

Multinational Corporate Crime: an Undeveloped Area of Criminological Inquiry

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Abstract

In this article I make a case for the study of multinational corporate crime (MCC) as a sub-area of criminological investigation. After discussions on defining deviancy both down and up and on the need for seriously examining the workings of MCC and its control, the rest of the article uses three illustrations to describe the routinized noncriminal enforcement of these crimes. These depictions of criminal impunity include the restructuring of harmful security investments, the rigging of interbank interest rates, and the avoidance of taxes and exploitation of labor. Each of these very diverse set of circumstances underscores the contradictory nature between the criminal sanctions on the books and the systemic nonenforcement of these same criminal laws in action. Such routinized differences in the capitalist state's response to MCC as contrasted with other corporate and non-corporate crimes in conjunction with the obvious need for developing theories and empirically-based policy responses to these multinational corporate crimes, offer a justification for its own area of criminological inquiry.

Keywords: Crime Control; Criminological Inquiry; Law Enforcement; Multinational Corporate Crime

Introduction

In a 1993 article in *The American Scholar*, the sociologist and U.S. Democratic Senator Daniel Moynihan introduced the concept of "defining deviancy down," referring to the ways in which the United States framed particular legal violations out of existence. At the time, this phrase along with the rising popularity of "zero tolerance" policies conjured up several earlier sociopolitical expressions like "permissive society," "soft on crime," and "moral decay." These mass-mediated terms spoke of threats to impending chaos and social disorder and of political and economic desires to restore "law and order" vis-à-vis, stepped-up forms of law enforcement and punishment, especially involving marginalized and impoverished communities of color.

As used here, the cultural application of defining most elite crimes and in particular multinational corporate crimes downward is also buttressed by the recognition that the vast majority of non-elite crimes are co-temporally defined upward. By simultaneously examining or accounting for the full range of criminality as well as to the cultural reciprocity between defining some deviancy down and some up, the traditional unidirectional discourse of legality or crime control is made more complicated by the capitalist state's uniform or systemic differential responses to the crimes of multinationals as compared to virtually all other crimes. How does this political economy of crime and crime control work?

First, there are the countless ways in which those crimes of multinational corporations are part and parcel of, and not at odds with, the law and order of both a developing capitalist state and political economy. In reoccurring instances of MCC, the functionalities of reproducing and accumulating capital routinely outweigh any actual concern with the criminality and real harm or threats to the economy,

polity, climate change, environment, ecosystem, and so on. This legal-political stance or sociocultural attitude towards MCC where bottom lines trump legal principles set these crimes apart from most forms of corporate and almost all forms of non-corporate crimes, resulting in comparative impunity for those multinational corporations involved in an array of criminal illegalities [1].

In addition, defining multinational corporate crime downward is reinforced by the problem of the invisibility and neutralization of the crimes of the powerful in general and those of multinational corporations in particular [2]. The "non-outing" of these crimes and relative absence of criminal punishment is further complicated by the bidirectional relationships between culturally defining some deviant formations downward and other deviant formations upward [3, 4]. For example, defining the "crimes of domination and repression" committed by agents of multinational corporations downward and defining the "crimes of accommodation and resistance" committed by less powerful corporate organizations and by those powerless members of society upward [5], represents an arbitrary or subjective rather than an objective or neutral use and interpretation of the criminal law. Like a cultural feedback loop of sorts, these differential definitions of crime are beneficial to the interests of the former criminal offenders and are detrimental to the interests of the latter criminal offenders. In fact, it is the very applications of these criminal definitions or sanctions in everyday life-- the "law in action" as well as the "law in inaction"-- that ultimately at the end of the day decides what's a crime regardless of what the "law on the books" may claim.

Finally, because the criminal pursuits of multinational corporate violators are the rare exceptions to the regular rules of noncriminal enforcements, and because defining MCC downward seems to be a relative constant, the concept is employed here more as a heuristic than a punitive devise. Accordingly, the control or investigation of these crimes as well as the struggle to prevent multinational corporate harms and injuries in the aggregate do not necessarily conform to those who

advocate for better enforcement of existing laws or tougher criminal sanctions as the means for reducing multinational corporate victimizations. Importantly, there are also alternative social measures to criminal sanctions that may be used and perhaps these can more effectively thwart the abuses and harms of unchecked multinational corporate power [6].

Following these introductory remarks, the rest of the article starts with a brief synopsis of the comparative state of criminological research on different forms of crime and criminality, and then transitions into a discussion of the study of multinational corporate crime and to the normality of its criminal impunity. As a means of expounding on the significantly differential responses of impunity for multinational corporate crimes as contrasted with the common criminal penalties for other corporate or non-corporate crimes, this focus on the law in action/inaction turns its eye to three illustrations of the routine “beyond incrimination” treatment of MCCs. These include: (1) the restructuring of securities investment traders to escape some of the financial and/or legal liabilities of Dodd-Frank, (2) the insider trading and rigging of interest rates worldwide by multinational banks, and (3) the financial looting of multinational corporations by tax evasion and labor exploitation.

What each of these multinational corporate crime scenarios exhibit and share in common are that they are benefactors of the tendencies of capitalist states to conventionalize or normalize these crimes by way of recurrences of noncriminal sanctions towards these offenders. At least in the short term, these multinational corporate violations do not appear to threaten the reproduction of capital, and their concomitant costs or losses are viewed as acceptable and as necessary for capital accumulation and expansion. In practice then, the contemporary lack of criminalization or enforcement of the laws against MCC is parallel to criminology’s lack of investigation, research, and scholarship on these crimes. These tandem omissions I submit have already created a demand for developing a sub-area of criminological inquiry devoted to multinational corporate crime.

This field of examination would not only fill-in a gap in the routine omission of the study of MCC, but it would also contribute to our understanding of the state apparatus of noncriminal capitalist control. Furthermore, the development of this area of study would produce a MCC theory and practice, with the prospects for establishing alternative means and stratagems for addressing and resisting MCC. Such a field would entertain the overlapping spheres and inter-related worlds of a wide array of existing and recently developing areas of social, historical, and behavioral inquiry into the wrongdoings of multinational organizations, nation-states, stateless regimes, illegal networks, financialization, globalization, and securitization.

Contextualizing the Need and Conceptualizing the Lens for Investigating Multinational Corporate Crime

With the exception of the *Westlaw Journal White-Collar Crime*, which contains written commentary and analysis primarily by members of the legal profession of developments within relevant criminal and case law, there are no sociological or criminological journals devoted solely to the theory and practice of white-collar, let alone, corporate or multinational, crimes. Compared to the study of

“ordinary” or “indexed” or “street” crimes, the study of white-collar crime in general, as evidenced by published research constitutes roughly 5 percent of the total [7]. About half of that white-collar research has not been about corporate crime, and most of that research has not been about MCC. In other words, to date probably less than 1 percent of criminological inquiry, research, and publication has been directed at multinational corporate crime.

This dearth of criminological scholarship devoted to MCC, given the devastating impact of these crimes locally and globally, helps to keep these crimes of the powerful invisible, while their various harms all but stare us in the face. For example, a December 6, 2016 cover story in the Sunday Business section of *The New York Times*, underscored how global bankers often flouting their own policies and sustainable pledges to save the rain forests, are financing projects to the tune of hundreds of billions of dollars in multinational corporate loans, which are displacing indigenous communities, facilitating deforestation, destroying ecosystems, and contributing to climate change [8].

At the same time, an increasing body of empirical research demonstrates among U.S. citizens a growing anxiety concerning the dangers posed by elite or powerful offenders. The first study actually designed to measure lay or public knowledge about white-collar crime revealed that the participants were fairly ignorant about corporate crime, its harms and victimization. Moreover, more than two-thirds of the participants thought that they were well informed on the subject [9]. This study also revealed that most people were influenced by popular myths about the crimes of the powerful, which resulted in more of a subjective rather than an objective or informed appreciation of the real costs in dollars or of the lives lost from the crimes of the powerful (Ibid.). Hence, one critical objective of the study of multinational corporate crimes is to demystify these crimes and their lack of control.

Part of the MCC conceptual problem stems from the fact that there have been a paltry number of high-quality studies of corporate crime [10], and again even fewer analyses and studies of the crimes of multinational corporations. One excellent exception is the examination of Rio Tinto, the war on Bougainville, and resistance to mining in *State Crime on the Margins of Empire* by Kristian Lasslett [11]. The limited evidence that does exist regarding these types of crimes suggests that the criminal law and penal sanctions have provided no deterrent value; although regulatory policy has fared somewhat better. Either way, the perceived costs or risks by those law-violating individuals working on behalf of corporations as well as the risk of formal legal punishments for these MCCs are quite small compared to the incentives or rewards (profits) for noncompliance. Another part of the conceptual problem stems from the unimaginable unknown dark figure of multinational corporate crimes.

In the world of high-powered multinational corporate crimes

¹that we do know about, these transgressions should be studied within the legal trends and social parameters of capital accumulation and global geopolitics. In an era of financialization and globalization, these examinations need to take into account both the current developments in the internationalization of criminal law and criminal justice as well as in the application of international human rights law.

¹ Multinational corporate crime refers to those acts or omissions on behalf of the Modern corporation or “a body formed and authorized by law to act as a single person although constituted by one or more persons and legally endowed with various rights and duties including the capacity of succession,” which has divisions in more than two countries (Merriam-Webster.com).

Concerning International Criminal Law, Elies Van Sliedregt maintains that there has been a general trend to normalize complicity inside of a multitude of liability models, such as “collective agency” or “co-perpetration” in criminal wrongdoing [12].

Unfortunately, these and other formulations of criminal wrongdoing and collective guilt are not without their own problems and contradictions. To date, the law has only narrowly and scarcely used these liability models. For example, models of collective agency have been primarily, if not, exclusively applied to social groups like those involved in drug or human trafficking rather than to social organizations like those involved in international securities frauds or other kinds of global financial harms and injuries [13]. Even more importantly, as one of the world’s leading regulatory investigators of financial institutions, Stephen Platt [14], has demonstrated in *Criminal Capital: How the Finance Industry Facilitates Crime*, not only do the global practices of banking act as a circulation system for criminal money acquired through drug trafficking, terrorism, piracy, human trafficking, proliferation and tax evasion, but these financial institutions also participate routinely in miss selling, rate rigging, and sanctions evasion.

In the context of globalization, the commonweal, and International Criminal Justice, “the godfather of international criminal law” and the Editor of *Globalization and Its Impact on the Future of Human Rights and International Law*, M. Cherif Bassiouni [15] has written: “We are living through a period of decline in the observance of and respect for human rights as they have evolved since the end of World War II. And we may well be witnessing a setback in the evolution of international criminal justice... in a curious, not to say perverse, way-our globalized world is becoming more interdependent and interconnected at the same time that it is becoming less committed to the identification and enforcement of the common good.” Comparable conclusions have also been drawn from *The Routledge International Handbook of the Crimes of the Powerful*. Although Bassiouni’s arguments and Barak’s may vary, they both agree that over the past couple of decades:

“Globalization has not only enhanced the power and wealth of certain states...it has also given these states a claim of exceptionalism. That claim has also extended to certain multinational corporations and Other non-state actors because of their wealth, worldwide activities, and their economic and political power and influence over national and international institutions. For all practical purposes, many of these multinational entities have grown beyond the reach of the law, whether national or international” [15].

Probably nowhere is this statement truer than during the periods that led up to and followed the Wall Street implosion of 2008, wherein the identification and enforcement of the criminal laws, national and international, were conspicuously absent from battling the epidemic of high-stakes looting and high-risks securities frauds that were operating throughout the financial services industry.

Nine years later, not one of the top Wall Street bankers who were collectively responsible for the biggest financial crimes in United States history has ever been charged, let alone, prosecuted for or convicted of violating any criminal laws against securities fraud. On the other side of the enforcement ledger, more than a few of those financial crimes of the past were legalized through decriminalization and deregulation, such as the repeal of the 1933 Glass-Steagall Act in 1999. Other forms of high-risk gambling, such as credit default swaps have still not been outlawed as obvious conflicts of interests, and they are also party to a derivative world of shadow banking subject to little in the way of state

regulation. Historically, these types of enforcement contradictions circulate the marketing of licit and illicit securities trades. At the same time, these securities fraud enforcement dilemmas cannot be detached either from their codependency on capital accumulation or from the development of an evolving capitalist state [16].

One fundamental difference between Bassiouni and Barak in the analyses of the roles of bourgeois legality in the development and implementation of the internationalization of criminal justice has to do with their ways of coming to terms with the noncriminal intervention into human rights violations, high-risk financial frauds, and a host of other multinational economic and environmental crimes. When Bassiouni examines the present state of globalization, he talks in terms of its positive and negative paradoxical effects on human rights violations and the lack of enforcement against such crimes. By contrast, when Barak examines the co-existence of the contemporary outcomes of the globalization of the crimes of multinational corporations and their noncriminal control, he speaks in terms of the historical contradictions between the enforcement of the criminal law, on the one hand, and the enforcement of capital accumulation and the influential roles played by the World Bank, the IMF, and a number of international trade agreements, resulting in favorable accommodations to multinational interests often at the reciprocal expense of consumers, workers, and the environment, on the other hand.

The Case of Restructuring Securities Investments and Circumventing Dodd-Frank

What most people do not know about MCC, including U.S. legislators on both sides of the political aisle who voted in favor of deregulation and for the Financial Services Modernization Act of 1999, which provided the final “nail in the coffin” that had been gradually eliminating the heretofore separation between commercial and investment banks established by Glass-Steagall in 1932, is the 1999 law also known as the Gramm-Leach-Bliley Act permitted these merging banking institutions to delve into any and all economic activities that are considered “complimentary to a financial activity.” As a consequence of this abstruse and limitless legal clause, banks like Morgan Stanley, JPMorgan Chase, and Goldman Sachs now “own oil tankers, run airports and control huge quantities of coal, natural gas, heating oil, electric power and precious metals [17]. In other words, these banks are buying and trading in entire industries no differently than Koch Industries while the latter oil industrialists are now engaging in financial transactions like those of Wall Street as they try to extricate themselves from the public enmity of climate changing fossil fuels. As a result, post Dodd-Frank there has been a “musical chairs” of sorts where bankers are becoming industrialists and industrialists are becoming securities traders.

In the case of the giant Wall Street financial firms, they have been “buying oil that’s still in the ground, the tankers that move it across the sea, the refineries that turn it into fuel, and the pipelines that brings it to your home. Then, just for kicks, they [have also been] betting on the timing and efficiency of these same industrial processes in the financial markets – buying and selling oil stocks on the stock exchange, oil futures on the futures markets, swaps on the swaps markets”. Naturally, allowing a handful of banks to control the supply of crucial physical commodities and to trade in the financial products that might be related to those markets, such as aluminum in the case of Goldman Sachs, is not only a furtherance of the financial services industry’s dominance of the political economy and its expanded concentration of

wealth, but it is also an open invitation to commit mass manipulations and frauds when required.

On the other hand, there are now those handfuls of industrialists and technologists that are diversifying their operations and moving aggressively into the financial markets, like the brothers Charles and Davis Koch. Keep in mind that Koch Industries has profit revenues on the order of more than \$100 billion annually, making it a nonpublic corporation larger than IBM, Honda or Hewlett-Packard, second in size only to the largest private company in the United States, the agribusiness colossus Cargill [18]. Since the early 1990s the Koch brothers, for example, have also been specializing in “over the counter” or OTC trades-private, unregulated contracts not disclosed on any kind of centralized exchange. Today, they are engaging in the full spectrum of trading activities once limited to the Wall Street financial giants, including such exotic securities as credit fault swaps and other derivative instruments. Koch Industries presently finds itself among the beneficiaries of the Dodd-Frank Wall Street Financial Reform and Consumer Protection Act of 2010. Case in point, the 2013 Volker Rule that bans investment banks from “proprietary trading” or investing their own money on their behalf in securities and derivatives, does not apply to nonbanking institutions.

Accordingly, as many Wall Street banks have had to unload their commodities trading units, nonbank traders like the Koch brothers who are not prohibited from proprietary trading are able to pick up clients who would have previously traded with JP Morgan, Citigroup, or Goldman Sachs. Thus, these new unregulated markets in securities have managed to circumvent the intention of the Volker Rule. At the same time, global bankers have been quietly assuming the former roles of industrialists who are getting out of the climate harming businesses. As a consequence of these operational exchanges, one could argue that the risks and harms to both the economic markets and the bioecosystems remain essentially unaltered by regulatory reform like the Volker Rule. In the process, the perpetrators of both these environmental and financial assaults have simply traded places with impunity.

The Rigging of Interbank Interests Rates: An Epidemic of Global Fraud Exposed by the Libor Scandal

The Libor (London Interbank Offered Rate) Scandal was a series of fraudulent rate submissions by those banks who submit interest rates for calculating an average interest rate used as a measure of the cost of borrowing between banks as well as a benchmark for setting interest rates worldwide. The rigging or manipulating of these rates was also connected to widespread insider trading of securities. The Libor calculating process works as follows:

Between seven and 18 large banks are asked what interest rate they would have to pay to borrow money for a certain period of time and in a certain currency. The responses are collected by Thomson Reuters, which removes a certain percentage of the highest and lowest figures before calculating the averages and creating the Libor quotes [19].

There are similar kinds of interbank rates measured elsewhere in the world, such as the Japanese Tokyo Interbank Offered Rate (Tibor) or the Belgium-based Euro Interbank Offered Rate (Euribor).

Concerning the Libor violations-criminal or civil-before, during, and after the Wall Street financial meltdown, these fraudulent rate submissions exceed by orders of magnitude any financial scam in the

history of markets. As one of the civil complaints read: “by surreptitiously bilking investors of their rightful rates of return... Defendants reaped hundreds of millions, if not billions, of dollars in ill-gotten gains”. In the United States alone, early estimated costs to the states, counties, and local governments came to at least \$6 billion in fraudulent interest payments, not counting \$4 billion that governments spent to unwind their positions exposed to rate manipulation [20]. In public responses, there were calls for resignations, criminal prosecutions, and stricter regulations of the financial sector. In addition, numerous civil lawsuits were filed by a diversity of plaintiffs, ranging from mutual funds to the city of Baltimore, Maryland claiming that they had “lost profits on Libor-based securities due to banks’ artificial suppression of the rate”. Defendants in these legal cases included the Bank of America, JPMorgan, Credit Suisse, HSBC, and Citigroup.

It should be pointed out that before the outrage emerged, in the global world of finance, the Libor was considered the “gold standard” for benchmarking interest rates. When the Libor went up, monthly interest payment rates were inclined to go up. When the Libor went down, some borrowers enjoyed lowered interest rates. However, pensioners in general as well as those who had invested in mutual funds would lose money or earned less in interest. Like “insider trading” in the stock market, having advance knowledge or information of Libor rates can not only affect the value of a security or a commodity, but its manipulation can also be used to make lucrative profits off of trades.

In terms of the routinization of these rigged rates, court documents have revealed that at the Royal Bank of Scotland (RBS), among senior traders it was common practice to make requests to the bank’s rate setters as to the appropriate Libor rate. Testimony from documents filed in Singapore by a RBS trader, Tan Chi Min, claimed that the Libor fixing process amounted to an “interest rate cartel” where rates could be globally manipulated. In his court affidavit, Min maintained further that senior traders at RBS were not only aware of the rate manipulation, but that they also supported such actions. Messages from one Barclays Capital (BCS) trader also revealed that for each basis point (0.01%) the Libor was moved, those involved could net a couple of million dollars [21]. On occasions, some hedge funds were also known to request rate information [22].

In 2012, there was roughly \$10 trillion in loans-including credit cards, car loans, student loans and adjustable-rate mortgages-as well as some \$350 trillion in derivatives that were all tied to the Libor. In July of that year, the United Kingdom based investment bank BCS paid \$453 million in a settlement with U.S. and U.K. regulators, admitting that their traders had submitted fraudulent bank rates for their costs of borrowing between 2005 and 2008. These traders had “repeatedly requested that their colleagues in charge of the Libor process tailor the bank’s submissions to benefit the firm’s trading positions. Barclays staffers also colluded with counterparts from other banks to manipulate rates...”(Ibid.). Additionally, during the height of the global financial crisis, between late 2007 and early 2009, BCS made artificially low Libor submissions because the bank was afraid that if its submissions were too high, then it would get punished in the markets as their investors would question the bank’s health. As former U.S. Assistant Attorney General Lanny Breuer was quoted, as saying regarding a settlement with UBS Financial Services, the real reason that Barclays had rigged the Libor rate was “to maximize profits and to hide its weakness during the crisis” [23].

On December 11, 2012, it was announced by the U.S. Department of Justice (DOJ) that HSBC Holdings, a British multinational banking and financial services company headquartered in London, ranking as the fourth largest bank in the world with total assets of \$2.67 trillion, had agreed to forfeit \$1.25 billion and to pay \$665 million in civil penalties for violating the Bank Secrecy Act, the International Emergency Economic Powers Act, and the Trading With the Enemy Act. In the settlement, the state had also agreed not to criminally prosecute HSBC for alleged terrorist financing. One week later, UBS, Switzerland's biggest bank, settled with U.S., U.K. and Swiss regulators for a sum of \$1.5 billion for manipulating interest rates and for criminal charges against two former traders. The global investigation of these traders involved more than a dozen banks and brokers.

In fact, regulators found that the Zurich-based bank made "more than 2,000 requests to its own rate submitters, traders at other banks and brokers to manipulate rate submissions through 2010" [24]. According to the Financial Services Authority, there were at least 45 bank employees, including some managers, who knew of the persuasive practice and another 70 people who were included in open chats and messages "where attempts to manipulate Libor and Euribor" were discussed (Ibid.). In 2011, Japanese regulators had also temporarily suspended some of UBS and Citigroup's transactions "after finding that both banks had attempted to influence Libor rates and the related Tokyo Interbank Offered Rate".

Besides these multinational banks there were other global banks involved in this kind of collusion and submission of fraudulent Libor rates. Back in March of 2011 the Wall Street Journal reported that U.S. regulators were investigating Bank of America Corp. and Citigroup Inc. for manipulating the Libor. Eleven months later, in February 2012, the U.S. Department of justice announced that it was launching a criminal investigation into widespread Libor abuse. In July of 2012, the UK Serious Fraud Office announced that it too was opening a criminal investigation into Libor. Not only was the UK looking into BCS' fraudulent submission rates but also those of twenty other major banks.

During the same month and year, the Canadian Competition Bureau (CCB) announced that it was carrying out an investigation into the Canadian branches of the RBS as well as HSBC, Deutsche Bank, JP Morgan Bank, and Citibank for "price fixing" around the yen denominated Libor rate. A federal prosecutor for the CCB stated that "IRD (interest-rate derivatives) traders at the participant banks communicated with each other their desire to see a higher or lower yen LIBOR to aid their trading positions"[25].

By the end of 2015, more than a half-dozen banks had paid out more than \$10 billion to settle charges with regulators for fraudulent rate submissions. However, in the face of all the accusations against dozens of multinational or global banking giants and in the midst of a rate rigging epidemic in the financial services industry, there were very few traders who were actually indicted, and subsequently criminally prosecuted for securities frauds. And, there were no CEOs or chairmen of the boards who faced any type of criminal charges. Although a number of them bowing to political pressure found it necessary to resign their leadership positions.

Despite the lack of difficulty in convicting these multinational financial criminals for their habitual violations of the Libor, pretty much like the history of high finance crimes in general, these have for all intent and purposes been routinized away and decriminalized. Like the capitalist state's responses to the epidemic of securities frauds in the

financial services industry that led up to and caused the Wall Street meltdown, social control of these criminalities has primarily been subject to conciliatory settlements with the feds or compensatory civil relief for select groups of investors, and rarely have the benefactors of these defrauding schemes been subject to any kind of penal sanction [26]. In terms of compensation for the victims of Libor, plaintiff investors and municipalities initially filed a series of class actions in New York. Eventually these lawsuits were joined by homeowners claiming that they too had been victimized by the Libor manipulations, which had, in effect, made their mortgage repayments more expensive than they would have been, and in many instances resulted in foreclosures and repossessions of people's homes.

In the class action suit filed in New York, Annie Bell Adams and her four co-lead plaintiffs explained how their subprime mortgages were securitized in Libor-based collateralized debt obligations and sold by bankers to investors. The class action alleged that traders at 12 of the biggest banks in Europe and North America were "incentivized to manipulate the London interbank offered rate to a higher rate on certain dates when adjustable mortgage interest rates were reset" [27]. According to the complaint, the result was that subprime homeowners between 2000 and 2009 ended up paying more. Alabama-based attorney, John Sharbrough, at the time of the filing stated that the number of plaintiffs could be as high as 100,000 and that each of them may have lost thousands of dollars. These plaintiffs held what had been called Libor Plus adjustable-rate mortgages. Moreover, there were at least 900,000 outstanding U.S. home loans indexed to Libor that originated from 2005 to 2009, "with an unpaid principal balance of \$275 billion," according to the Office of the Comptroller of the Currency (Ibid.).

Estimates of how much banks were going to end up paying in Libor lawsuits once ranged from a low of \$7.8 billion to a high of \$176 billion. However, in the spring of 2013, a federal judge dismissed most but not all of the Libor lawsuits against 16 banks, including JPMorgan Chase and Bank of America, in part, because the plaintiffs "couldn't jump through all of the necessary hoops to show how they had been harmed by violations of U.S. antitrust laws"[28]. While Judge Buchwald found that plaintiffs lacked standing to sue the banks either under antitrust laws or the Racketeer Influenced and Corrupt Organizations statutes, he let some claims proceed under different laws. For example, he made it possible for big institutional bond investors, including pension funds and money managers like Charles Schwab, to proceed. Similarly, lawsuits by derivative traders were allowed to go forward, which simply resulted in many of the defendant banking institutions settling their cases financially for fractions of what they made from their ill-gotten gains.

As the Managing Editor for Business and Technology at The Huffington Post, Mark Gongloff, wrote at the time: "Regulators, who have more leverage over banks than civil plaintiffs, will keep extracting cash in settlements as the months go forward. But if Libor victims can't make the banks pay more in court, then this whole Libor scandal may well end up being more like the Grenada invasion than World War III" (Ibid.).

The Business Model of Tax Avoidance and Labor Exploitation: The Case of Apple and other Multinational Corporations

In 2015 Apple Inc. reported a quarterly profit of \$18 billion, the largest in history. During the same year its market-capital valuation of

\$765 billion reached the highest ever for any U.S. corporation. Based on total revenues of \$233 billion for 2014/15 for a private, public, or state-owned company, Apple ranked 12th in the world [29]. However, its record for design and technological innovation has been second to no other companies. Several factors have contributed to Apple's success, including the vision of the late Steve Jobs, the execution of Apple engineers, the failure or refusal of Apple to pay a fraction of its fair share in taxes, and the superexploitation of the workers who manufacture Apple products [30].

Apple has a lot of company among multinational corporations who also invest in the creation of shell companies and offshoring in order to evade their fair share of taxes. When it comes to paying close to nothing in U.S. taxes or rates around 2 to 5 percent and even as low as 1 percent, the typical tax rate would be around 30 percent. As the Panama Papers exposed and the Australian comedy show *The Undercurrent* explains in a 7 plus minute video available on YouTube: "Companies like Apple, Google and Facebook use offshore registration, transfer payments, debt loading and tax havens to get a lower tax rate than nurses, starving their host countries like Australia of so much money that they're cutting schools, medicare, public broadcasting, climate change and indigenous services" [30].

In the case of tax thieving, a 2013 U.S. Senate investigation discovered that by "creating mail-slot entities all over the world and attributing its profits to them, Apple [had] managed to pay just 2 percent in taxes on \$74 billion of income overseas". Apple is in "good company" when it comes to tax evasion. Off shore accounts and tax-sheltering by the very rich and multinational corporations are estimated to constitute a hidden financial system valued at \$21 trillion dollars [31], representing hundreds of billions of dollars annually in lost revenue or stolen money from the tax collector. According to Citizens for Tax Justice, 18 of America's largest corporations, led by Apple, deployed the same tactics to avoid paying \$92 billion in U.S. taxes in 2014. The same Senate report found that "Apple-which has \$181.1 billion socked away in offshore accounts-is among the group of multinational corporations lobbying Congress to grant them a second repatriation tax holiday so they can bring an estimated \$1.7 trillion home at the significantly reduced rate of 6.5 percent"[29]. With President-elect Trump soon to take office and a Republican controlled U.S. Congress, the likelihood of a second reparation tax holiday for the superrich is not far off.

In the case of worker exploitation, the state routinization of the inhumane conditions under which Apple's subcontracted employees work in China is well known thanks to the performance artist Mike Daisey's one-man show at the Public Theater in New York in 2011, a New York Times follow up story in January 2012, and finally the BBC documentary *Panorama* that aired in December 2014. The film reveals a series of broken promises made in 2012 by Apple to various human rights and labor rights groups to improve the working conditions inside of a number of Chinese facilities where employees of Pegatron and Foxconn busily assemble the newest iPhones. The filmmakers recorded the regular breaching of the standards established for workers hours, ID cards, dormitories, work meetings, and juvenile employees. They also documented that in Indonesia children were working in dangerous open cast mines and that the tin from these illegal digs was being used in iPhones.

Apple's annual report for 2014 acknowledges that the compliance rate regarding its own standards was only 70 percent, down from 77 a year earlier. The enforcement of workers hours was also down from the previous year. In a nutshell, these subcontracted workers are exploited

in various ways despite the reality that Apple's labor costs amount to a tiny fraction of its profits, especially in the context of the generous compensation packages enjoyed by top executives. In 2011 and 2012, "the top nine members of Apple's executive team received compensation packages equal to that of fully 90,000 Chinese factory workers"[29].

Subsequently, in April 2015, Li Qiang, founder and executive director of the workers' rights organization China Labor Watch, reported that "workers from Foxconn factories in Chengdu and Shenzhen were [being] sent to the Quanta factory in Changshu to work 12-hour days making Apple watches in order to meet the company's April 24 release deadline". As there was a shortage of dormitory space for the workers at the factory, they found themselves forced to sleep in buses. These workers also found themselves producing watches in freezing temperatures while wearing thin work uniforms, and where close to 100 workers became ill and had to be hospitalized. Certainly once again one can argue that it's not fair to single out Apple when it comes to multinational corporate exploitation of laborers. Its record is far from the worst of the technology companies. A footnote as I put the finishing touches on this article, the Trump transition team is already rumored to be involved in negotiations with Foxconn to bring its production to the United States, which would make the cost of producing the iPhone twice as expensive as in China.

Conclusion

Globally there is no compelling counter-evidence to assume that other than the circumventing of Dodd-Frank or its equivalencies, the rigging of interbank interest rates, the tax avoidance, and the exploitation of labor by the most powerful multinationals, that these practices are not a part of their operating models of doing business. As these and other examples of MCC such as high-stakes securities frauds, crimes against the environment, consumer abuse, and so on disclose: the investigation, identification, and enforcement of these transgressions and the relevant criminal laws, national and international, have been conspicuously absent from the capitalist state's well-armed arsenal of legal weaponry that allegedly fights against all forms of criminality. In step with the absence of state control of these crimes of capital, the study of multinational corporate crimes and the control or prevention of these has also been conspicuously missing from the criminological agenda.

The prevailing state of criminal impunity and the normalization or routinization of these and other MCCs can be explained in terms of the historical contradictions between the enforcement of the criminal law, on the one hand, and the enforcement of capital accumulation and reproduction, on the other hand, resulting in the latter overcoming or defeating the former. Most, if not almost all, of this "decriminalization" occurs before any criminal charges, not to mention criminal prosecutions or adjudications, let alone, convictions have even been considered, let alone attempted. Hence, I have not here or elsewhere called for tougher law enforcement or stricter laws of regulation because in all likelihood these new rules would find themselves in the same condition as the old rules, subject to the laws of inaction and impunity.

I have also rejected such other conventional means alleged to control multinational corporate crime as the various forms of self-regulation advocated by persons associated with lenient or softer criminal enforcement approaches to white-collar criminals, including

enhanced self-monitoring, upgraded ethical conduct, or greater social responsibility. For decades these and other banal ideas and bankrupt practices have proven themselves inadequate for addressing all forms of corporate misbehavior, especially involving multinational or global actors. In short, these types of alternative social sanctions are of little value beyond their ideological or obfuscating appeal as each misses hitting the proverbial etiological nail with the criminological hammer. That is to say, multinational corporate crimes are extremely profitable, the criminal costs or downsides associated with these violations are virtually nonexistent, and these transgressions are temporarily good for global markets.

Elsewhere, I have identified some 30 organizational and structural policy changes capable of halting multinational corporate crime. Here, I merely calling-as the time is way past due-for the serious study and development of MCC as a sub-area of criminological inquiry.

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