Towards Understanding Globalisation and Control of Corporate Harm: a Preliminary Criminological Analysis†

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Introduction

'Globalisation' features prominently in many current debates, both within the popular media and academic journals. It has both a prominent and taken-for-granted status, so that newspaper reports, activists and other NGO newsletters, television news and countless sites on the internet can launch into analyses of the impact of globalisation on anything from local industry to the destruction of cultures and languages (Waters 1995). This debate is replicated within a range of academic social science disciplines, and has begun to be felt within criminology (see for example Findlay 1999 and Braithwaite & Drahos 2000[1]). Yet, for many this term is ill understood and poorly defined, to the degree that sections of the academic literature have begun to distance themselves from the term[2]. Nonetheless, key themes appear and reappear under the rubric of 'globalisation': the erosion of national sovereignty (Habermas 1979; 1996), the growth of international and global institutions including multinational corporations (Greider 1997), global rationalism or the growth in rules at the global level (Giddens 1990) and the rapidity of economic change and primacy of free trade policies (Dunkley 1997; Greider 1997). Each of these themes, this paper argues, holds important implications for a criminological understanding of the control of corporate harm.

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1 Indeed, Braithwaite and Drahos' book is on a closely related topic about the way business regulation has developed on the world stage. My aim is far more modest, to reflect what I see as some of the key criminological debates on the control of corporate harm in light of the major themes and issues associated with globalisation.

2 The millennial edition of the British Journal of Sociology, for example, includes analyses from eminent authors such as Wallerstein, Lasch and Castells on the state of that discipline and its relevance to contemporary society. What is interesting is that the term 'globalisation', whilst central to the discussion within many of the papers within that volume, appears but only rarely.

A criminological analysis on the impact of globalisation on corporate crime and its control is timely. Much of the popular debate on globalisation concerns the harmful conduct of industry, particularly multinational corporations. This is echoed in criminological writing which often has berated the discipline and the state for a focus on crime in the streets, rather than crime in the suites (for classic examples see Sutherland [1949] 1983 and more recently Box 1983). Further, critics of globalisation pay considerable attention to the ways the institutions of globalisation, most notably the World Bank and International Monetary Fund, underpin and exacerbate the propensity of multinational corporations to wreak misery and suffering on the weakest of the worlds peoples (see for example Martin & Schumann 1997 and the collection by Mander & Goldsmith 1996). Criminologists too, have been concerned with the reluctance of institutions (most often, however, institutions of the state) to take firm decisive action against corporations (see for example Clinard & Yeager 1980). Given these similarities, it is timely to consider what the likely impact of globalisation is, not only on the nature and extent of corporate harm, but on its possible control. It is this latter question that this paper seeks to address.

Criminological analyses of the control of corporate harm can be seen as a series of expanding boundaries. Initial concerns revolved around the paucity of criminal prosecutions in response to corporate harm. Indeed, the underpinning of Sutherland's seminal thesis on white-collar crime was that corporations which broke the law were more harmful than traditional street criminals and had higher levels of recidivism. His was a call to action, a demand for a complete reversal of the practice of 'going soft' on such criminal activities. These breaches of the law deserved criminal punishment. This demand has remained popular. Many others, particularly in the US, have viewed the lack of criminal prosecution against companies that maim and kill as a clear failure of state policy and practice (Glasbeek & Roland 1979). An underlying perception of these authors is that companies are amoral actors that respond in a uniquely rational fashion to the threat or reality of criminal punishment. The state that fails to use this sanction is either captured by industry interests or simply ignorant (Pearce & Tombs 1990).

Careful studies of the reality of regulators' everyday lives revealed a contrasting picture. Where the call by criminologists was for corporate scalps as a sign of success, Hawkins in his 1984 study showed that for many regulators the resort to prosecution was an indication of failure. A regulator who could not bring a company to a point of compliance is one who has failed. Regulating demanded skill beyond that of simple law enforcement, the purpose was prevention of harm occurring in the first place. Reiss (1984) captured nicely the contrasting dynamics in the two approaches. He labelled a reliance on enforcement and punishment as a 'deterrence' strategy, the other on negotiation and education as a 'compliance' strategy. The mindset behind these strategies could not be more different, for one, the regulator is a judge with a keen eye for failure, for the other, the regulator is an enabler and educator (Rees 1988).

The aim of much writing by Braithwaite (Ayres & Braithwaite 1992) has been to design regulatory strategies that combine the strengths of both approaches. His regulatory pyramid, combining persuasive tactics at the base and escalating to punitive strategies when necessary, is perhaps the best known of these. Within an enforcement strategy such as this, sanctions range well beyond criminal prosecution. At the more punitive end licence revocation (the equivalent to corporate capital punishment) might be used, further down fines (including equity fines), prohibition notices ('cease and desist' orders), compulsory disclosure, on-the-spot fines, even rewards can have a place within a comprehensive regulatory armoury.

Arguably more important in an era of globalisation, however, is Braithwaite's contention that what is needed to ensure compliance is the presence of third actors (beyond regulator and regulated company) which can make both company and regulator accountable for their actions (Ayres & Braithwaite 1991). A range of public interest groups may then become involved in the regulatory task, residents of nursing homes in nursing home regulations, unions in health and safety, consumer groups in product safety and so on.

A recognition of the impact of public interest groups makes it clear that organisational responses to the harm they cause do not rest on the actions of the regulator alone. In terms of developing regulatory strategies, Grabosky (1994a, 1994b) highlights that the regulator and public interest groups are not the only actors which can be used to persuade companies that it is in their own interests to comply. Insurers, companies further up or down the supply chain as well as public interest groups can be brought in to bolster regulatory activity. Certainly, attention needed to be diverted away from a sole preoccupation with the legislated techniques for corporate control, towards an understanding of the dynamics and particular industrial context within which regulation takes place (Haines 1997). It is this context which sheds light on why compliance does, or does not occur.

The shift in attention away from government regulator has brought with it a concern with standards of corporate conduct themselves, beyond a preoccupation with law enforcement or compliance with a pre-set standard. In recent writing, the company's role is no longer merely to comply with regulations legitimised by legislation, but to create codes of conduct, rules and guidelines which set the standard for good behaviour (Ayres & Braithwaite 1992; Gunningham & Grabosky 1998). This work is focussed on how good corporate behaviour (in terms of standards) is engendered, beyond minimal compliance with a government mandated regulatory regime.

This is echoed within regulatory policy in Australia, for example in the health and safety sphere. The move is away from prescription, exact specifications in legislation for what a company must do to ensure compliance with a preset safety regime, towards outcome-based legislation where companies design safety systems that either adhere to a certain process or ensure a certain outcome – in this example a safe workplace. This is seen as a simplification of the regulatory process. It is argued that the focus on outcome-based legislation reduces the need for multiple (and occasionally conflicting) requirements within regulations (Johnstone 1997). However, it also means *monitoring* regulatory compliance has become infinitely more complex. Regulators need greater skills, since they no longer have a rulebook, rather they require the knowledge and training to be able to ascertain when a company's system is, or is not, satisfactory (Commonwealth of Australia 1999). This is well illustrated by the 'safety case' regimes now prevalent in many regulatory jurisdictions[3]. Under these regimes, companies have to prepare an extensive document (the Safety Case), which demonstrates: that they have identified all hazards in the workplace; undertaken a risk assessment to ascertain the level of risk that each hazard poses and put in place risk control measures and a monitoring regime to ensure an ongoing commitment to safety. The details of each 'safety case' may vary, with companies thus responsible not only for regulatory compliance (ensuring a safe outcome) but with standard setting itself (i.e. what specific risk controls need to be in place to ensure a safe outcome). Further, a competent regulatory enforcement officer now not only has the task of monitoring compliance, but ascertaining whether the methods the company has used and the ensuing safety performance are adequate to ensure regulatory compliance. In both criminological analysis and in regulatory policy, enforcement and standard setting have become intertwined.

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3 Amongst others, gas installations, gas pipelines within Victoria, as well as federally controlled oil operations in the seas around Australia.

The thrust behind the developments in both criminological and policy spheres is that it is industry which has both the resources to develop company policies to avoid harm and the responsibility to ensure they are effective. To a criminological sceptic, however, the key question is motivation: *why* should a company act to avoid harm – particularly if they fear no retribution if they fail? One answer is provided by the deterrence strategy. A company should do this because if they do not they will be punished. But questions of corporate motivation clearly have other answers, particularly when bodies outside of government are seen to regulate. A number of studies reveal that companies who excel in safety standards are convinced that it is in their long-term interest to develop and maintain high safety standards (Braithwaite 1985; Rees 1994; Haines 1997 but see Hopkins 1995). Further, a shared commitment to high standards allows trust to develop between companies in the same industry and between industry and regulator so that no one company will seek advantage by cutting corners or lowering standards. Perhaps one of the most interesting studies in this area is that of the US nuclear installations undertaken by Jo Rees (1994). Rees argues that, in response to Three Mile Island, US nuclear installations were convinced they shared the same fate. That is, a nuclear accident in any one company would be catastrophic for the industry as a whole as public sentiment would ensure all of their operations would be severely curtailed. Only avoiding nuclear accidents at all costs would ensure the long-term success of their industry as a whole. The belief in this shared fate resulted in a self-regulatory regime that demonstrated considerable ability to pull poorly performing operators into line. A similar, but arguably less successful, regime is in place in the chemical industry in their 'Responsible Care' programme (see Gunningham & Grabosky 1998).

The presence of these environments, however, is by no means guaranteed. There are good reasons why some companies are, or can be convinced, that high standards are in their long-term interest. Other environments or industries do not provide such a context. Haines (1997) draws on a Marxist analysis to flesh out the common observation that smaller companies tend to be less safe than their larger counterparts (Croall 1989; Nichols 1989; Snider 1991). Haines argues that it is the process of capital accumulation, the increasing concentration of capital progressively squeezes smaller companies as they fight for survival that explains their generally poor performance. One means by which such companies can survive is to cut corners. The smaller operator may simply not have the choice to comply with all government demands. With little leverage in the market, they must simply accept the rules of competition as given. When safety costs too much (particularly when the hazards appear remote) such businesses justify that their current practice is the only way to survive.

Further, not all large well-resourced businesses act to improve standards in their industry. Clearly, some large businesses also see high standards in areas such as safety as inimical to profit (Haines 1997). One way for companies to get rid of the problems associated with a hazardous process, particularly if it is expensive, is to reduce the hazard by contracting out the risky operations associated with such a hazard. But the problem as a whole does not disappear. Industries characterised by high levels of contracting out have been shown to display poor safety practices (Haines 1997; Quinlan 1999). Part of the reason for this poor safety is that subcontractors tend to be small and exhibit a small business philosophy to safety – one which large businesses can exploit through the contracting out process (Haines 1997).

What this suggests is that the potential for an improvement in corporate standards and control of corporate harms are context specific. Clearly, there are a range of regulatory techniques and non-government as well as government actors which can 'regulate' corporate activity. But to understand the likelihood of success of particular strategies demands an understanding of the changing context within which business operates and the impact this has on how organisations develop their priorities. The purpose of this paper is to map changes in that context that have clear implications for influencing the way organisations see their priorities and so for the development of successful regulatory strategies. More specifically, the paper selects key issues in the globalisation debate, which have a clear impact on the way criminological analyses have conceptualised the problem of regulation to date. It is argued that these changes illustrate both the strengths and need for further development in a criminological approach to the regulatory task.

The Fate of the Nation State and the Rise of Global Institutions

Much of the debate about regulatory enforcement strategy (the 'deterrence or compliance' or 'punish or persuade' model) has contained unwritten assumptions about 'the enforcer' being a national or state government. These assumptions can be seen to fall into two broad categories: firstly, that there is a state which is able to 'punish or persuade' and secondly, that the state sees that task as their sole purpose in control of the organisation for the purposes of improving their compliance with regulatory standards.

The globalisation debate makes each of these assumptions increasingly problematic. A central theme in globalisation is the way in which the nation state[4] can no longer develop in isolation to the rest of the world. Globalisation is a relativising force. Communities are not able to see themselves as 'the world' but rather must form identities in comparison with others (Mittleman 1994). Clearly, they can do so in opposition to 'the world' (as in the case of some fundamentalist or totalitarian regimes) or by seeing themselves as a part of a world community. The key issue is that states can no longer ignore global influences in a range of economic and social areas. In terms of regulatory strategies, global influence means that nations will develop regulatory strategies in light of international regulatory trends (see for example Haines 1999). Governments may be bound to accept products which breach local regulations, such as the recent ruling by the World Trade Organisation (WTO) that Tasmania accept the importation of fresh salmon from Canada (World Trade Organisation 2000), despite concerns that the salmon would introduce disease to local stocks. Government may no longer have a free rein to choose a regulatory strategy, independent from international trends or obligations.

To many, globalisation erodes the self-confidence of the nation state (Habermas 1996). National governments subject to international pressures are less able to convince their populace that they are 'in control' (Habermas 1979). The creation of laws and the enforcement of those laws have a political purpose – beyond their instrumental effectiveness, 'law and order' campaigns are attempts by governments to re-establish legitimacy (Hogg & Brown 1998) rather than reduce crime rates. The criminal law is used as a symbolic weapon to re-establish national legitimacy and as such is less amenable to form part of a graded regulatory response to corporate wrongdoing. Indeed, when faced with corporate harm the state may see greater advantages in criminalising the victims or those who complain on their behalf – rather than attempt to control the corporation. Control of the corporation may jeopardise investment (Harvey 1989). Certainly, within the Asian region there are clear examples where the criminal

4 The debate is usually couched in these terms – rather than focussing on the intricacies of a federal constitutional arrangement such as Australia where much regulatory activity takes place at the state level.

law is used not to uphold regulatory standards, but to maintain 'national order'. Those at most risk of criminalisation are individuals and groups lobbying for changes and improvements in working standards, rather than the corporate actors themselves (Phongpaichit & Baker 1995; Deyo 1997).

The relativisation process that accompanies globalisation also means that the concerns of one country about regulatory standards may not primarily concern the activities of companies within their own borders. Rather, the concern may be around the level of corporate harm evident in neighboring countries (which in the case of environmental damage might spill over into their borders) or corporate activity within less-developed nations seen as abusing the rights of local populations. Countries have considerably less ability to control the actions of another nation than they do in controlling corporate activity within their own borders. Criminological calls for traditional punitive regulatory strategies, such as criminal prosecutions, simply are not applicable.

Despite these complexities, the criminological themes outlined above resonate at the international level. Many diplomatic and political discussions about how to deal with nations with poor labour standards revolve around 'punish or persuade' strategies. The content of the strategies differs, but the dynamics are similar. At the international level the punitive strategy is often the trade sanction and diplomatic negotiations the 'compliance' or persuasive route. Arguments about the strengths and weaknesses of trade sanctions to some extent mirror those for punitive regulatory strategies at the national level (Braithwaite & Drahos 2000). Trade sanctions are seen as a definite signal that the international community will not tolerate certain practices. However, it is argued that they also alienate the target nation and provide less opportunity for negotiated outcomes. Such arguments resonate with criminological discussions of regulation.

The recent broadening of the criminological debate to include multiple forms of regulatory techniques and a variety of regulatory actors is also relevant in a globalised environment. Emerging 'sanctions', such as consumer or government sponsored boycotts and publicity campaigns, need to be effective across national boundaries (for a comprehensive list see Grabosky 1994a). Such sanctions are complemented by techniques that are clearly designed to improve standards. Examples include labelling strategies ('dolphin free tuna' labels guaranteed use of nets not harmful to dolphin, or 'RUGMARK' labels which guarantee no use of child labour) and accreditation schemes (ISO 9000[5]) designed to ensure safety and quality of the product (Sabel et al 1999).

The diversity of techniques is mirrored by the diversity of actors that seek to 'regulate' the activities of business. Some represent formal aspects of international or regional governance, institutions such as the United Nations, International Labor Organisation (ILO) and World Trade Organisation (WTO) at the international level; the Association of Southeast Asian Nations (ASEAN), the European Economic Community (EEC) and the North American Free Trade Agreement (NAFTA) at the regional level. Other actors are less tied to specific governments, but nonetheless are increasingly important element, of international governance. The International Organisation for Standardisation is a key component of the regulatory framework at the international level[6]. In addition are a range of international non-government organizations (NGOs), organizations which often are vocal proponents of the need for globalisation to have a human face (Rowbotham & Mitter 1994).

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5 ISO 9000 is a family of standards produced by the International Organisation for Standardisation (see below). It encompasses a range of standards concerned with quality systems. The two major standards, which form the basis of accreditation, are ISO 9001 for production industries and ISO 9002 for service industries (International Organisation for Standardisation, 2000).

Global Rationalism

This diversity of techniques and actors points to an aspect of globalisation which is little discussed, but has considerable implications for the nature of regulation into the future - the progressive rationalisation of administration in what might be termed global rationalism. Each regulatory actor, whether government, international institutional forum or NGO seeks to consolidate its perception of the way companies should act – and seeks to create or influence rules. This has led to a wealth of non-binding guidelines, codes of practice and codes of conduct appearing on the international stage. Some are generated by individual companies or industry associations (Diller 1999), others by regional bodies such as the recent OECD Guidelines for Multinational Enterprises (2000). This is accompanied by a proliferation of legal and administrative rules emanating from various global and regional institutions, much aimed at the harmonisation of regulatory standards in order to facilitate trade (Giddens 1990; Haines 1999; Braithwaite & Drahos 2000). Thus the complexity of regulatory standards at the international level compounds the already complex nature of the regulatory task at the national level with the shift, outlined above, towards an outcome-based model.

In order to demonstrate high standards, companies such as multinational corporations (MNCs) which seek to assure an international public that they are indeed reducing their harmful side effects may sign up to any one of a number of voluntary schemes around internally or industry generated codes of practice. It is not lost on these companies, though, that the voluntary nature of this regulation leads to questions of its effectiveness (Sabel et al 1999). To counter this, some schemes have privately driven auditing procedures, where major accounting firms are hired to check compliance with industry or company codes. It is here that NGOs are increasingly requested to act as auditors where companies such as Nike feel that an audit by a high profile NGO will give greater legitimacy to the findings of the audit (Sabel et al 1999).

The driving up of standards as a result of these schemes leads to the possibility that the standards of MNCs may actually pull up the standards of other local companies. Certainly, MNCs have the resources to raise standards above other companies, particularly in industrialising countries (Mueller 1994). What may be evident is a global pattern that mirrors Haines (1997) work in Australia. That is, it is the small organisation that struggles to comply with regulations and higher standards. Larger organisations with resources may be those best able to increase standards. It is unlikely that those MNCs or other large organisations that exhibit such behaviour do so because of some sort of an inherent characteristic of such organisations or their personnel (Haines 1997). There are simply too many disasters and instances of appalling behaviour on the part of MNCs for this sort of naivete - the instance of Bhopal just to mention one (Shrivistava 1987). Rather such behaviour may be expressed only under certain conditions including: the ability to control the market in the interests of safety (Haines 1997), the presence of adequate third party oversight (for example NGO audits) (Ayres & Braithwaite 1991; Sabel et al 1999; Cooney 1999) as well as the presence of a corporate culture or philosophy that sees success and high standards as mutually supportive (Haines 1997). Under these conditions, standards of such 'virtuous' MNCs to ensure the maintenance of these standards across their operations may rest in the first instance with internally generated codes.

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6 The International Organisation for Standardization is a worldwide federation of national standards bodies, of which the Australian Standards Association is one (see below). It is a non governmental organization established in 1947 (International Organization for Standardization 2000).

In a global setting, the regulatory framework - a combination of state-imposed rules, international obligations and voluntary schemes - thus becomes a complex web. However, in addition to this complexity is an emerging ambiguity in the degree of compulsion each aspect of the framework contains. Regulation combines mandatory requirements, as in the case of legislation and state-based regulation, with voluntary conformity resting on self-imposed or industry-wide guidelines standards. This apparently neat division may not always be clear. Rules may appear non-binding, but are in fact binding. One method by which this is achieved is by the customer (most often government or business) requiring certain forms of accreditation (for example ISO 9000 accreditation) before they will purchase goods. Here a voluntary scheme (ISO 9000) becomes a prerequisite for entering a certain market, shedding doubt on its voluntary status. The obligation, however, arises from the consumer not in the traditional sense of government regulation.

In other cases the shift from voluntary to compulsory is more directly under government mandate. Increasingly, legislation in the regulatory arena is becoming multi-layered, with regulations calling upon various standards *as a condition of compliance*. Principal legislation, for example, the *Occupational Health and Safety Act* 1985 (Vic) will have underpinning it a series of regulations (for example the *Occupational Health and Safety (Plant) Regulations* 1995 (Vic) (hereafter Plant Safety Regulations). Within these regulations reference is often made to Australian Standards (for example in the Plant Safety Regulations, six Australian or joint Australian/New Zealand Standards are called up[7]). These are standards created by Australian Standards Committees, comprising government, expert and industry representatives, under the auspices of the Australian Standards Association[8] aimed at providing specifications on eliminating particular hazards. Once called up in legislation such as this, the standard becomes binding. This 'nesting' of standards within legislation leads to intriguing outcomes since such standards can be revised without changing the regulations or legislation in any way. At present, Australian Standards are going through a progressive review process to bring their standards into line with the International Standards of the International Organisation for Standardisation, mentioned above. As Australian Standards are harmonised with International Standards, those standards then become required of Australian business in a de facto manner. Thus, the process of 'simplification' of Australian regulations, when drawing in Australian and International Standards in this way may result in more, not less, regulation. Further, standards and guidelines intended to be voluntary may end up mandatory.

The proliferation of rules as de facto mandatory requirements clearly creates some problems. Where there may be a positive effect in an increased demand for professionalism to make sense of the rules (Rees 1988), the potential risk is that the complexity will result in increased opportunities for creative strategies in rule avoidance (Vaughan 1983, Passas & Nelken 1993). For governments there is increasing difficulty in identifying which companies are falling short of these requirements or are exploiting a lack of oversight by regulators. The changing nature of work is a key issue here. Sites of production have changed in many industries away from a central factory towards greater use of outworkers,

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7 For example AS 2030, *Gas Cylinders*, AS/NS 1200 *Boilers and Pressure Vessels*. Further standards may be called up in Codes of Practice that underpin regulations. As of 1999 there were 5,760 Standards in total, with 2,431 of these called up into legislation (Australian Standards Association 1999).

8 The Australian Standards Association is a not-for-profit organisation established in 1922. It operated formally under a royal charter (incorporated in 1950) and in 1999 changed its status to a company under corporations law, specifically a company limited by guarantee. It is recognised as the peak standard setting body in Australia through a 1988 memorandum of understanding with the Commonwealth Government (Australian Standards Association 1999).

individuals and often their families producing garments or toys within their own homes (Harvey 1989; Rowbotham & Mitter 1994). It is up to government to ensure that legislation pertaining to the company is also applicable in the family home, for example by extending the responsibility of the contractor for the safety of the subcontractor, or the major company for the safety of those making their product under licence. Schemes such as ISO 9000 are applicable in outworkers places of work – since the issue in this set of standards is the quality of the product, which may include the standard of the workplace if it is seen to impinge upon that quality. However, spatial challenges remain. Outworking brings with it the problems of decreased corporate accountability, as there is substantially less opportunity for proper oversight by the regulator or third parties, such as unions.

Understanding the process of rationalisation, of turning a substantive value (e.g. 'Safety' or 'good working conditions') into sets of formal rules has a time honoured history. It was Weber who first described the process as an inevitable process in the gradual bureaucratisation of societies (Gerth & Wright Mills 1993) and has been well-utilised in studies on regulation (see Espeland 1998; Haines 1999). A key feature of rationalisation is, however, that there is no intrinsic 'rightness' of the value to be enshrined. Regulations proliferate on the world stage partly because of the conflicting values held by different sections of the world's population. Nations, institutions and individuals seek to influence rules (and regulations) so that their form of 'rightness' becomes enshrined in those rules. As globalisation proceeds and countries are forced to confront the different nature of values in other corners of the world, rules proliferate and become more complex as parties seek to find their voice (for a description of this process in the ILO see Cooney 1999).

The Impact of the Free Trade Agenda

Arguably the most fundamental value conflict confronting the world stage at present is between those who consider free trade to be essential to future world development (Freidman & Freidman 1996), and those who argue that free trade policies result in subservience of all to the dictates of capital, in particular a capricious financial market (Mander & Goldsmith 1996; Martin & Schumann 1997). Through the process of rationalisation, this value conflict underpins regulatory conflict. Free trade policies have been responsible for their own sets of rules aimed at enshrining free trade, eminently illustrated by GATT, and now WTO policies. Such policies limit the power of other forms of regulation, in particular environmental and labour protection regulations and those designed to protect local culture (see Dunkley 1997). Part of the rationale behind WTO policy stems from a mistrust of such regulation, since from an economic perspective it should be left up to the market to regulate (Freidman & Freidman 1996). From this perspective, regulatory capture is defined as regulations, such as those designed to protect the environment or safety, which allow the capture of a particular market by preventing the entrance of potential competitors. Over time, it is argued, such regulations serve to reduce competition as only those already in a particular market have the knowledge and the resources to comply (Kolko 1963, 1965; Stigler 1975).

It is useful to understand how this is played out on the national stage. In Australia this rationale underpins the National Competition Policy (1993) which has a direct effect on how regulations within Australia are made. Under present legislation, all regulations within Australia (both commonwealth and state) must go through a review process to assess their efficacy and efficiency. This process in most well developed within Victoria. In an attempt to deregulate, all regulations in that state subject to sunset after 10 years, and unless they are reviewed and reinstated they cease to exist. For each case of review, as well as for

proposed new regulations, a regulatory impact statement must be prepared and subject to public scrutiny. While many aspects of this process are positive for regulatory improvement and efficiency, the process is anything but value-free. Statements must be prepared and the regulation justified *according to its costs to competition (Subordinate Legislation Act* (1994) Vic). It is competition or free trade that is set up as an inevitable public good. Regulations to protect the environment, occupational or public health must prove that their social benefits outweigh the costs to competition before they can be reinstated. The assumption of the good of free trade evident in WTO policies is again mirrored in state policy.

An associated aspect of the free trade agenda is the wave of privatisation of government assets in order to create new markets. The associated philosophy accompanying this agenda is a belief in the value of small government (Savas 1987). Within the regulatory arena, the demand to do more with less may compound the increased burden on regulators to understand the effectiveness of industry self-regulatory regimes. It has long been recognised that lack of adequate resourcing of the regulator can encourage corporate deviance (Clinard & Yeager 1980). The complexity of the regulatory task is increasing, with regulators needing to ascertain whether individualised safety case regimes are appropriate, company in-house policies are effective examples of good practice or whether auditors are undertaking a thorough job, all at the time that many departmental budgets are getting tighter as government resources decline (Habermas 1979).

There are other examples of a conflict between economic policies based on free trade and the needs of regulative tools to reduce corporate harm, which illustrate more directly the impact of privatisation on the ability of government to regulate. A common mechanism by which governments encourage good safety practice in companies is to vary workers' compensation premiums to reflect the safety of the particular business, or in some cases the industry as a whole. Companies that have a good safety record, in terms of fewer claims for compensation arising out of illness and injury, have a reduced insurance premium burden, since the government manipulates premiums based on claims record (Johnstone 1997). This mechanism is one means by which companies can be encouraged to view good safety practice as improving the bottom line (Haines 1997). A recent trend in Australia has been to privatise worker's compensation schemes and with it their state insurance offices. In states such as Victoria, companies may now employ private insurers, firms which may also insure them for other risks. The potential is for insurance companies to provide bulk discounts to companies that use their services for more than one insurance scheme (for example fire insurance and workers' compensation). This provides discounts to companies, not on the basis of their health and safety practices, but according to the commercial logic of how much business they are willing to push a particular insurer's way, a problem noted in South Australia prior to the introduction of WorkCover in that state in 1986 (Blewett 2000). Through a policy of privatisation, government may potentially lose a powerful lever by which they can influence safety practice.

This conflict between economic and social values is beginning to be felt in the public domain. Certainly, there is a growing public backlash against the assumption of the automatic good of free trade and competition (Mander & Goldsmith 1996). But this growing unrest brings with it additional challenges for developing models of corporate regulation. Ascertaining the legitimacy of these various voices and their concerns also becomes more complex. Under traditional models of regulation it is the state which is seen to have the predominant role in representing such concerns and in intervening in business activities for the purposes of reducing corporate harm. This legitimacy is extended under tripartism (the inclusion of third parties) by virtue of the fact that they suffer the

consequences of corporate harm. This becomes more difficult as regulation is elevated to the global stage as NGOs may no longer be those directly harmed by corporate actions (Khor 1997). Nelson (1996) analyses the growing influence of international NGOs on the World Bank since their policies have been widely criticised for gross environmental insensitivity. While generally supportive of the way this action makes the World Bank more accountable and reduces the influence of corrupt governments, it is not without its problems. Most of the influence to date has come from NGOs emanating from northern developed nations. The funding of these organisations is mainly from within the US and Europe and so northern NGOs need to be attuned to their support base. Nelson points to the way this can create problems between policies northern NGOs advocate and those of their southern partners, particularly with respect to protection of the environment. During the negotiations studied, southern NGOs were concerned to avoid measures which might further damage the economic prospects for impoverished areas, while their northern counterparts pushed more 'hard-line' policies which would force the environmental agenda in a more high profile, and economically damaging, manner.

Certainly, part of the challenge for criminologists studying the control of corporate crime in a global arena is to ensure that the control strategies do not further exacerbate divisions between rich and poor, and in Grabosky's (1995) terms, that the strategies are not counterproductive. As concerns about globalisation escalate there is a need to analyse whether political responses to various protests against economic restructuring simply allow industrialised nations to maintain islands of high regulatory standards whilst standards in less developed nations fall. Just as regulations aimed at free trade can curtail safety and environmental regulations, regulations on safety and the environment can reduce the ability of poorer, weaker nations to enter the markets of the richer nations (Atkinson 1994). Transfer of knowledge to assist developing and industrialising countries control the harms wrought by corporations within their borders would be a step forward.

Conclusion

Criminology has a long-standing interest in the control of corporate harm. In particular, it has a deep-seated scepticism of the desire and ability of corporations to deal adequately with the harm they cause. It is a scepticism that has served the discipline well, and through careful empirical work seen analyses of regulation and compliance develop beyond a preoccupation with use of the criminal law to diverse and innovative strategies. This paper has outlined how criminological insight can be used to understand the challenges posed to the regulation of corporate harm in an era of globalisation. In particular, it is no longer possible to assume that the state is in a position to regulate corporate harm, or that it has the motivation to do so. While the multiplication of public interest groups, national and international NGOs is a positive sign for maintaining corporate accountability, it is clear that the mere presence of an NGO is not sufficient to ensure corporate virtue. The paper has noted the proliferation of both rules and sites of regulation, the possibility for conflict in the aims of regulations and the increased complexity of the sites of production in association with a shift to place greater responsibility on corporations for the harm they cause. Careful research on the impact of globalisation on the effectiveness of control of corporate harm, in a variety of locations and industries is sorely needed.

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