] It's not the role of the Government of Canada or any level of government in this country to police your actions or to sign off on what you're doing and be held responsible. There are just too many actors in a free and open market to source products from around the world to suggest that at the end of the day your company is off the hook if something goes wrong and the Canadian government

is partially liable. (MP John Williamson, Foreign Affairs Committee, 28 May 2013, p.8) In this example, ‘policing’ corporate conduct outside Canadian borders was described as risky for the Canadian government and led to the assumption that only companies are in the best position to regulate their own actions.

The dominant view in the data towards binding regulations over business reflects the neoliberal common sense that the market, driven by competitiveness to “naturally produce winners and losers” (Glasbeek, 2002, p. 18), can effectively self-regulate (Tombs & Whyte, 2003a; Sethi, 2003). ‘Soft-law’ approaches to corporate accountability such as those currently endorsed by the Canadian National Contact Point, the ILO, and Export Development Canada do not place sanctions on companies in the event of a violation, and are typically understood as cooperation-based agreements in which states guide, rather than obligate, companies towards carrying out socially responsible considerations in their business operations (Bittle, 2015, p. 142; Pariotti, 2009; Shamir, 2004; Tombs & Whyte, 2015, p. 140). Voluntary and corporate-led CSR initiatives often receive widespread praise – typically from corporate and industry think-tanks and economic ‘experts’ of Global North countries – for providing flexible and cost-effective alternatives for regulating offshore corporate conduct in place of transnational state sanctions that are seen as overly complicated and costly (Kohl, 2014; Michalowski & Kramer, 1987; Shamir, 2004; Sklair & Miller, 2010).

Circling Back to Corporate Self-Regulation

Multiple state officials and corporate representatives claimed that corporate-led CSR standards are equivalent – if not even more demanding – than state regulatory systems. A government official representing DFATD noted, “As the private standards start to have a greater impact on the market, it still has the effect, even if the government has been unable to carry out its proper

functions of governance.” (Duane McMullen, Human Rights Committee, 12 May 2014, p. 23)

Chris MacDonald, a business professor at a Canadian university, made the following argument in favour of private CSR measures:

In business, opportunities to take unfair advantage are common, and regulation can only go so far towards remedying this. Government cannot be everywhere, and if it could be, we wouldn't want it to be. So responsible companies seek to go beyond the letter of the law both because it's the right thing to do and to forestall being the target of additional, potentially burdensome regulations. [...] Indeed, I think the burden of proof rightly rests on the shoulders of companies that do business in faraway places to assure themselves and Canadians that they are being particularly responsible in under-regulated contexts. (Chris MacDonald, Foreign Affairs Committee, 28 May 2013, p.11)

Corporate-led, self-regulatory CSR strategies were conceptualized as rigorous enough to fill existing voids in the global regulatory system. Signi Schneider's description of the corporate due diligence expectations of Export Development Canada echoed this sentiment:

If national law is higher in a particular area, then you need to match that. My experience has been that sometimes when national law is not particularly mature or well enforced, in some cases, companies can make up that gap themselves quite well, because they're given the latitude under the regulatory regime. (Signi Schneider, Human Rights Committee, 8 June 2015, p. 57)

Furthermore, soft-law approaches to corporate compliance were described as effective remediation options to resolve violations or conflicts between local communities and multinational businesses. A government official explained the role of the Canadian National Contact Point as the “dialogue-facilitator” between Canadian companies and foreign complainants: “It's not finding right or wrong, it's not casting judgement [...] [NCPs] try to bring members of the community and businesses together to solve their issues in an amicable way.” (Interview #4, Government Official) Similarly, Export Development Canada's approach towards non-compliant companies seeks to encourage cooperation instead of punishment:

Our approach has always been to say, ‘Let's rectify the situation. Let's use our leverage to make the situation better versus walking.’ We generally try to do that unless we don't

have cooperation from the company that we're doing the financing with. (Signi Schneider, Human Rights Committee, 8 June 2015, p. 52)

The assumption that the Canadian government should support companies in achieving labour standards, rather than enforcing laws where required, is evident in an exchange between New Democratic Party MP Paul Dewar and Bob Chant, a representative of Loblaw Companies:

Paul Dewar: Do you still believe that government has a role in this? That role, as we talked about last year, was simply to adhere to basic principles of CSR to help companies.

Bob Chant: I'm not sure if your proposition is that the Government of Canada has a role to enforce—

Paul Dewar: No, no, let me be clear. It's to facilitate Canadian companies being able to act in a corporately responsible way. It's a partnership.

Bob Chant: Sure, the government can play a role. I think the high commission in Bangladesh, in Dhaka, does exactly that. They could be held up as a model for promoting corporate social responsibility in developing countries.

(Exchange in Foreign Affairs Committee, 28 April 2014, p. 13)

The examples presented above reflect a dominant adherence to compliance-oriented approaches that position the role of the state to *persuade* corporations to comply with the law (Gobert & Punch, 2003, p. 316; Shamir, 2004; Tombs & Whyte, 2003a). The flexibility of self-regulatory CSR frameworks was described as a positive feature of the soft-law approach which enables companies to “go beyond those prescribed by the law” in ways that can adapt to the unique cultural and social contexts of operating in foreign locations, while also circumventing the legalistic challenges posed by enforcing strict regulations in other jurisdictions (Albareda, 2008, p. 433). However, these claims about self-regulating markets rely on the problematic assumption that businesses are moral entities capable of embodying the ‘good corporate citizen’ that will voluntarily reconcile undesirable social circumstances without external oversight (Sethi, 2003; Shamir, 2004). An NGO representative expressed doubts about the enforceability of CSR-

based approaches to corporate accountability:

One of the key problems is that a lot of international law is soft law, so it's not enforced. And the Canadian CSR Strategy relies entirely on voluntary CSR standards. So there is not any independent oversight to monitor when companies are not living up to those responsibilities and there's virtually no way to hold companies to account or have any consequences if they are not respecting human rights. (Interview #9, NGO Representative)

Academics and rights-based NGOs have made similar arguments against voluntary CSR initiatives, especially in light of multiple examples of corporate 'scandals' involving companies that on paper adhered to CSR codes of conduct, but are ultimately 'amoral calculators' whose primary goal is the financial bottom-line (Glasbeek, 2002; Tombs & Whyte, 2015, p. 146). As such, voluntary CSR strategies enable businesses to evade public scrutiny and accountability while maintaining the legitimacy of capitalist projects even when they pose harms to social wellbeing (Bittle, 2015; Harris, 2011; Tombs & Whyte, 2015, p. 124). Private corporate codes of conduct are problematic because they allow businesses to vaguely define the scope of corporate social responsibilities on their own terms (Cernic, 2008; Parsons & McKenna, 2009; Shamir, 2004), and are not required to ensure that remedial strategies are available to victims of corporate offending, meaning there are no guarantees that corporations will actually implement their own self-defined guidelines for ethical conduct (Albareda, 2008; Barkemeyer, 2009; Delaney, Montesano, & Burchielli, 2013; Hart, 2010; Sethi, 2003, 2014; Soederberg, 2006, 2007; Tombs & Whyte, 2003a; Voiculescu, 2011).

Several voices in the Committee hearings – particularly those speaking on behalf of rights-based NGOs – expressed similar doubts as those raised by corporate crime scholars about relying on voluntary and corporate-led CSR initiatives to improve working conditions in Bangladeshi factories. And yet despite knowledge of the criticisms detailing the weaknesses of voluntary CSR strategies, dominant voices were reluctant to stray *too* far from the status quo of

compliance-oriented approaches and left little room to conceptualize the possibility of state-mandated accountability strategies. For instance, a representative from the ILO stated:

The experiment with self-regulation in the sense of codes of practice that are voluntarily implemented in supply chains in the manner they have been has not driven the kind of improvement that was intended, expected or, indeed, demanded. There is wide recognition in the industry that simply relying on these voluntary social audits is not a productive way forward. (Dan Rees, Human Rights Committee, 18 June 2015, p. 111)

A similar criticism was put forth by an academic:

Some companies are introducing codes of conduct, as you heard the Loblaws person talk about, for their suppliers in order to protect their own reputations. But the practice of CSR must be seen in the context of profit maximization. [...] Building a stable industry requires a stable workforce and a secure workplace, but alas, the garment industry is fickle and especially susceptible to marginal variations in cost. An increase of 10 cents in the cost of production of a shirt can lead a retailer to look elsewhere for their supply. Unless there are strong pressures — and I stress the word “strong” — there is little incentive for owners to implement concepts like CSR. (Syed Rahman, Human Rights Committee, 15 June 2015, p. 75)

Professor Rahman also reiterated, “any voluntary arrangement can be broken without any fear of persecution” (Professor Syed Rahman, Human Rights Committee, 15 June 2015, p. 79).

In spite of these criticisms, subsequent discussions immediately shifted to concerns about the negative impact of binding regulations for the employment status of garment workers in the industry. For instance Senator Ataulhjan expressed, “I’m a great believer in keeping the factories in Bangladesh because it supports over 3 million women” (p. 80) and then Senator Hubley raised concerns about how factory closures arising from “bad press” could have on the factory workers (p. 81).

Dominant framings of transnational corporate harms perpetuated by state and corporate voices rely on the assumptions that harms perpetuated in the name of business are “regrettable necessities” inherent in capital accumulation, which fails to question the deliberate decisions made by corporations to prioritize profits over all other social considerations, as well as the role

of Global North states in reinforcing self-regulating markets (Bittle & Snider, 2006, p. 477; Lynch & Michalowski, 2006, p. 193; Pearce, 2001; Steinzor, 2014, p. 224; Tombs & Whyte, 2003a, p. 9).

The CSR 'Fix'

According to the dominant views, the Accord on Fire and Building Safety in Bangladesh (the Accord) overcomes the economic, developmental, cultural, and legal challenges associated with enforcing transnational regulations in the garment sector while also incorporating aspects of external accountability to appease public pressures for better oversight over corporate supply chains. However, as the following demonstrates, questions remain as to how the Accord actually benefits factory garment workers.

As outlined in the literature review, signatory companies to the Accord voluntarily agree to have their supplier factories inspected by safety inspectors and engineers hired by the Accord Steering Committee, and to implement the inspectors' recommendations for safety improvements. The Accord is a partnership between retail companies, trade unions, and NGO witnesses, in which signatory companies are legally bound to the terms of the agreement. A witness from Loblaw Companies, one of only two Canadian companies to have signed the Accord, described the program to members of the Human Rights Committee:

This legally binding five-year agreement is a comprehensive initiative to improve working conditions in the Bangladeshi garment industry. It includes independent safety inspections at factories and provides transparency and accountability with public reporting results, which are posted online and released to international media. When safety issues are identified, vendors have to commit to addressing the deficiencies while helping ensure the factory workers are paid their salaries, thereby protecting workers from income interruption. (Bob Chant, Human Rights Committee, 15 June 2015, p. 57)

The binding nature of the Accord was emphasized by a number of witnesses as a significant

advancement from previous CSR strategies to improve working conditions in the industry:

We believe that the dispute resolution mechanism in the Accord sets it apart from previous failed attempts at voluntary programs in Bangladesh without imposing undue risks for signatory companies. The binding nature of the dispute resolution mechanism in the Accord ensures accountability to the commitments contained in it. This accountability gives investors assurance that the signatories are committed to managing the risks associated with sourcing from Bangladesh. (Peter Chapman, Foreign Affairs Committee, 28 May 2013, p.2)

From the Canadian perspective, it is important to support the Accord publicly more than is done now, for many reasons. One particular reason is that the Accord, being legally binding on the retailers, doesn't only put the onus on the Bangladeshi government or the Bangladeshi factory owners to do X, Y and Z, but also asks the retailers to hold up their end of the bargain. (Professor Ananya Mukherjee-Reed, Human Rights Committee, 12 May 2014, p. 42)

From my personal experience, because I met with Accord two or three weeks ago, they are very serious about their criteria for building safety. They're no nonsense, and you have to comply. There are no halfway measures. There is none of this partnership stuff that a lot of the agencies used to do: If you join and if you pay, we will make sure that over the next year or two you're compliant. Either your building is safe to walk into and has all the necessary things or it doesn't. That's where I find Accord to be very strong and very good at what they're doing. (Barry Laxer, Human Rights Committee, 8 June 2015, p. 81)

The Accord was described as a legally-binding mechanism for improving corporate accountability that is more transparent, binding, and progressive than previous corporate-led initiatives. On the surface these assumptions seem accurate, as the terms of the Accord contain legal obligations for signatory companies and their supplier factories, especially regarding publically disclosing and implementing recommendations set out in third-party factory inspection reports. However, the details of the agreement's terms and recent reports from labour-based NGOs suggest a different sort of 'accountability'.

A primary component of the Accord involves the implementation of "Corrective Action Plans" that supplier factories are required to adopt at the recommendation of third-party factory

inspectors “according to a schedule that is mandatory and time-bound” (Bangladesh Accord, 2013, p. 4 para. 12). In particular, supplier factories have six months to implement the Corrective Action Plans before legal action can be taken against the companies and supplier factories involved (Bangladesh Accord, 2013, p. 4 article 13). A statement by the Workers’ Rights Consortium, a non-governmental signatory witness to the Accord, explains these obligations:

[T]he failure by a company to adhere to its obligations may result in an adverse, binding arbitral award which may then be enforced by a court in the company’s home country. Such an award could, for example, require the company to comply with its obligations to help pay for the installation of safety features such as emergency exits found necessary for one of its supplier factories to operate safely. (Hensler & Blasi, 2013, p. 3)

These statements and the comments about the Accord shared in the Committee meetings suggest that signatory companies are legally obligated to provide financial assistance to fund repairs in their supplier factories. However, a closer reading of the agreement reveals that the Accord places greater legally-binding obligations on the supplier factories – not the signatory companies directly – in the event of a violation of the signatory agreement.

First, there are no clearly defined expectations for signatory companies to provide financial support to supplier factories to implement the changes recommended by inspectors: “Participating brands and retailers will negotiate commercial terms with their suppliers which ensure that it is financially feasible for the factories to maintain safe workplaces and comply with upgrade and remediation requirements instituted by the Safety Inspector”. Negotiable options may include “joint investments, providing loans, accessing donor or government support, offering business incentives or through paying for renovations directly” at the discretion of the signatory companies (Bangladesh Accord, 2013, p. 6 article 22). However, an Aggregate Report published by the Steering Committee of the Accord notes “it is unclear to the Accord how many suppliers are actually receiving assistance and what forms of assistance are being received”, as

signatory companies and supplier factories are not obligated to publicly disclose how these building repairs are financed (Bangladesh Accord Secretariat, 2 February 2016, p. 16). Details of the Accord suggest the only financial contributions signatory companies are obligated to pay are those required to fund the activities of the Accord Steering Committee, Safety Inspector, and Training Coordinators (Bangladesh Accord Foundation, 2013, p. 6 article 24). Thus ‘accountability’ for building safety repairs are only vaguely outlined, which places most of the onus on factory managers and owners to locate their own sources of funding to make the necessary repairs in compliance with Accord standards. In light of these considerations, it may serve to remind readers of the claims from the Committee sessions that praised the Accord for ensuring retail companies “hold up their end of the bargain” to facilitate safer working conditions in Bangladesh (Professor Ananya Mukherjee-Reed, Human Rights Committee, 12 May 2014, p. 42).

Second, signatory companies are not subject to immediate sanctions in the event that Corrective Action Plans are not implemented. The protocol for failing to implement inspectors’ recommendations on a timely basis is to “expedite prompt legal action” against the supplier factory owner (Bangladesh Accord Foundation, 2013, p. 6, article 20). On the other hand, the ‘legal action’ required of the signatory companies associated with violating supplier factories is to terminate any contracts with continually non-compliant factories (Bangladesh Accord Foundation, 2013, p. 6, article 21). As of July 2016, 34 supplier factories have been forced to end their relationships with retail companies for this reason (Bangladesh Accord Secretariat, 22 July 2016), while zero signatory companies have publicly disclosed any relation to non-compliant factories, as “data and information linking specific companies to specific factories will be kept confidential” from members of the public and consumers (Bangladesh Accord Foundation, 2013,

p. 5 article 19). This particular version of ‘accountability’ punishes non-compliant supplier factories, while signatory companies are merely required to quietly find new suppliers. This significant detail regarding accountability for factory safety repairs, along with other ‘binding’ considerations in the terms of the Accord, were overlooked throughout the Committee sessions.

Considerable doubt is raised about whose interests the Accord serves when one considers that the financial costs of undertaking mandated building repairs as well as the threat of terminated supplier contracts are shouldered by local managers and workers of supplier factories. To date, there has been no legal action taken against a signatory company by the Accord Steering Committee – there have, however, been numerous actions taken against the local managers and owners whose factories are deemed non-compliant by Accord inspectors. A report by the Clean Clothes Campaign, a non-governmental signatory witness to the Accord, reported that as of the beginning of 2016, only 8 out of 1,403 of the factories that were inspected in 2014 have corrected all identified hazards, 57 factories have not completed all repairs but are ‘on track’, and “the remaining 1,338 factories are behind schedule in getting some or all of their repairs done.” (Clean Clothes Campaign & International Labor Rights Forum, 28 April 2016). And only in 49 cases have signatory brands reported that some form of direct assistance has been provided to their supplier factories to fund the mandated Corrective Action Plans, while the majority of cases are reported as being self-financed by the suppliers (Bangladesh Accord Secretariat, 22 July 2016).

According to the Bangladesh Garment Manufacturers and Exporters Association, lack of funds to finance building repairs is a significant problem for supplier factories to implement the required changes set out in the Corrective Action Plans (Clean Clothes Campaign & International Labor Rights Forum, 28 April 2016). When probed about why no legal action has

been taken against the signatory companies that have failed to provide assistance to those factories deemed beyond the maximum six month period following an inspection, a representative from the Clean Clothes Campaign explained: “Legal action is a very long process. If we can reach the same faster through public pressure that will be better for the workers.”¹⁰ (Personal correspondence, 18 April 2016)

As a result of having to bear most of the financial burdens for complying with Accord standards, workers at supplier factories have reported facing downward pressures from factory managers and owners to remain silent on matters of dangerous working conditions. Factory workers reported managers “seemed to know in advance of inspection visits”, and some workers claim they were temporarily given safety equipment prior to the arrival of safety inspectors or corporate representatives and were “warned not to complain about the factory when asked” (Human Rights Watch, 2015, p. 60). In a report published by the International Labor Rights Forum, a garment worker described the new struggles related to working in a factory that supplies goods to signatory companies of the Accord: “Our factory was inspected by the Accord. The owners are saying that because of you we have to spend all this money on renovating the factory or otherwise the Accord will force us to close the factory.” (Mim, in Claeson, 2015, p. 80) In addition, workers in Accord-related factories are now subject to retaliatory threats from factory managers and owners for speaking out against poor safety conditions. ‘Window-dressing’ strategies to produce the appearance of compliance for inspectors are not atypical in CSR regimes that lack independent oversight mechanisms (Haar & Keune, 2014; Shamir, 2005; Tombs & Whyte, 2015, p. 119).

¹⁰ This response was gathered from an email sent to the Clean Clothes Campaign about a general inquiry in the enforcement aspect of the Accord. Individual representatives from this organization were not contacted for a research interview.

Despite claims that the Accord promises enhanced and progressive accountability mechanisms compared to previous CSR strategies, the workers at the bottom of the supply chain continue to shoulder the burdens of regulatory regimes that claim to support human rights but are primarily motivated to maintain corporate reputation and economic sustainability. A government official from the DFATD openly identified corporate reputation as a key motivator for businesses to adopt CSR projects:

I think the companies, Loblaw in this particular case, are joining the Accord in order to be known to be taking corrective action. Therefore, belonging to the Accord or the Alliance is seen by companies as showing to the outside world that they are becoming more responsible in where they source product. [...] I know from talking to companies that they are joining these Accords and Alliances to collectively take the kind of action that will satisfy consumers who will not buy products with a guilty conscience. (Peter MacArthur, DFATD, Human Rights Committee 12 May 2014, pp. 18-19)

The Bangladesh Accord represents a legitimization of the problematic relations of power between supplier factories and retail companies that creates additional requirements and liabilities on supplier factories in comparison to the responsibilities assigned to signatory companies. Private CSR agreements like the Accord provide opportunities for retail companies to manage their public reputations following the highly publicized Rana Plaza disaster. The ‘binding’ aspect of the Accord and its supposed assurances to improve factory safety conditions fail to consider essential components for proper workplace health and safety regulations, including those that offer legal protections to workers’ rights to unionize and refuse dangerous work, independent oversight authorities to inspect and monitor working conditions and enforceable sanctions against violating employers (Bittle, 2015, p. 144; Bittle & Snider, 2011; Claeson, 2015; Noble, 1995; Tombs & Whyte, 2007; Tucker, 1995). Rigorous mechanisms that would hold signatory companies to higher standards of transparency and accountability in their supply chains were understood to be too legally difficult and economically disadvantageous to

enforce, which confirms the problematic yet recurring hesitation towards holding the rich and powerful accountable for recklessly negligent decisions that cause widespread harms (Lynch & Michalowski, 2006, p.75; Steinzor, 2014, p. 225). Unfortunately, the group that bears the brunt of these downward pressures are the garment workers, whose wellbeing, rather ironically, is set out as the primary concerns of the Accord and the Committee sessions on global supply chain accountability.

Conclusion: Summary of Findings

This chapter explored the economic, political, and legal considerations that framed discussions of transnational corporate accountability measures to improve workplace safety standards in the Bangladesh garment industry. A ‘regime of truth’ based on neoliberal beliefs of market fundamentalism and the ‘good corporate citizen’ defined the scope of an appropriate regulatory framework for enhanced accountability over global supply chains. Dominant voices – primarily from the corporate and public sectors – argued that efforts to improve the working conditions in the Bangladesh garment industry must not disrupt the financial profitability of multinational retail companies in order to protect the employment opportunities of female garment workers. A focus on economic-based approaches towards international development reinforced the responsibility of the Canadian state to encourage the flow of transnational capital. Soft-law regulatory frameworks based on principles of CSR were constructed as the best solution to resolve the ‘global regulatory gap’ that was attributed to irreconcilable differences in workplace cultures and jurisdictional clashes between Bangladesh and Canada.

The (re-)acceptance of corporate-led CSR strategies as the most feasible means to regulate transnational corporate conduct did not emerge without resistances. Committee

members and witnesses from NGOs, academia, and labour-based organizations expressed skepticism about whether the purported ‘trickle-down’ benefits of the garment sector in Bangladesh and non-binding CSR initiatives can actually benefit the industry’s predominantly female workforce. However, these concerns were dominated by beliefs by corporate representatives, government officials and some Committee members who maintained that improving the lives of garment workers was only achievable through flexible, non-binding regulatory mechanisms. Ultimately the dominant knowledge claims that legitimized corporate-centric accountability mechanisms illustrate the resilience of neoliberalism in reproducing the (de)regulatory circumstances that preceded the Rana Plaza collapse.

Chapter 6: Conclusion

A Study in Conceptualizing Transnational Corporate Harm and Accountability

From the outset of this study a critical criminological view was adopted to “move beyond a juridical or quasi-juridical framework” (Michalowski 2010, p. 19) that narrowly defines crimes by legalistic definitions, and to direct the “criminological gaze” (Michalowski, 2010, p. 21) at the whole body of social harms perpetuated by multinational corporations – some of society’s most powerful actors and institutions. Corporations have increasingly become subject to much public, academic, and even juridical scrutiny (Braithwaite, 1985; Garrett, 2011; Piquero, Carmichael, & Piquero, 2008) following widely publicized ‘debacles’ of corporate capitalism akin to the Westrays (Bittle, 2012), Enrons (Soederberg, 2008), Bhopals (Pearce & Tombs, 1998a) – and now, the Rana Plazas – that have become far too familiar in our histories.

Yet the idea of the ‘criminal’ corporation, with inherent ‘criminogenic tendencies’ rooted in its goals of maximum profits (Glasbeek, 2007; Pearce, 1993; Pemberton, 2005; Steinzor, 2014; Tombs & Whyte, 2015; Vaughan, 1982), as being responsible for the aforementioned disasters seems to evade popular discussions outside of the rare criminal case and corporate crime literature. The present study contributes to the discipline of criminology by exploring the political, economic, and cultural assumptions involved in the ongoing social processes of defining who and what in society are considered ‘criminal’ (Bittle, 2012; Lynch & Michalowski, 2006). Critical discourse analysis was employed to explore the socially constituted processes through which wrongful acts committed or at the very least recklessly tolerated by multinational corporations were legitimized and situated outside the realm of criminality (Bittle & Snider, 2015; Frank, 1983; Snider, 2000).

Drawing upon Foucauldian concepts of knowledge production and Gramscian ideas of

hegemonic negotiation, the thesis identified the dominant knowledge claims that characterized discussions about the regulation of corporations in the Rana Plaza disaster. Addressing safety concerns in supplier factories was important to minimize the risks to workers' lives, but primarily to repair the compromised reputations of retail companies and re-establish consumer and investor confidence in the industry. Regulations or binding standards over factory safety conditions that could stifle the economic performance of the industry and discourage multinational retail companies from operating in Bangladesh was ironically considered to be detrimental for the wellbeing of financially-vulnerable female garment workers. Concern for the economic sustainability of the garment industry secured neoliberal beliefs that view multinational corporate activity as an essential component of advancing international development in Global South nations (Baram, 2009; Soederberg, 2006). Thus flexible trade agreements between Global North and South countries were deemed necessary for the Canadian state to facilitate international development agendas abroad.

Market fundamentalist perspectives also framed poor factory safety conditions in supplier factories as inevitable risks for global economic growth, which served to naturalize industrial disasters and downplay corporate responsibility for faster and cheaper production that so often renders workplace safety standards vulnerable (Tombs, 1995; Tombs & Whyte, 2007). A global 'regulatory gap' was identified wherein both the government of Bangladesh and the Canadian government were perceived to be incapable of effectively implementing and enforcing state-mandated CSR regulations. At the same time, assurances had to be made to convince consumers, investors, and the wider public that Canadian businesses were making some effort to improve working conditions in their supplier factories. Ultimately, discussions about holding Canadian companies accountable for conditions in their supply chains remained committed to the

neoliberal doctrine that multinational corporations, as the purveyors of social welfare operating with good intentions and natural capabilities to self-regulate, should not be subject to any regulations that departed too much from pre-existing forms of compliance-based, voluntary responsibility initiatives.

Passive Revolution of CSR: What's Changed?

Drawing upon a Gramscian-Foucauldian approach towards the reproduction of neoliberal hegemony, several conclusions can be drawn from the dominant knowledge claims identified in the study's findings. The Bangladesh Accord was understood by a number of actors across corporate, state, and civil society groups as providing the definitive solution to enhance factory conditions without sacrificing the all-important economic performance of the industry. However, the Accord actually shifts responsibility for maintaining factory safety conditions almost entirely onto factory managers and owners, which creates additional downwards pressures on factory workers to produce the same amount of clothing on even smaller profit margins. Unfortunately, these downwards pressures to maximize productivity constitute a significant underlying cause of safety crimes (Hills, 1987a; Tombs & Whyte, 2007), thereby reproducing the very circumstances that preceded the Rana Plaza disaster.

Gramsci's concept of passive revolution is relevant in cases where corporate-led mechanisms of accountability are re-introduced and legitimised to reconcile the negative publicity and concerns about the consequences of capitalist greed (Gill, 2015, p. xvi; Gramsci, 2000, p. 247; Jones, 2006; Simon, 2015; Soederberg, 2006, p. 49; Wanner, 2015). The prevalence of voluntary CSR strategies like the Accord represent a "revolution from above" (Simons, 2015, p. 47) in which the loudest voices presented arguments in support of pre-existing

capitalist principles. Dangerous working conditions resulting from reckless capitalist production processes were accepted as inevitable for achieving economic growth in impoverished countries and therefore minimized the pressures for binding state regulations over transnational business. The recurring mantra about the women of Bangladesh needing the economic income provided by companies served to re-establish the moral legitimacy of multinational corporations despite their complicity in recklessly tolerating unsafe and exploitive working conditions (Tombs & Whyte, 2009, p.105).

Dominant adherence to the belief of ‘good corporate citizenship’ deflected any ideas about corporate ‘harm’, ‘wrongdoing’, ‘greed’, and most certainly ‘criminality’ from entering common-sense assumptions about global capitalist development (Friedrichs & Rothe, 2013; Rothe & Friedrichs, 2015; Pakes, 2013). The concerns about “the underlying causes of corporate crime, including class-based exploitation that is fundamental to capitalism” (Bittle & Snider, 2011, p. 375; Bittle, 2015) were acknowledged by only a handful of speakers, but these claims were not fully incorporated in the accepted ‘solution’ to industrial disasters. Instead, a *mild* form of corporate accountability was presented as the most viable option. Widespread acceptance of the Accord as legally-binding helped dissuade arguments about the need for external regulations over multinational retail corporations while also ensuring the relations of power between those at the top of the global supply chain and those at the bottom remained untouched. Dominant voices reaffirmed neoliberal ideals which claim that transnational capital, unfettered by state regulations, can indeed ‘lift all boats’ regardless of the exploitive and dangerous conditions in which private wealth is produced (Baram, 2009; Bonefeld, 2006; Rothe & Friedrichs, 2015; Sklair & Miller, 2010; Soederberg, 2006; Tombs & Whyte, 2003a).

Opening Paths to Resistance

Although the status quo of neoliberal corporate-led regulation emerged as the prevailing conceptualization of transnational corporate accountability, this does not suggest attempts at resisting hegemonic discourses about global capitalism are entirely futile. The fact that the Canadian Foreign Affairs and Human Rights Committees held sessions about corporate accountability in global supply chains, and that concerns were expressed within these sessions about the life-threatening structure of the fast fashion industry, demonstrate points where “hegemony begins to crack” (Lynch & Michalowski, 2006, p. 192). The scramble to mitigate the negative scrutiny arising from the workers’ deaths at the Rana Plaza factory reflects the precarious position upon which the hegemony of neoliberalism rests and must constantly be “relegitimized as a worldview” (Soederberg, 2010, p. 16, see also Gibson-Graham, 1996; Jessop, 2009; Kramer, 2013; Snider, 1987). Stability in hegemonic orders requires constant ‘repair work’ and therefore transformation to actively negotiate dynamic changes in societal attitudes.

In the case of the Rana Plaza disaster, multinational corporations and Global North states were seen to incorporate “previously excluded ideas” (Lynch & Michalowski, 2006, p. 192) about multinational corporate activity to sustain legitimacy for capital accumulation processes to continue (Bieler & Morton, 2006; Bruff, 2005; Soederberg, 2010). The efficacy and legitimacy of CSR strategies to improve supplier factory safety had to be reaffirmed, while proposed alternatives to corporate-led accountability had to be discounted and conceptualized as economically, politically, and legally unreasonable. The considerable efforts to “secure the successful reproduction of neoliberal-led capital accumulation” provide insight towards the inherent instability of legitimacy in neoliberal hegemony (Soederberg, 2010, p. 60). It is only by recognizing this instability upon which capitalism precariously teeters, especially in times of

crises when corporate monoliths begin to quiver, can we resist their exploitive and unsustainable practices (Bieler & Morton, 2006, p. 26).

Furthermore, although the current implementation of the Accord fails to address underlying structural causes of poor safety conditions in supplier factories, some representatives of rights-based groups were hopeful the agreement does formalize some form of accountability to which signatory companies must respond, and opens up space for legitimate discussions about implementing meaningful changes to improve working conditions worldwide (Interview #3, Union Representative; Interview #9, NGO Representative; see also Bittle, 2012, p. 193). For instance, the reports published by Accord signatory witnesses including the Clean Clothes Campaign¹¹, International Labor Rights Forum¹², and non-signatory group Human Rights Watch¹³ regarding the Accord's implementation progress demonstrate pathways through which non-industry stakeholders can pressure signatory companies to uphold their CSR commitments in practice.

Although rampant corporate negligence and relentless demands of capitalist accumulation that produce the underlying causes of corporate harm were not seriously scrutinized by the Canadian state and corporations, they should be subjected to criminological inquiry. The discipline of criminology must continue to question the relations of political, economic, and cultural power that allow society's most influential players to remain, crisis after crisis, beyond the reach of public accountability (Bieler & Morton, 2006; Bittle, 2012; Kramer, 2013; Laufer, 2014; Soederberg, 2010). Ways of thinking can and do influence the social

¹¹ "Rana Plaza Three Years On: Compensation, Justice and Workers' Safety". Clean Clothes Campaign & International Labor Rights Forum, 2016.

¹² "Our Voices, Our Safety: Bangladeshi Garment Workers Speak Out". International Labor Rights Forum, 2015.

¹³ "Whoever Raises Their Head Suffers the Most: Workers' Rights in Bangladesh's Garment Factories". Human Rights Watch, 2015.

constitution of crime and punishment, which serves an important reminder for criminologists to move beyond studying what *causes* crime and towards studying why certain crimes *continue*. Only by scrutinizing corporate harms in addition to resisting the processes through which their consequences are legitimized, can the ‘cracks’ of hegemonic corporate capitalism be chipped away by the social masses to make room for the protection of all workers across the supply chain. After all, hegemonic dominance can only be sustained through the incorporated legitimacy of the people, and so it is the people’s demands to which hegemony must answer.

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Appendices

Appendix A: Members of the Standing Committee on Foreign Affairs and International Development

Below is a list of members of the Standing Committee on Foreign Affairs and International Development whose names appear in the minutes from the Committee's study of corporate supplying and manufacturing practices in developing countries for Canadian consumers, held between 2013 and 2014. Members' names are listed in alphabetical order.

- Dean Allison, Chair, Standing Committee on Foreign Affairs and International Development, Conservative Party of Canada
- Paul Dewar, New Democratic Party
- Lois Brown, Conservative Party of Canada
- Bob Rae, Liberal Party
- John Williamson, Conservative Party of Canada
- H el ene Laverdi ere, New Democratic Party
- Bob Dechert, Conservative Party of Canada
- Nina Grewal, Conservative Party of Canada
- Richard Harris, Conservative Party of Canada
-  eve P eclet, New Democratic Party
- Marc Garneau, Liberal Party
- David Anderson, Conservative Party
- Gary Schellenberger, Conservative Party
- John Carmichael, Conservative Party
- Peter Goldring, Conservative Party

Appendix B: Witnesses Appearing Before the Standing Committee on Foreign Affairs and International Development

Tuesday, May 28, 2013

- Peter Chapman, Executive Director, Shareholder Association for Research and Education
- Diane Brisebois, President and Chief Executive Officer, Retail Council of Canada
- Peter Iliopoulos, Senior Vice-President, Public and Corporate Affairs, Gildan Activewear Inc.
- Chris MacDonald, Individual Presenter, Director, Jim Pattison Ethical Leadership Education and Research Program and Professor, Ted Rogers School of Management, Ryerson University
- Bob Chant, Senior Vice-President, Corporate Affairs and Communication, Loblaw Companies Limited

Monday, April 28, 2014

- Duane McMullen, Director General, Trade Commissioner Service Operations and Trade Strategy, Department of Foreign Affairs, Trade and Development
- Peter MacArthur, Director General, South, Southeast Asia and Oceanic Bureau, Department of Foreign Affairs, Trade and Development
- Tom Smith, Executive Director, Fairtrade Canada
- Jeff Nankivell, Director General, Asia Pacific, Department of Foreign Affairs, Trade and Development
- Bob Chant, Senior Vice-President, Corporate Affairs and Communication, Loblaw Companies Limited
- Diane Brisebois, President and Chief Executive Officer, Retail Council of Canada

Appendix C: Members of the Standing Senate Committee on Human Rights

Below is a list of members of the Standing Senate Committee on Human Rights whose names appear in the minutes from the Committee's study of Canada's human rights obligations regarding the rights and safety of garment workers in developing countries, held between 2014 and 2015. Senators' names are listed in alphabetical order.

- Mobina Jaffer, Chair, Standing Senate Committee on Human Rights
- Salma Ataullahjan, Deputy Chair
- Elizabeth Hubley
- Nicole Eaton
- Elizabeth Marshall
- Raynell Andreychuk
- Tobias Enverga
- Nancy Ruth
- Art Eggleton
- Thanh Hai Ngo
- Scott Tannas
- Michel Rivard

Appendix D: Witnesses Appearing Before the Standing Committee on Foreign Affairs and International Development

May 12, 2014

- Duane McMullen, Director General, Trade Commissioner Service Operations and Trade Strategy, Department of Foreign Affairs, Trade and Development
- Peter MacArthur, Director General, South, Southeast Asia and Oceanic Bureau, Department of Foreign Affairs, Trade and Development
- Dean Frank, Director, Strategic Planning and Operations, Asia Bureau (Development), Department of Foreign Affairs, Trade and Development
- Hon. Jane Stewart, Privy Council, Special Representative and Director, ILO Office to the United Nations, International Labour Organization
- Syed Sajjadur Rahman, Individual Presenter, School of International Development & Global Studies, University of Ottawa
- Ananya Mukherjee-Reed, Individual Presenter, Professor and Chair, Department of Political Science, York University

June 8, 2015

- Signi Schneider, Vice-President, Environment and Corporate Responsibility, Export Development Canada
- Bob Kirke, Executive Director, Canadian Apparel Federation
- Barry Laxer, President, Radical Design Ltd
- Shannon Brown, Director, Business Development and Commercial Relations, Fairtrade Canada
- Bob Jeffcott, Co-founder and Policy Analyst, Maquila Solidarity Network
- Shawna Bader-Blau, Executive Director, Solidarity Center
- Sofia Molina, Category Specialist for Coffee, Fairtrade Canada

June 15, 2015

- Peter Iliopoulos, Senior Vice-President, Public and Corporate Affairs, Gildan Activewear

Inc.

- Bob Chant, Senior Vice-President, Corporate Affairs and Communication, Loblaw Companies Limited
- Syed Sajjadur Rahman, Individual Presenter, Professor, School of International Development & Global Studies, University of Ottawa
- Nisha Varia, Director of Outreach for Women's Issues, Human Rights Watch

June 18, 2015

- Dan Rees, Director of Better Work, International Labour Organization

Appendix E – Interview Participants

A total of nine interviews were conducted for the research project. The interviews are listed below by number, category of interviewee, and date of interview. For reasons of confidentiality, the names of participants are not provided.

Interview 1: Industry Spokesperson, 14 December 2015

Interview 2: Non-Governmental Organization Representative, 17 December 2015

Interview 3: Union Representative, 7 January 2016

Interview 4: Government Official, 12 January 2016

Interview 5: Politician, 3 February 2016

Interview 6: Academic, 10 February 2016

Interview 7: Private Sector Representative, 19 February 2016

Interview 8: Politician, 2 March 2016

Interview 9: Non-Governmental Organization Representative, 21 March 2016

Appendix F – Interview Guide

1. What are the expectations for Canadian companies when they operate in foreign locations?
2. How does your organization help Canadian companies achieve these expectations?
3. How should the Government of Canada ensure corporate accountability measures are enforced when Canadian businesses operate in foreign locations?
4. How should Canadian companies exercise due diligence to prevent workplace safety violations in their multinational business operations?
5. How should other Canadian stakeholders (government, companies, unions, and NGOs) make sure cases like the Rana Plaza collapse do not reoccur in the future?
6. Which factors impact the implementation of internationally-recognized corporate responsibility measures (e.g., the OECD Guidelines and the UN Guiding Principles for Business and Human Rights) within the global supply chain?
7. What strategies do you feel are most effective when enforcing workplace safety standards for Canadian companies operating overseas?
8. What conditions would need to be fulfilled if Canada were to effectively impose legally-binding workplace safety obligations for Canadian companies operating overseas?
9. Should there be a legal obligation for Canadian companies sourcing from poorer countries, like Bangladesh, to compensate victims of workplace safety violations when they occur outside of Canada?
10. Under Section 217.7 of the Canadian Criminal Code, corporations are legally obligated to take reasonable steps to ensure the safety of workers and the public. Would it be effective if the Government of Canada were to enact extraterritorial powers and impose a similar law on Canadian companies operating outside of Canada? Why or why not?
11. Is there anything else that you would like to discuss regarding international corporate accountability measures?

Appendix G – Research Ethics Approval Notice

File Number: 08-15-20

Date (mm/dd/yyyy): 09/28/2015



Université d'Ottawa **University of Ottawa**
Bureau d'éthique et d'intégrité de la recherche Office of Research Ethics and Integrity

Ethics Approval Notice

Social Science and Humanities REB

Principal Investigator / Supervisor / Co-investigator(s) / Student(s)

<u>First Name</u>	<u>Last Name</u>	<u>Affiliation</u>	<u>Role</u>
Steven	Bittle	Social Sciences / Criminology	Supervisor
Ashley	Chen	Social Sciences / Criminology	Student Researcher

File Number: 08-15-20

Type of Project: Master's Thesis

Title: Is it Any of Our Business?: Canadian Perspectives on International Corporate Accountability

Approval Date (mm/dd/yyyy)	Expiry Date (mm/dd/yyyy)	Approval Type
09/28/2015	09/27/2016	Ia

(Ia: Approval, Ib: Approval for initial stage only)

Special Conditions / Comments:

N/A



Université d'Ottawa **University of Ottawa**
Bureau d'éthique et d'intégrité de la recherche Office of Research Ethics and Integrity

This is to confirm that the University of Ottawa Research Ethics Board identified above, which operates in accordance with the Tri-Council Policy Statement (2010) and other applicable laws and regulations in Ontario, has examined and approved the ethics application for the above named research project. Ethics approval is valid for the period indicated above and subject to the conditions listed in the section entitled "Special Conditions / Comments".

During the course of the project, the protocol may not be modified without prior written approval from the REB except when necessary to remove participants from immediate endangerment or when the modification(s) pertain to only administrative or logistical components of the project (e.g., change of telephone number). Investigators must also promptly alert the REB of any changes which increase the risk to participant(s), any changes which considerably affect the conduct of the project, all unanticipated and harmful events that occur, and new information that may negatively affect the conduct of the project and safety of the participant(s). Modifications to the project, including consent and recruitment documentation, should be submitted to the Ethics Office for approval using the "Modification to research project" form available at: <http://research.uottawa.ca/ethics/submissions-and-reviews>.

Please submit an annual report to the Ethics Office four weeks before the above-referenced expiry date to request a renewal of this ethics approval. To close the file, a final report must be submitted. These documents can be found at: <http://research.uottawa.ca/ethics/submissions-and-reviews>.

If you have any questions, please do not hesitate to contact the Ethics Office at extension 5387 or by e-mail at: ethics@uOttawa.ca.

Signature:

Riana Marcotte
Protocol Officer for Ethics in Research
For Barbara Graves, Chair of the Social Sciences and Humanities REB