A SOUL TO DAMN AND A BODY TO KICK: IMPRISONING CORPORATE CRIMINALS

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REFLEXIVE STATEMENT -- LEO G. BARRILE

My grandparents came from rural villages in Italy to the United States at the beginning of the century. They settled in Lawrence, Massachusetts and took jobs in the textile and paper mills. They experienced the bloody attacks against workers and their families during the IWW led strike. Most of their children worked in the mills and luckily most of their grandchildren and great grandchildren did not. Two of my uncles, Nick and Armando died in middle age from cancers contracted from the work conditions they were exposed to. I remember their long and painful deaths. I remember that Nick was already practically deaf from years of unprotected work near constantly clanking machinery, but the chemical fumes he was unprotected from were what eventually did him in. At the time, everyone saw my uncle's deaths and the families they left fatherless as facts of life, as the risks that sometimes accompany having a job. Even today, for some workers in blue collars not much has changed.

I was drawn to research on corporate crime, particularly corporate victimization of workers, largely because I see my uncles in those injured today. I see their families and the devastation that is largely preventible. Perhaps this has motivated my intolerance for those who advocate anything less than criminal penalties for those who knowingly disregard the lives of their workers. For Nick and Armando, this paper is for you.

INTRODUCTION

It was Edwin Sutherland (1940) who first contended that socially harmful acts that were committed by corporations ought to be treated as crime or criminal behavior by sociologists whether these acts were considered criminally punishable by strict legal definition or not. Corporate crime is *organizational white collar crime*. It consists of acts by the agents of legitimate businesses which violate criminal, civil or regulatory laws or otherwise cause harm to workers, consumers or the environment. A case in point is the Johns-Manville company which for decades concealed its knowledge of the carcinogenic effects of asbestos on workers and failed to protect those who made, worked with, or used the product. Unlike *occupational white collar crime* such as embezzlement which is usually committed by individuals for their own benefit and often runs counter to the interests of the company, organizational white collar crime enhances the company's capital accumulation and competitiveness (Michalowski, 1985: 324), it is usually tolerated or even tacitly encouraged by upper management (Geis, 1967), it is frequently done with management's knowledge of the harm and increased risks that will occur (Cullen, Maakestad and Cavender, 1987: 41), and it is too often an endemic element of corporations and business practices (Needleman & Needleman, 1979; Reasons, Ross & Patterson, 1982; Ermann and Lundman, 1992; Pearce and Tombs, 1992). Individuals may

benefit from corporate crime with promotions and increased salaries as Gilbert Geis (1967) found in his early research on the bid rigging schemes of Westinghouse and General Electric, but the main outcome of the acts is the advancement of the company's interests. Richard Quinney called these acts *crimes of economic domination* because they help to preserve the superordinate position of the capitalist class by further appropriation of labor, resources and capital (Quinney, 1980).

Until recently corporate crime, despite its devastating effects, remained closeted and invisible. Nearly all the cases of business induced theft and harm were handled in civil and administrative courts and resolved with fines. In the rare criminal prosecutions, fines were also the most common penalty. In the even more rare cases of imprisonment, owners and operators of small companies or middle level managers at best from big companies served relatively short sentences. However, the Savings and Loan scandal and the growing grass roots environmental movement eroded some of the "halo effect" that those with high status, power and legitimacy had in court and the legislature. The corporate veil which insulated most companies from criminalization was becoming transparent if not pierced.

Some social researchers argue that the public became more cynical of the corporate class as the cases of corporate disregard for health and safety became more apparent and more numerous (Simon & Eitzen, 1986; Cullen, Maakestad and Cavender, 1987). The rising sentiment of cynicism undergirded an incipient support for criminal prosecution of corporations. Cullen, Maakestad and Cavender (1987) go so far as to contend that a Habermasian "crisis of legitimation" occurred during the 1970s because the state did little or nothing to prevent or punish corporate violence and fraud. Indeed the state had Watergate, Vietnam and racial tensions shouting at its legitimacy.

However, the would be legitimation crisis fizzled during the 1980s with the Reagan era. Ronald Reagan supported and implemented his version of laissez faire capitalism through massive deregulation of businesses. Reagan's evisceration of the budgets of federal regulatory agencies and his chaining of the justice department's reach in corporate matters allowed

widescale corporate criminality to flourish. The HUD and S&L scandals were symptoms of this policy. Despite the environmental and health and safety movements, Reagan's popularity and legitimacy remained intact. However, his actions jolted the state's avowed role as intermediary between large businesses and the rights of individuals and communities. Reagan baldly and transparently promoted the interests of the dominant class disturbing what Poulantzas calls the "equilibrium" created by the state as arbiter between the public and the dominant class. In Poulantzas' words (1975:123), "the modern capitalist state presents itself as embodying the general interest of the whole of society..."

Decimating the regulatory agencies was not the way to promote a democratic image of the state. Indeed, regulatory agencies, particularly the way they operate, perform a great function for the corporation. They act as a buffer between the corporation and zealous social reformers, consumer advocates, environmentalists, labor unionists, activist state and federal prosecutors and socially aware state and federal legislatures, not to mention an angry public. In the present historical social formation, workers' and the general public's interests are more represented and more organized bureaucratically. Active regulatory agencies would at least appear to be containing corporate crime, and appeasing organized discontent.

Reagan's actions had the unanticipated consequence of forcing state and local judiciaries and legislatures to fill the political void. And they did. They brought corporations to criminal court, and as we will see, juries typically found them guilty.

What of the hypothesized crisis of legitimation? Apparently, legitimation is not located in the state as a whole, but rather, as Poulantzas (1975) suggests, in relatively autonomous political forms, such as the executive, legislative, or judicial institutions. Indeed the popular push to use state courts for trying corporations may have come as a result of a declining faith in the arcane apparatus of the federal regulatory system and the comparatively greater influence that popular interest groups have on state and county court personnel through, for instance, the popular elections of judges, district attorneys, and state legislators. Typically, these middle levels of power, as C. Wright Mills referred to them, are more open to the

dominated classes than are the closed political elites of the power bloc, the executive level of the political system, and its adjunct technoclass of policy advisors, researchers and legal professionals.

And here is the hope for social change as realist theorists see it (Young & Mathews, 1992): that groups of, for example, workers, consumers, and environmentalists can influence law and law enforcement to punish corporate agents and bring about greater social justice. This is what Karl Klare (1979) called constitutive law, the empowering of capital poor classes, and what Pearce and Tombs (1992) call "non-reformist reform," substantially changing how corporate criminals are handled.

The environmental rhetoric of the Clinton administration is ever so encouraging. Yet it was a recessionary economy that drove the Clinton election much as it did Reagan's. The ultimate nightmare of the capitalist state be it run by a democrat or republican is that economic tailspins will lead to economic and political anarchy. It remains to be seen if the health and safety rhetoric of the Clinton administration, and the recently passed massive regulatory legislation and new federal sentencing guidelines for corporate crime will be subsumed to the goal of stimulating business growth by relying on the corporate class.

The potential disorder created by the demise of the economy may be at the basis of many sociologists' reluctance to advocate full criminalization for corporate misdeeds. Many advocate noncriminal approaches such as "compliance strategies," namely, encouraging corporations to obey regulations voluntarily or using reduction in fines to encourage compliance (Kagan and Scholtz, 1984; Sigler, 1988; Stone 1975; 1985). Others such as Fisse (1971; 1991) Braithwaite (1982); Fisse and Braithwaite (1983) support such techniques as enforced self-regulation, negative publicity, and limited criminal and civil liability for corporations and managers. The main arguments against criminalization are: that it will antagonize companies and perhaps drive them to more elaborate evasion schemes; that it is impractical to criminally investigate corporations; and that the vast majority of companies are either "good corporate citizens" or can be cajoled, shamed or persuaded to comply. If all

else fails or the acts very serious, then some sociologists advocate corporate probation, the externally or internally supervised restructuring of goals and decision-making within the organization (Gruner 1988; Geraghty, 1979; Frank & Lombness, 1988; Schwartz & Ellison, 1982). Some see corporate probation as a strategy for making capitalist organizations more socially responsible, while others see it as a potentially radical attempt to change the relations of production (Schwartz & Ellison, 1982). Punishing the corporation is akin to modifying a murderer's gun with rubber bullets instead of imprisoning the murderer. Apparently, many sociologists still cannot bring themselves to see corporate criminals as deserving of incarceration as street criminals. Present corporations are merely organizational conduits for those who are firmly entrenched with a capitalist business ideology. Corporate crime comes from the inherent drives to appropriate capital and exploit labor.

There is an enormous asymmetry in the relationship between the corporate criminal and the victim (Coleman, 1992) which is not balanced by the present enforcement strategies, nor by sociologist's suggestions on compliance, shaming or corporate probation.

The cases that I will discuss cry out for corporate criminal liability the imprisonment of executives. As we will see this rarely if ever happens. The mere appearance of corporate class members in criminal court is encouraging and a first step at confronting corporate dominance.

CORPORATIONS AND EXECUTIVES IN CRIMINAL COURT

During the 1980s there were substantial increases in the number of corporations and managers indicted, sentenced and fined for crimes (though any increase would seem substantial because corporate prosecutions were rare). For instance, from 1983 to 1990 environmental criminal indictments more than tripled from 40 to 134 (Gold, 1990). From 1985-1988 fines levied against corporations rose from one-half million dollars to seven million dollars (Goldberg, 1991). The EXXON Valdez oil spill produced criminal fines several times that amount, a $25 million federal fine and a $100 million restitution payment not to mention the civil penalties of $900 million over 11 years (New York Times, 1991). Also, a greater

commitment appears to exist in the Justice Department and regulatory agencies such as the EPA which have begun, in the 1990s, to increase their investigative and prosecutorial staffs, establishing, for example, special environmental crime units. From 1982 to 1990, the Justice Department increased its environmental unit staff from 3 to 25 lawyers, and the EPA increased its investigative staff from 23 to 60, and is planning eventually to reach 500 investigators (Gold, 1990).

Yet, despite these encouraging trends, very little actual progress in punishing or deterring corporate violence has occurred. Take workplace safety. Despite the fact that nearly 11,000 workers die each year from work related injuries, the Labor Department, from 1981-1989, referred only 44 criminal cases to the Justice Department and it in turn produced merely two convictions (Bros, 1989:289 using statistics from National Safe Workplace Institute, 1988). In American history only 16 cases of corporate homicide have been charged, only 9 of those made it to trial, and in only three cases were corporate agents sentenced to prison (Bros, 1989:305 statistics from National Safe Workplace Institute, 1988). **In the 20 years that OSHA has existed not one person has actually served a prison sentence for violating the act** (Cohen, 1989:157). Moreover, corporations have recently obtained reversals of some of the few criminal prosecutions of the 1980s.

A case in point is Film Recovery Systems, Inc. (People v. Film Recovery Systems, Inc., Nos. 84 C 5064 and 83 C 11091 Cir. Ct. of Cook County Ill. June 14, 1985). Initially, this case appeared to be a model of how the law can be used to sanction corporate crime. The company and three of its agents, the president, plant manager and foreman, were prosecuted for the death of a worker from cyanide poisoning. Hosts of sociologists and crime researchers referred to it as a watershed case. Unfortunately, the verdicts were reversed on appeal.

Film Recovery chemically stripped silver from x-ray film by using a mixture of water and sodium cyanide. The workers, most of whom were from Poland and Mexico, were never told of the cyanide and its dangers, nor were they adequately protected from toxic fumes in the

processing. Most of the workers did not speak nor read English and thus could not decipher the warnings on the chemical containers. Their supervisors purposely concealed the dangers from them, even to the point of removing the skull-and-crossbones labels from some of the containers. Most of the workers experienced dizziness, nausea, headaches, and skin and eye irritations every day. In 1983, Stefan Golab a Polish undocumented worker died at the factory from cyanide fumes.

In a bench trial in 1985, Film Recovery and its parent company Metallic Marketing, Inc. were convicted of involuntary manslaughter and 14 counts of reckless conduct and fined $24,000 each. Three of the company's agents were convicted of murder and 14 counts of reckless conduct, and received 26 year sentences. Two of the three were also fined $24,000 each. The judge ruled that the Film Recovery president and the managers knew that their acts would cause a strong probability of death or great bodily harm--conditions of murder in the Illinois statute.

On appeal the verdicts were set aside and a new trial was ordered, solely because of a technicality. The state appeals court argued that since the evidence and facts used in both convictions were the same then they should not have produced different criminal convictions--murder for the managers and involuntary manslaughter for the corporation. (Illinois v. Steven O'Neill, Film Recovery Systems, Inc., Metallic Marketing Systems, Inc., Charles Kirshbaum, and Daniel Rodriquez, Ill. App. 3d, 550 N. E. 2d 1090 (1990)). The usual reluctance to charge a corporation with murder because of its ostensible inability to serve a sentence or to be executed came back to haunt the trial prosecutors in this case. Now nine years after Stefan Golab died at work we still have no closure on his case.

Reversals on appeal are common in corporate criminal cases. Even in regulatory cases corporations have won some crucial appeals. For instance, in October, asbestos manufacturers successfully appealed the two year old EPA ban on asbestos products. These reversals remind us of a nagging fact, corporate criminal convictions are rare. They are slow to come to court.

They are cautiously prosecuted. And, they are dragged on ad infinitum through the appellate system.

Is the criminal law experiencing culture lag? Does it need a statutory infusion to catch up to the new attitudes toward corporate criminality?

To some extent the notion of culture lag or legal lag is true. While federal and state criminal statutes have provisions for treating corporations as "persons," many courts have been reluctant to convict corporations for crimes beyond negligence, that is, crimes that usually require intent or mens rea, crimes such as assault and nonnegligent murder. Even cases of naggingly evident negligence have been reversed. A corporate version of mens rea needs to be formalized much as it was for organized crime under the federal RICO provisions (Racketeer Influenced and Corrupt Organizations Act).

Legal lag is evident in a case involving the deaths and injuries of workers in a Warner-Lambert chewing gum factory explosion (People v. Warner-Lambert Co. 51 N.Y. 2d 295, 414 N.E. 2d 660, 434 N.Y.S. 2d 159 (1980), cert. denied, 450 U.S. 1031 (1981)). In the process of rolling and cutting gum, magnesium stearate dust and liquid nitrogen were used to prevent sticking in different operations. The factory was often thick with magnesium stearate dust, and this was noticed by the company's insurance inspector who stipulated that an effective exhaust system and better insulated electrical connections be installed to prevent an explosion. Warner-Lambert made some superficial changes but did not stop production and did not implement important safety modifications. Soon after, a small explosion, presumably caused by the liquid nitrogen's liquefaction of oxygen, set off a huge second explosion of the magnesium stearate dust which killed six workers and injured 44 other workers. In 1980, the company and four managers were indicted for second degree manslaughter and negligent homicide. The trial court threw out the indictment, the appellate division reinstated it and finally the New York Court of Appeals dismissed the indictment. The Court of Appeals reasoned that since the cause of the explosion could not be directly shown, the corporation and its managers could not have foreseen this uncertain cause of the explosion. The court ignored the

issue of whether the conditions tolerated by the company posed a general risk of danger so great and so foreseeable that it was clearly an act of negligence (Koprowicz, 1986:215-216). The court also held that the issue of work-related deaths was not clear in the statutes and that the legislature would have to more clearly define corporate criminal liability for the deaths of workers (Von Ebers, 1986:982). The court claimed, in effect, that state law lagged behind the changing attitudes toward corporate criminal responsibility.

The notion of collective responsibility still sounds foreign to the modern legal ear which is tuned to the frequency of individual intentionality long established in Anglo-American criminal and common law. Modern statutes reflect this. Few state criminal codes delineate a set of specific sanctions for corporations for specific crimes as is established for individuals. And while the new federal sentencing guidelines attempt to address corporate punishment, even if a corporation were convicted of first degree homicide and even if there were aggravating circumstances, the corporation would probably be fined or placed on probation because the usual punishments indicated, imprisonment or the death penalty, are impossible to execute literally against a corporate entity, short of closing it down or quarantining its activities. As Lord Thurlow put it the corporation has no soul to damn, no body to kick.

Ironically, corporations have argued for more than a century that they ought to be treated as "persons" under constitutional law. They contend that they should have the same rights as any citizen. For example, Dow Chemical argued in 1986 that it should be protected under the Fourth Amendment search and seizure provisions from the EPA's plane surveillance of its facilities to detect pollution (Nader and Mayer, 1988). But no corporation has volunteered to be treated like a typical citizen for criminal prosecution. The corporation claims that the legal notion of personhood under the law is abstract and ambiguous when criminal when the argument shifts from privileges to criminal responsibilities and liabilities.

Despite the arguments about the soulless, mindless, ethereal nature of the corporation in the law, the courts have for more than eighty years attributed liability to corporations and managers for crimes.

In 1904 the New York Circuit Court found the Van Schaick company and several of its officers guilty of manslaughter in the deaths of 900 people who drowned when a steamboat caught fire and its life preservers failed. For its failure to furnish adequate firefighting and lifepreserving equipment the owner and the company were declared liable for violating the federal law on ship safety. No intent was necessary for conviction. The officers were convicted of aiding and abetting the violation (United States v. Van Schaick 134 F. 592 C.C.S.D.N.Y. 1904).

In perhaps the most influential and precedent setting case on criminal intent and corporations the New York Central 1909 case established the controversial principle of **vicarious liability** (New York Central and Hudson River Railroad Co. v. U.S. 212 U.S. 482 (1909)). An assistant traffic manager for the company allowed certain customers to ship freight on the railroad for less than the statutory rates, effectively granting them an illegal "rebate" or bribe to use the railroad. The United States Supreme Court held that the corporation could be held liable for the acts of its agents when in their occupational role they illegally act in behalf of or for the benefit of their corporation. The civil law principle of respondeat superior (the superior speaks for his employees) was transplanted into criminal prosecutions. Justice Day argued that the intent of an employee acting in his job could be imputed to the company. A provision under the Elkins Act held that a corporate officer's actions could be taken as an act of the corporation as well as an act of the individual (212 U.S. 494-496 (1909)). Hence the corporation had **vicarious intent** or liability. Quoting Bishops New Criminal Law of 1892, Justice Day wrote "...[a corporation] can act therein as well viciously as virtuously." (212 U.S. 493 (1909).

In New York Central the contention that corporations could not be tried for crimes requiring intent had been pierced.*

*(Note 1): (The court did mention that some crimes could not be committed by corporations and some legal scholars believe that this referred to specific intent crimes such as homicide (Foerschler, 1990:1293). However, the court was likely referring to occupational white

collar crimes that are antagonistic to the corporation's financial interests, such as theft or embezzlement and other crimes occurring among employees such as rape, assault and theft.)

After New York Central states began to include corporations in their statutes as criminally liable. However, some legal scholars and social thinkers have criticized the application of vicarious liability. Mueller (1957) argued that the corporation should be held liable only for the acts and intention of the "inner circle" of corporate officers. Since stockholders are affected by corporate liability they should pay the price only when those people who are truly entrusted with decision making powers act criminally (Mueller, 1957:40-41).

Indeed other countries have attempted to adopt this limited approach. In Great Britain, presumably, the agents of the corporation must be its "directing mind," its "alter ego" or the "organ of the company," before vicarious liability can be applied. Canada and Australia are attempting to apply similar standards. However, the notion of an agent with a directing mind in a large intricate organization is, in practical terms, difficult to apply. Large companies can and do have a huge advantage in criminal court over small companies because of the way that responsibility and decision making are typically diffused in bureaucracies.

Others argue that corporate criminal intent ought to be derived from the established policies, ideology, and corrective programs of a company. Brent Fisse (1991) argues that corporate blameworthiness should be tied to intent which could be measured by a company policy that permits wrongdoing and/or a lack of precautions or lack of due diligence in preventing the behavior from occurring. In a similar vein Pamela Bucy (1991) argues that a "corporate ethos" that encourages crime in corporate agents ought to be used to infer intent and corporate blameworthiness.

The problem with using policy and ethos is that they are easy for a corporation to contrive. Is image policy? Is public relations ethos? Hardly. Actions speak louder than avowed principles. And we can more readily deduce intent from the actions of employees than from some abstract purported policy or ethos.

In addition to criminal law, regulatory law contains provisions for misdemeanor and felony prosecutions of corporations and officers. Since regulatory law protects the public welfare, strict liability is used in many provisions. This means, for one, that a corporate officer who has responsibility over a worker who violates a regulatory law can be punished even if the officer did not know the actions had occurred. This is precisely what happened in the U.S. v. Dotterweich (320 US 277 (1943) case where violations of the Food, Drug and Cosmetic Act (FDCA) made Dotterweich strictly liable. Similarly, in U.S. v. Park (421 US 658 1975) the president of a grocery chain was held liable for violations of the FDCA even though he had ordered a subordinate to correct the problem. Because the problem was not corrected strict liability fell on him. Similarly, the Clean Air and Water Acts, RCRA, and CERCLA have provisions for imprisonment and heavy daily fines. For instance, under RCRA (Resource Conservation and Recovery Act) fines of $50,000 per day and sentences of 2 years in prison are possible. Further, violations under the **"knowing endangerment"** provision of RCRA include a sentence of 15 years in prison and a fine of $1 million for life threatening actions. In 1980 amendments to RCRA incorporating knowing endangerment were passed into law, but it took 7 years after the provision and 3 years after the burden of proof was lessened in the act to gain a conviction. Knowing endangerment requires proof that a company knew of imminent danger of death or bodily injury. (See **section 6928(e) of RCRA** for a definition of knowing endangerment). Any violations of the provisions of RCRA are federal crimes.

Protex Industries was the first conviction won and upheld under the knowing endangerment provision. Protex exposed employees to solvents used in cleaning recycled drums of toxics (US v Protex Industries, Inc. No 87-CR-115 (DC Colo Mar 4, 1987). The EPA, FBI and the federal grand jury found that Protex had violated the knowing endangerment provision of RCRA by exposing workers to solvents that affected their central nervous systems and increased their risk of cancer. Knowing endangerment is, for all intents and purposes, an attempt to find a substitute for mens rea without the same level of individual mal intent or

criminal mind that is usually required. Using knowing endangerment, only the corporation's "actual knowledge," that its conduct will lead to serious injury or a substantial certainty of death, "imminent danger" is required. Interestingly, this "knowledge" can be ascribed not to individuals but to a corporation as an entity for purposes of prosecution.

Protex argued that the notions of knowing endangerment and imminent danger were constitutionally vague as applied for criminal purposes in court, and that the EPA had failed to furnish them with the results of their tests. In short they pleaded ignorance. The court and appellate court had no trouble establishing that Protex could have "reasonably expected harm" to occur to workers with a "substantial likelihood" in its workplace and that Protex had a "presumed knowledge" of the threat of its toxics and displayed a "willful blindness" to the consequences to workers in transporting, treating, storing and disposing the chemicals.

The Protex case indicates the problems that arise when corporate liability is pushed beyond negligence. The court literally had to redefine the mens rea element in the law to "knowledge of a substantial certainty of imminent danger" to fit the reality of the workplace. RCRA bent itself into a pretzel attempting to find an analogous notion of intent for corporations.

Many regulatory laws, like RCRA, contain enormously punitive sanctions. The EPA alone has over 100 convictions to its credit Industry Week, 1990). Unfortunately, regulatory agencies have been excruciatingly slow to bring cases to court and are enormously understaffed. The AFL CIO estimates that there are 2,000 federal and state OSHA inspectors for 6 million worksites. Most will never be inspected.. The Reagan and Bush doctrine made matters worse..

However, one of the unanticipated consequences of the Reagan policy was to stimulate the prosecutions of corporations in state courts. This created a controversy over "preemption." Did federal regulatory law preempt the states from taking action against corporations. A case in point is the Pymm Thermometer Corporation case (N.Y. v. Pymm Thermometer Corp 135 Misc. 2d 565; 515 N.Y.S. 2d 949, People v. William Pymm, Edward Pymm Jr. Pymm Thermometer Corporation and Pak Glass Machinery Corporation 151 A.D. 2d 133; 546 N.Y.S.

2d 871; 1989 N.Y. App. Div. Lexis 13537, 76 N.Y. 2d 511; 563 N.E. 2d 1; 1990 N.Y. Lexis 3345; 561 NYS 2d 687; 59 USLW 2254; 14 OSHC (BNA) 1833). Pymm manufactures thermometers. Mercury contamination at the plant was always a problem. State and OSHA inspectors found that the workplace was contaminated and that workers were not issued protective masks. Also Pymm was running a clandestine mercury reclamation business in a basement even more dangerous than its regular factory. Vidal Rodriquez who worked in this basement was exposed to mercury vapor levels 5 times the allowable limit without any ventilation. He developed neurological symptoms of mercury poisoning.

Pymm was accused of conspiracy, falsifying business records, assault in the first and second degree, and reckless endangerment. The jury returned verdicts of guilty on all these charges. The trial judge reversed the jury on the grounds that OSHA regulations preempted state prosecution. The appellate division reversed the judge, and the court of appeals affirmed the appellate's reversal of the judge and reinstated the jury's verdicts. The Pymm decision may actually be the watershed case that criminologists and legal scholars have been hunting for. A conviction of corporate officers for criminal assault.

One important conclusion that the appellate judges drew from the case was that federal regulatory laws set and control standards, but that they do not preempt general state criminal laws. In a famous civil suit brought by Karen Silkwood's husband against the company that exposed her to deadly radiation, Supreme Court also ruled that federal law does not preempt state regulatory law (Silkwood v. Kerr-McGee 464 U.S. 238 78 LE 2d 443-476, 104 S Ct 615, 1984). Hence, federal regulatory provisions do not stand as obstacles to state criminal punishments, civil suits, or regulatory sanctions.

State prosecutions like Pymm have had to battle the corporation because of the inactivity and ineffectiveness of federal regulatory agencies, particularly OSHA. For example, workers from Pymm pleaded with OSHA to do something about their conditions, to no avail. And while the New York State Attorney's office intervened in Pymm, smaller and poorer state

jurisdictions might not even attempt to bring such cases to court against large corporations. And many states have less stringent codes than the federal government.

CONCLUSION

Regulatory agencies and the federal judiciary have, at their best, been slow, cautious and reluctant to bring criminal charges against corporations. During the Reagan administration they were virtually absent. Few cases of corporate crime were actually punished or punished significantly. Poulantzas's point that the modern state contains the "effect of isolation," that it alienates the person from his or her real socio-economic relations of class is well illustrated by the relative invulnerability of corporations to real prosecution. Because of this, state criminal courts became more active in charging companies and their managers with crimes especially when workers or the public were injured or killed. The Pymm and Film Recovery cases are sterling examples of this phenomenon.

More importantly community groups began to fill the void left by the state. Grass roots,community organizations and advocacy groups have shepherded an era of public involvement in the monitoring of corporate practices, particularly regarding the environment. Advocacy groups have lobbied for passage of strict environmental laws with "right to know" clauses. Community tracking committees have assumed central roles in scrutinizing the audits, the environmental impact statements the toxic use reduction plans and the evacuation plans of companies which produce or dispose of toxic materials. The message of groups advocating greater protection of workers, the environment and consumers is receiving more support. There is apparently a healthy mistrust and cynicism in the public toward corporations and federal agencies. In the legal cases discussed above, most of the juries had no inhibition about punishing corporations and their managers. John Coffee's (1981) argument that juries might be impressed or intimidated by high status, powerful defendants and thus reluctant to find guilt (jury nullification) is simply not true of many trials.

Advocacy groups have been engaging in the kind of community involved policing of corporations that realist theorists advocate for street crime (Young & Mathews, 1992).

However, as Pearce and Tombs (1991) point out community groups need the support of committed social control agencies to match the immense power and economic influence of corporations.

Imprisonment of company managers for corporate crimes is an integral element in cutting the absolute power of the corporate class. It peels away some of the layers of legitimacy and invulnerability. Notwithstanding Braithwaite's argument that only "vice presidents for going to jail" will be imprisoned, serious sentencing of managers will inevitably cut a swath across the corporate hierarchy. Compliance models of enforcement, as Laureen Snider (1990) argues, merely reinforce the ideological, political and economic dominance of the corporate class and the powerless relationship of regulatory agencies toward them.

The support of many academic and law professionals for nonpunitive, compliance oriented strategies also fails to recognize the inherent criminogenic elements of oligopolistic capitalism. The rehabilitation of a "deviant" manager or the reorganization of a "defective" organization ignore the root causes of corporate criminality in the economic system and class conflict.

Imprisoning the corporate manager may seem like little more than a crime control approach, but it can have symbolic and political significance. If the corporate class is not beyond the reach of the law and prison, then some of the asymmetry in the relations between the capital rich and the capital poor might be reduced. More importantly if community groups grass roots organizations, unions, and consumer groups can influence more legislation, enforcement and prosecution of corporate criminals then a growing empowerment might occur and real challenges might be mounted against capitalist domination. This grass roots use of criminal punishment is what Karl Klare (1979) envisioned as "constitutive law" and what Frank Pearce and Steve Tombs (1991) see as "non reformist reform." The criminal punishment of the corporate class might be a rallying point for social justice and significant social change.

Corporate crime reveals the weaknesses and contradictions of oligopolistic capitalism. Imprisoning its purveyors attacks the first line of defense of the economic status quo. A constitutive law that involves the capital poor in environmental, work and product safety would empower these groups to form more egalitarian economic and political systems.

When social control agencies begin to punish corporate criminals in the same manner as street criminals, and when community groups are involved in developing economic policy then the political system will have altered the relations between the classes and greater social justice will be possible.

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