

scottish justice matters

CYBERCRIME



BOOK REVIEW

The Corporate Criminal: Why Corporations Must Be Abolished.
Steve Tombs and David Whyte (2015). Routledge

Reviewed by **Hazel Croall**

FROM GLOBAL corporate tax evasion to the exploitation of workers, it is now widely accepted that the harms associated with corporate activities dwarf those associated with so called conventional crime. Here, in Scotland, we have seen our major banks implicated in financial scandals, our environment threatened by industrial pollution, and workers and the public killed in a spate of avoidable 'accidents' such as Piper Alpha (Croall 2016). Little of this has however resulted in the prosecution and punishment of those responsible, and Tombs and Whyte argue that corporations are taken for granted and their crimes 'normalised'.

In this short book for Routledge's 'Key Ideas in Criminology' series, which aims to provide authoritative essays on major themes and debates, the authors, both of whom have extensively written on, researched and campaigned about the topic, admirably chart a relatively clear course through the complex morass of theories and arguments concerning the 'criminality' of corporate harms and issues of regulation. Their main argument is that the corporation, as it emerged, is fundamentally criminogenic, amoral and socially irresponsible. Limited liability limits individual responsibility and the creation of the corporate 'person' conversely dehumanises decisions as individuals can hide behind the 'corporate veil'. Managers and shareholders are distanced geographically and psychologically from the harmful consequences of decisions taken in boardrooms, often dictated by financial considerations. This is exacerbated by the massive size of corporations and the use of subcontractors. Criminal law, based inherently on the notion of individual responsibility, has always had difficulty capturing the 'guilty' party.

Corporations are subject to regulation and the state, which often facilitates

corporate harms, seeks to balance the need for social protection and to prevent the corporate economy self-destructing against the corporate desire to maximise profits. The authors navigate through the plethora of debates surrounding the origins and effectiveness of regulation from arguments that the market will regulate itself, to 'compliance' theories which, based on the assumption that corporations are fundamentally willing to comply, offer a range of approaches from persuasion and negotiation for the majority through to prosecution of the minority. Others stress the social responsibility of corporations although ultimately harmful activities are bad for business: therefore, social responsibility may assist profitability. For many years forms of de-regulation have been justified according to the need to avoid 'burdensome' 'red tape'. While new forms of regulation have emerged such as the Corporate Manslaughter and Corporate Homicide Act of 2007 (CMCHA) and financial controls in the wake of scandal and crisis these are often seen as ineffective due to failures in drafting and implementation or as merely symbolic.

In summary, argue Tombs and Whyte, corporations are essentially destructive and their sole *raison d'être* is the accumulation and maximisation of profit. Harm and crime are inevitable and their reduction requires that the corporate form itself must be abolished. This raises obvious questions about how this might be achieved and, as the authors themselves ask, whether such an aim is 'wildly utopian'. Despite its limitations, regulatory reform, they argue, is worth pursuing particularly transformative reforms. These might for example challenge the ability of individuals to hide behind the corporate veil by holding individual directors to account as discussed in reforms of the CMCHA, or



by enabling so called equity fines which directly target profits (discussed recently in the Scottish Parliament).

Furthermore, damaging corporate activities are challenged and resisted daily by workers and the public. It might readily be argued however that such 'pragmatic idealism' produces reforms which despite the furore about corporate scandals such as Sports Direct or BHS, do little more than chip away at the edifice of corporate power. More radical reforms are undoubtedly required. To the authors, a form of utopianism, in the shape of a radical imagining of a future without corporations is necessary. Corporations were constructed, and can therefore be modified. While there could perhaps have been a greater discussion of other 'pragmatic' and possibly achievable yet radical reforms, this is a readable, accessible and thought provoking treatment of a highly significant topic for our contemporary economy and society.

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Croall H (2016) 'Crimes of the Powerful in Scotland' in Croall H, Mooney G and Munro M (eds) *Crime Justice and Society in Scotland* Routledge