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State-corporate crimes and human rights violations: an essay on the symbiotic relationship between states and corporations

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Resumo

Nesse ensaio buscamos ampliar a compreensão dos crimes estatais-corporativos que violam direitos humanos por meio de uma aproximação da literatura do crime-estatal corporativo com campo dos estudos organizacionais. Argumentamos que crimes corporativos violadores de direitos humanos são (re)produzidos com a participação do Estado, em função das lacunas de governança estabelecidas pela globalização, criando uma relação simbiótica que potencializa a normalização de tais infrações. Nossa argumentação é a de que tal problema resulta de uma articulação deliberadamente organizada e constituída, historicamente, por meio de relações de poder, que visam garantir uma ordem social centrada na manutenção dos interesses capitalistas, modo de produção em que vida, morte e violência são normalizadas.

Palavras-chave: Crime estatal-corporativo. Violência. Corporações.

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Abstract

In this essay, we seek to expand the understanding of state-corporate crimes that violate human rights by approximating the literature on state-corporate crime with the field of organizational studies. We argue that corporate crimes that violate human rights are produced and reproduced with the state's participation in the governance gaps established by globalization in a symbiotic relationship that enhances their normalization. Our argument advances toward unveiling the problem as a configuration resulting from a deliberately organized and historically constituted articulation based on power relations, which aims to guarantee a social order centered on maintaining capitalist interests in which the exploration of life, death, and violence are normalized.

Keywords: State-corporate crime. Violence. Corporations.

Crímenes estatales-corporativos y violaciones a los derechos humanos: un ensayo sobre la relación simbiótica entre Estados y corporaciones

Resumen

En este ensayo buscamos ampliar la comprensión de los crímenes estatales-corporativos que violan los derechos humanos a través de una aproximación de la literatura sobre delitos estatales-corporativos al campo de los estudios organizacionales. Defendemos el argumento de que los crímenes corporativos violatorios de los derechos humanos se producen y reproducen con la participación del Estado, debido a las brechas de gobernabilidad establecidas por la globalización, en una relación simbiótica que potencia su normalización. Nuestro argumento es que dicho problema resulta de una articulación deliberadamente organizada e históricamente constituída a partir de relaciones de poder, que pretende garantizar un orden social centrado en el mantenimiento de los intereses capitalistas, un modo de producción en el que la vida, la muerte y la violencia están normalizadas.

Palabras clave: Crimen estatal-corporativo. Violencia. Corporaciones.

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INTRODUCTION

Several news stories highlighting organizations' involvement in criminal activities underline the pervasive nature of corporate crimes in today's society (Van Erp, 2018). This can be partly attributed to the deliberate efforts of governments and corporations to obscure corporate wrongdoings and their subsequent harms (Barak, 2015). This is further facilitated by a legal system that does not punish these infractions, coupled with the argument that capital accumulation promotes citizen welfare (Barak, 2017).

Even scholars and economists analyzing economic development and international business recognize the absence of integrated and multidisciplinary conceptual frameworks that address the complex and comprehensive consequences of international business on economy and society (Giuliane & Macchi, 2014). In analyzing the globalization process and its impacts on developing economies, economists have warned about the mismatch between private incentives and societal costs and benefits (Stiglitz, 2006) and the distributive effects of globalization and its potential to exacerbate poverty (Rodrik, 2017).

Transnational corporations, the most visible embodiment of globalization, are powerful players with the influence to shape the global governance agenda (Ruggie, 2007). They use the legal foundation and infrastructure states provide to function as the primary institutions through which capitalism sustains itself despite its harmful effects on human life (Tombs & Whyte, 2020).

Over the past two decades, there has been a rise in litigation against corporations for human rights violations, but compensation is rarely awarded (Schrempf-Stirling & Wettstein, 2017). Within the scope of soft law initiatives and stemming from the UN Global Compact, the UN Guiding Principles on Business and Human Rights (UNGPs) were established (UN, 2011). This pioneering initiative achieved a broad consensus regarding the corporate responsibility to respect human rights (Schrempf-Stirling et al., 2022). However, its vulnerability lies in the absence of legally binding effects and the inability to impose penalties, shifting the responsibility for its implementation to the discretion of States and the goodwill of corporations (Bernaz, 2013; Baneerje, 2014).

Often, by emphasizing the goals of their shareholders and prioritizing maximum profit, transnational corporations leverage the dynamics of global capitalism to invest in emerging economies strategically. These economies are primarily characterized by weak governance and prevalent corruption. Corporations are only penalized for human rights violations if their actions are classified as international crimes in such contexts (Bernaz, 2013; Ullah et al., 2021). Conversely, host governments often overlook these transgressions to bolster the economy and attract foreign direct investment, neglecting to demand that transnational corporations adhere to human rights respect standards (Chu, 2005; Ratner, 2001).

This study focuses on transnational corporations as presented in postcolonial literature. It views these corporations as central players in advancing and spreading capitalism and imperialistic economic practices (Banerjee, 2008; Mir et al., 2008). Therefore, we identify these corporations as the driving force of capitalism (Sklair, 2002, 2016). Their power extends beyond national borders, often emerging as unregulated wealth-creation machines potentially harmful to society (Bakan, 2004). Included among these is the "necrocorporation," which, through its actions or omissions, commits corporate crimes against life (Medeiros & Silveira, 2017).

The criminological literature has studied the criminal arrangements between States and corporations. Within this literature, categories have emerged as theoretical tools to comprehend crimes committed by powerful entities. These categories also address the historical absence of legal redress for damages inflicted by influential actors who have, over time, evaded criminalization and stigmatization (Barak, 2015). In this literature, "State-corporate crime" focuses on understanding how the State either participates in or facilitates corporate crimes (Whyte, 2014).

While establishing modern organizations and their control mechanisms, a significant portion of regions that are now impoverished had their wealth expropriated by colonial powers. These powers also implemented a homogenizing discourse in their colonies that denied the legitimacy of the knowledge and organizational methods of these places (Mir et al., 2003). Postcolonial thought offers fresh insights into the history of this process in postcolonial societies, drawing from critiques of the unequal relationships between the Global North and the Global South (Oliveira & Silveira, 2021).

Given the significant threat of corporate crimes by corporations and states, endangering the preservation and continuation of life and the rising trivialization and normalization of death within the prevailing capitalist order, this study contends that corporate crimes infringing upon human rights are produced and perpetuated with State involvement. This unfolds within the governance gaps established by globalization, cultivating a symbiotic relationship between States and Corporations, normalizing such crimes. This topic is significant in the realm of organizational studies. While international literature has expressed interest nationally, research in the field of Administration – particularly Public Administration – on corporate and State-corporate crime is still in its infancy (Medeiros et al., 2020; Whyte, 2014). Thus, the value of this research encompasses a conceptual discussion on corporate crimes with State involvement and highlights the limitations of examining this organizational phenomenon in isolation, which overlooks its complexity.

First, we provide a theoretical context that examines symbiotic relationships between the State and corporations. Then, from a postcolonial perspective, we deepen our understanding of State-Corporate crimes related to human rights violations. Finally, we present our findings and offer suggestions for further research.

THE SYMBIOTIC RELATIONSHIP BETWEEN STATES AND CORPORATIONS

The assertion that the extent of harm caused by corporate crimes surpasses all other crimes cannot be refuted (Tombs & Whyte, 2020). However, definitions of corporate crime primarily focus on corporate breaches concerning legal standards. The most widely accepted definition of corporate crime is rooted in a legalistic viewpoint, which describes it as corporate actions that contravene criminal laws and lead to the company's conviction (Baucus & Dworkin, 1991; Schlegel, 1990; Shapiro, 1990).

Within this context, corporate crimes encompass several illegal actions or omissions by organizations and their representatives for the organization's benefit. They exploit legal gaps in the global economy and engage in creative compliance (Van Erp, 2018; Van Erp & Huisman, 2017). Nonetheless, the prevailing views on the subject and the regulated practices regarding crime and its control are primarily guided by economic interests and the requirements of capitalism. Consequently, many harmful actions undertaken by individuals and groups possessing political and economic power are often regarded as non-criminal activities (Bernat & Whyte, 2019).

Specifically, the State-Corporate crime paradigm, introduced by Kramer and Michalowski in the 1990s, offers a robust and well-developed conceptual framework. This framework is built upon over eight decades of theoretical exploration aimed at understanding crimes committed by those in power, starting with Sutherland's work (1949) on white-collar crimes and extending to political and organizational crimes (Griffin & Spillane, 2016; Rothe & Medley, 2019).

The updated definition of State-Corporate crime is as follows: "illegal or socially harmful actions that arise when one or more political governance institutions work directly with one or more institutions responsible for economic production and distribution" (Kramer & Michalowski, 1990, p. 4, as cited in Kramer et al., 2002). Elaborating on this definition, Kramer and Michalowski (1993) introduced two categorizations for State-Corporate crime: "State-initiated: occurs when corporations, contracted by the government, engage in organizational misconduct, either through explicit instruction or implicit governmental consent; and state-facilitated occurs when state regulatory institutions fail to restrain rogue economic activities. This failure can be due to direct collusion between corporations and governments or because both parties share objectives that might be hindered by stricter regulation" (Kramer et al., 2002).

The theoretical framework on State-Corporate crime is significant because it highlights the harmful and sometimes fatal consequences of collaborative initiatives between States and corporations. These collaborations are rooted in their mutual interests (Bradshaw, 2014; Friedrichs & Rothe, 2014) and a parallel legal system. This raises discussions about the State's deficiencies in regulation caused by internal and external factors (Medeiros et al., 2020). Additionally, this framework elucidates how certain injurious and socially detrimental actions are not considered criminal at the crossroads of corporate and State interests. This could be due to the absence of legal or regulatory stipulations or the inertia of the players responsible for upholding the laws (Kramer et al., 2002).

A common thread among all Corporate-State crimes is their standardization and normalization through laws and regulatory processes. In most cases, the harm results from adherence to the State's directives (Tombs & Whyte, 2020). Crimes committed by States and large corporations always involve interaction and cooperation, whether implicit or explicit, between these two entities. Therefore, disentangling State interests from corporate interests is challenging because of the overlapping agendas among players in organizational and State hierarchies and the numerous connections that arise when individuals assume high-ranking roles in corporate and State domains (Friedrichs & Rothe, 2014; Rothe & Medley, 2019).

Three dimensions confer their sensitizing function. First, corporate State crime challenges organizational deviance as an isolated act. Second, it underscores the horizontal relational nature between political and economic institutions. Lastly, the concept exposes the relational nature of Corporate-State crime, which establishes vertical relationships across individual, institutional, and political-economic levels of organizational action (Kramer et al., 2002).

The significant contribution of literature on State-Corporate crime has been its focus on re-emphasizing the role of the State in studies examining the social harm caused by corporations. The central discussion revolves around understanding how the State initiates, participates in, or aids in corporate crime (Whyte, 2014). By highlighting the depth of the relationship between the State and corporations and their symbiotic nature (Tombs, 2012), the concept allowed for recognizing the numerous scenarios in which governments and corporations become partners in crime. This raises questions about whether private groups and institutions outside the State can be leveraged to project State power. It also challenges the one-dimensional view of regulation as a State activity that can control corporations (Tombs & Whyte, 2020).

Analyzing the transnational context in which corporations operate, Michalowski and Kramer (2007) argued that State-Corporate crime should be broadened to encompass the diverse harms caused by transnational corporations. Amid globalization, acknowledging the transnational and global dimensions of corporate crime has given rise to a new body of literature in global criminology. This literature primarily aims to understand the implications of globalization on crimes and the criminal justice system (Friedrichs, 2007).

While recognizing advancements in the literature on State-Corporate crime, Tombs (2012) highlights a potential limiting contradiction because the concept emphasizes the relational aspects between the State and corporations and their deviant actions. This has led studies on the subject to often prioritize understanding specific incidents, thereby overlooking the nature and dynamics of State-Corporation relationships (Tombs, 2012).

A recurring theme in research on this topic is the lack of clarity regarding the boundaries between the State and corporate entities and between the public and private sectors (Rothe & Medley, 2020). If the State and corporate activities are closely intertwined, such that corporations consistently operate within and beyond the regulations set by the State, recent studies on the subject have highlighted the need to expand this paradigm to gain a deeper understanding of the symbiotic relationship between the State and corporations (Rothe & Medley, 2020; Tombs, 2012; Whyte, 2014).

Organizations provide opportunities for applying specialized knowledge essential for committing crimes, and thus, they warrant greater attention from organizational science (Van Erp, 2018). Numerous studies conducted by criminologists and sociologists on the causes and consequences of corporate crime have relied on existing organizational theories to gain a more in-depth understanding of the organizational context (Glebovskiy, 2019; Oliveira, 2015). However, what criminologists classify as corporate crime is often seen as a phenomenon outside organizational studies. Consequently, the harm caused to victims of organizational misconduct that goes beyond individual intent is underprioritized (Van Erp, 2018).

THE (RE)PRODUCTION OF CORPORATE-STATE CRIME THAT VIOLATES HUMAN RIGHTS

Postcolonialism is a diverse and structured body of knowledge rooted in a critical view of economic, political, and cultural systems of colonial, neocolonial, and imperialist regimes. This perspective aims to understand the intricate postcolonial conditions stemming from different colonial encounters and their respective outcomes (Banerjee & Prasad, 2008; Westwood & Jack, 2007). Beyond simply extracting and exploiting resources, modern Western colonialism established a dependency

relationship between colonies and their colonies, with its complex structure of trade and industrialization. In this context, colonizers sought to establish Western hegemony across economic, political, military, cultural, and ideological dimensions (Prasad, 2003; Westwood & Jack, 2007).

Necrocapitalism (Banerjee, 2008) is significant in understanding State-Corporate crimes as a consequence of practices aimed at the accumulation and perpetuation of neoliberal capitalism. This concept situates the workings of Imperialism within the institutional structures and processes that influence the relationships between nation-states, institutions, and multinational corporations. Necrocapitalism delves into various forms of institutional, economic, and discursive power that uphold the widely accepted and unchallenged notions of development, backwardness, and subsistence economies that suppress alternative narratives (Banerjee, 2008). Drawing from theories in political philosophy, Banerjee (2008) offers a theoretical examination, defining Necrocapitalism as “specific capitalist practices of accumulation that involve violence, dispossession, and death” (Banerjee, 2008, p. 1543).

As Necrocapitalism helps the understanding of State-Corporate crime, we delve into the theoretical concepts at its foundation. Agamben’s (1998) definition of the state of exception is based on the works of Michel Foucault and Hannah Arendt, and it also builds on Carl Schmitt’s concept of sovereignty. He argues that “the sovereign is the one who decides on the state of exception” (Agamben, 2002, p. 7). Agamben (1998) introduces the concept of *homo sacer* and bare life to describe the condition of an individual who exists in “a space that is simultaneously outside and, consequently, within both divine law and legal law” (Banerjee, 2008, p. 1544). In the role of a *homo sacer*, the individual is deprived of their citizen status (bios). Without rights, the value of their life is reduced to mere biological existence (zoé), making them disposable (Agambem, 2002).

In the framework of the modern nation-state, Agambem (2004, p. 13) problematizes the idea that “[...] the state of exception is increasingly becoming the dominant governing paradigm in contemporary politics.” Within this recurring state of exception, practices meant to handle exceptional events become regular governmental techniques. For example, within this recurring state of exception, the power to determine the value of life becomes evident (Banerjee, 2008). When life is ensnared in this state of exception, it reveals its bare dimension, meaning a state where one can take a life without committing homicide (Agambem, 2017).

When analyzing sovereignty within colonialism and apartheid, Mbembe (2003, p. 123) begins by critiquing Michel Foucault’s (2005) notion of biopolitics, defined as “the exercise of the right to kill, to let live, or to expose to death.” Building on this, Mbembe introduces the concept of Necropolitics. This pertains to the subjugation of life to the power of death, leading to the creation of “death-worlds” – unique and novel forms of social existence where vast populations are subjected to living conditions that confer upon them the status of the living dead (Mbembe, p. 146).

In Necropolitics, where life and death are inverted, sovereignty represents the power to create countless individuals who live on the brink of existence, constantly facing death. For these individuals, there is minimal to no sense of responsibility or justice (Mbembe, 2003). In genocidal wars, ethnic cleansing, environmental catastrophes, and widespread poverty, death becomes a valuable commodity. This creates a new domain in which capital transcends its former boundaries, turning death into a source of profit (Chamayou, 2013; Fontes, 2017; Haskaj, 2018).

In the modern political economy, the relationship between States, Corporations, supranational entities, and multilateral agencies facilitates Necrocapitalist privatization of sovereignty. This creates exceptional states in (post)colonial contexts, where Necropower derives profit from accumulation practices, encompassing the management of violence and death (Banerjee, 2008). Therefore, “Necrocorporation” can be understood as the darkest aspect of a corporation: “the domain where death is a consequence of life being subjugated by the force of death” (Medeiros & Silveira, 2017, p. 50).

Using the concept of Necrocapitalism, it becomes evident that Imperialism, which is still prevalent today, is deeply rooted in the globalization of the capitalist mode of production. Given their unique dynamics of exploitation, imperialist practices allow for the appropriation of surplus value by shifting the focal point of exploitation to certain geographic regions for the advantage of others (Banerjee et al., 2009). Moreover, through neoliberal economic policies, the relationships between the market, the state, and society are reorganized; a new international labor division is established; and structural adjustment programs are imposed on developing countries to ensure a favorable environment for investment and business (Alamgir & Banerjee, 2018).

New accumulation methods through dispossession (Harvey, 2005) allow capitalism to explore new territories. Therefore, global capital is increasingly advancing into the public sphere, implementing extractive capitalist regimes through institutional power (such as the IMF, WTO, and World Bank) and economic mechanisms (such as corporations and nation-states). This leads to the subjugation of local populations to private domination within institutional arrangements where established norms, beliefs, practices, and discourses support and normalize oppressive conditions (Martí & Fernández, 2013).

With intensifying globalization, power is channeled through communication networks that enable global interconnectivity. However, this does not mean that older forms of power exerted over populations within national territories are obsolete (Slater, 2004). As new governance spaces arise, new issues and relationships between players emerge, aiming to broaden their control and influence. Within the studies on transnational governance and its debates, the perspective that globalization has expanded markets for corporate operations is paired with the notion of a declining role of the nation-state in overseeing the spatial organization of social relations and transactions (Kourula et al., 2019).

However, within these power dynamics, to justify the State's role in overseeing business conduct, globalization has been cited both to explain the lack of authority and weakness of governments in business regulation and to justify the expansion of private, intergovernmental, or multi-sector governance setups in challenging areas such as labor regulation and environmental concerns (Kobrin, 2015; Koutula et al., 2019; Pattberg, 2005). Thus, a substantial portion of business regulation is carried out by private institutions, public-private partnerships, multi-sectoral entities, or civil society (Bartley, 2022). Additionally, the regulatory processes, to some extent, might mirror the ability of regulated interest groups to influence or capture the State (Djankov et al., 2002).

In a postcolonial view, as societies become more globalized, there is an understanding that power is shifting from the national level (nation-states) to the global stage (capital and corporations). This shift is backed by both Northern and Southern global States, where the traditional Euro-American imperial domination takes on new forms. This is evident in how the countries of the Global South continue to be dependent and play a role in pushing neoliberal changes onto their populations (Amin-Khan, 2012). In this context, a challenging dilemma is finding a way to maintain individual autonomy in the face of market freedom, aiming to ensure economic sufficiency and social dignity for everyone, even though international law views these two goals as central to its human rights regime (Michalowski, 2008).

In ambiguous responsibility sharing, as the BHR literature suggests, governance gaps emerge (Ruggie, 2008), where human rights violations occur. To a certain degree, the concept of Necrocapitalism (Banerjee, 2008) allows us to perceive these gaps as a distinct state of exception, formed by shared sovereignty between States and Corporations driven by their capitalist ambitions.

While the regulation of global economic relations and their inherent issues, such as human rights violations by corporations, seems to call for a new regulatory framework on which there is still no consensus (Porumbescu & Pogan, 2019), initiatives such as the UN Guiding Principles on Business and Human Rights (UNGPs) overlook the profit maximization drive that underpins capitalism (Bittle & Snider, 2013). They also underestimate the pivotal role power relations play in their implementation (Rosser et al., 2022).

In this contradictory context, a relevant consideration within criminology about the State's role in corporate governance suggests that throughout its history, globalization, with the involvement of advanced capitalist States, has led to an international legal regime favorable to businesses where multinational corporations operate in an increasingly international context and with growing freedom (Tombs, 2007). Following this process, the role of law becomes increasingly ambivalent in criminological analyses. This is due to its capacity, in its soft and hard forms, to regulate or enable corporate crimes (Haines & MacDonald, 2021).

Capitalist production in the 21st century is increasingly structured around international value chains dominated by transnational corporations. Within these chains, the transfer of economic value necessitates the fragmentation of production across various stages. This links production, primarily from the Global South, to end consumption and the financial reserves of corporations based in the Global North (Suwandi et al., 2019). In this context, transnational corporations leverage their

privileges in national and international legal frameworks to maximize profits by mobilizing their production. They also exploit favorable market conditions in host countries, where laws and regulations are limited, and compliance costs are lower (Marmo & Bandiera, 2022).

The significant changes in the relationships between the market, State, society, and the international division of labor (Alamgir & Banerjee, 2019) allow the market-state nexus to continue paving the way for accumulation practices that result in violence (Banerjee, 2018). Conversely, since the mid-1970s, the State has increasingly played roles as a spectator, facilitator, and conspirator in the emergence of State-Corporate crime (Tombs & Whyte, 2020). This phenomenon is consistently produced and reproduced, anchored in the routine of neoliberal daily life, with conditions shaped to facilitate and legitimize its existence (Rothe, 2020).

Critical criminology suggests that despite organized resistance against the regulation of economic activities, corporations consistently view regulatory processes as mechanisms that could threaten or enhance capital accumulation. Every regulation acts as a restriction and an authorization (Michalowski, 2020). Therefore, understanding State-Corporate crime goes beyond considering the coercive weaknesses of states or ruptures in public-private relationships. It involves examining the complex interplay between States and corporations, with their intertwined interests and ambiguous boundaries, acknowledging the State's role in fostering business profitability (Whyte, 2014).

Medeiros et al. (2020) differentiate between the terms "State crime" and "State-Corporate crime," which are often erroneously interchanged. The former concerns the convergence of two phenomena: human rights violations and organizational misconduct by the State, while the latter involves the participation of corporations.

Regarding corporate human rights violations, no substantial empirical evidence suggests that corporations benefit from a commendable human rights record. Nor is there evidence that companies that violate human rights face economic setbacks. This situation reflects market rationality, where potential profits overshadow the financial and trade risks associated with human rights violations (Banerjee, 2014).

Although the prevailing concept of "Human Rights" assumes that "human" is a universal category that represents everyone fairly, the frequent invocation of the term in general discussions, in the media, and at seminars and university conferences often excludes a significant segment of the global population (Mignolo, 2011; Sen, 2004). Thus, it is crucial to understand that, in some instances, human rights violations can reflect a broad consensus among politicians and the general public that some human lives matter less than others (Mayblin et al., 2020).

While debates on human rights have significantly transformed the discourse of global political elites, transnational activists, and some national leaders on politics and justice, gauging and comprehending the impacts remains challenging. This difficulty arises from the significant variations between regions, influenced by their distinct colonial and postcolonial histories and the processes that shape State-Society relations (Hafner-Burton & Ron, 2007). In this context, any global human rights framework reform should embrace a more emancipatory concept of human dignity. Additionally, it should focus on establishing a system of global justice and material compensation that bridges the gap between the Global North and South (Regilme, 2019).

In the context of human rights violations committed by corporations, when we address modern-day slavery and its frequent exposure, we are confronting a corporate crime that violates human rights and a profitable management practice rooted in the colonial era that continues to operate within the current political-economic system (Banerjee, 2020). In this light, modern slavery exemplifies the normalization of death and harm to workers as an inevitable consequence of capitalist work structures and economic organization (Tombs & Whyte, 2020).

To combat enslavement, supposedly in the interest of promoting a humanitarian governance system, States and corporations employ soft law mechanisms and corporate responsibility measures. They position themselves as benevolent players actively engaged in the fight against slavery. However, in practice, national legislation initiatives sustain the conditions that allow for enslavement within supply chains of the Global South and foster a form of consent to the issue as they divert attention away from corporations as the players responsible for this crime (Marmo & Bandiera, 2022).

By recognizing the functional contributions of enslaved labor, neoliberal globalization allows certain populations to benefit from a postcolonial global economic system shaped by histories of domination and exploitation (Strecker, 2022). In this context, the path toward eradicating modern slavery hinges on the understanding that the root of the issue is in a business model that relentlessly seeks low-cost manufacturing to maximize profits (Banerjee, 2020).

In the global extractive industry, numerous violent conflicts occur between corporations and local communities, primarily in countries that were colonized (Banerjee, 2018), where many human rights violations occur. Within a political economy focused on development, the extraction of natural resources and the expropriation of lands for economic gain highlight the evolving dynamics between State and corporate players. In their interactions, these players shape the governance structures related to access, control, and property rights over resources and lands. Therefore, they often deprive local communities of their livelihoods tied to these lands (Banerjee et al., 2018). Even when the extraction is under State control, it leans on development rhetoric to legitimize and bolster capitalist production systems that cause environmental degradation and politically disempower indigenous communities (Torres-Wong, 2021).

In conflicts within resource extraction contexts, the deliberative governance processes implemented through corporate social responsibility (CSR) policies may be unable to accommodate the competing legitimacies. This is because they pursue a deliberative consensus that hides domination processes and denies spaces for difference and coexistence (Banerjee et al., 2018). Similarly, critical criminology has highlighted the limitations of consensus-based regulatory approaches that do not consider the broader systems of inequality and power in which regulatory strategies emerge and are implemented (Davies & Malik, 2021).

A significant accountability gap has persisted since the 1948 declaration concerning the intersection of business and human rights (BHR). To this day, institutions responsible for monitoring, preventing, and addressing human rights violations by corporations remain undefined (Santoro, 2015). In recent years, transnational corporations have increasingly faced legal actions in their home countries due to their involvement in human rights abuses and environmental damages in host nations (Lindt, 2020).

In advocating for the implementation of a treaty on business and human rights, Bilchitz (2016) argued that such a treaty could introduce legal mechanisms to address the existing gaps, ambiguities, and rigid doctrines in the current international law framework that adversely affect the rights of individuals impacted by corporate activities.

In reality, national legislation on the involvement of corporations in human rights violations is still in its early stages. While most national legal systems have already implemented effective response mechanisms, such as the principle of corporate responsibility, standards for corporate culpability, and mechanisms for prosecution and punishment, states have not been proactive in addressing corporate involvement in severe human rights abuses. Regarding public international law, doctrinal complexities must be tackled when regulating non-state players (McConnell, 2017).

Various empirical assumptions have propelled discussions about developing new international legal norms concerning business and human rights (Kirkebo & Langford, 2018). One such assumption is the belief that States and Corporations perceive human rights and social responsibility as commitments with significant costs and minimal benefits that, when adhered to, can strengthen an entity's image and shift attention away from national regulations on the subject (Simmons, 2009). Conversely, in the legal realm, the evolution of binding legal mechanisms, often referred to as hard law, emerges from a stance of neutrality. Still, it operates on the premise that if an initiative results in reduced corporate power, it creates an avenue for new players to exert influence (Kirkebo & Langford, 2018).

In assessing the feasibility of establishing a binding international treaty, McConnel (2017) pinpointed several challenges that need addressing. First, international obligations should be formulated and articulated clearly and convincingly, especially in identifying duty-holders and assigning responsibilities. Second, given the bilateral nature of accountability on the international stage, attributing wrongful actions to states requires defining provisions related to complicity and due diligence. Thus, through a holistic perspective, it is feasible to draw clear distinctions between various wrongful deeds committed by different players and to evaluate the shared contributions of these players when setting up a remediation system rooted in the concept of collective responsibility. Lastly, delineating international obligations targeting business players and their compliance methods brings forth political challenges that are complex and lengthy to tackle (Maritan & Oliveira, 2022).

Even though a regulatory legal framework exists, it does not hinder the growth and strengthening of initiatives based on non-binding regulatory mechanisms undertaken by national states to enhance corporate adherence to human rights (Maritan & Oliveira, 2022; Nolam, 2016). Legal norms are important because they promote the development of more lenient regulatory tools and instruments. When properly adjusted, these can cater to various companies and productive sectors (Ganesan, 2016). Additionally, they provide a useful means to critique the harmful actions committed by the powerful (Paine, 2013). However, the theoretical endorsement of regulations concerning non-state players has direct repercussions at a practical operational level. In scenarios lacking oversight, stronger theoretical bases can also pave the way for future normative advancements (McConnell, 2017).

While there have been significant advancements and discussions within the realms of CSR and Business and Human Rights concerning the accountability of transnational companies for human rights violations, it is crucial to broaden the conversation. This includes considering theories about hierarchical conceptions of human value, as in some cases, human rights violations might indicate a broader consensus among politicians and society that certain human lives matter less than others (Mayblin et al., 2020). Furthermore, it is essential to recognize that the prevailing discourse on human rights originated during the colonial period. Beyond the rights formulated and recognized, it is also essential to understand the substance of this discourse and how it shapes and confines the realm of such violations (Azoulay, 2015).

The dynamics leading to human rights violations by corporations are complex, and the literature reviewed indicates significant challenges in addressing this issue. Examining the phenomenon through a postcolonial perspective places this issue within the broader challenges of the shared neoliberal social order. In this framework, neoliberal regimes strive to maintain public consent, constantly managing the contradictions between the drive for capital accumulation and the ongoing pursuit of new profit extraction methods (Snider, 2020). This theoretical discussion deepens our understanding of the problem, framing it as a result of an extensive system of inequality and power underpinned by symbiotic and dialectical relationships (Rothe, 2020).

FINAL REMARKS

This essay reflects on the production and perpetuation of corporate crimes that violate human rights. Drawing from the critical criminological literature (Tombs & Whyte, 2020), we explore how States and Corporations create conditions that allow for corporate crimes violating human rights in their intertwined and everyday relationships. This partly explains the lack of significant progress in holding Corporations accountable for human rights violations as recognized in the CSR and Business and Human Rights literature and highlighted in the Corporate Irresponsibility literature.

This study provides valuable insights into the field of Administration, particularly regarding organizational studies and Public Administration. By incorporating a postcolonial perspective (Banerjee, 2008), we recognize that focusing primarily on holding States accountable rather than Corporations poses a challenge in addressing the harm to individuals whose rights are violated and points to a deliberately organized and historically established framework aimed at preserving a broader order rooted in protecting capitalist interests (Rothe, 2020). Our discussion leads us to question whether human rights and their regulation serve as a means to reproduce the private interests of capitalism and pave the way for the absolution of corporate responsibility. Additionally, we contribute to the discussion on the State's role in corporate activity, participation, and facilitation. The political and economic interdependence between States and corporations demonstrates that corporate processes can enable crimes. Therefore, the value of discussions on corporate State-related crime lies in the potential to serve as a lens for analyzing various industrial sectors and identifying vulnerabilities within them. These vulnerabilities are structurally embedded and lead to crime and damage as part of corporate processes.

In asserting that corporate crimes violating human rights are created and perpetuated with the State's participation due to governance gaps established by globalization, we highlight a symbiotic relationship between States and corporations that enables their normalization. This advances the field of organizational studies and the area of criminology that addresses corporate crimes. It is not a new concept, given that both theoretical frameworks consistently address the power of Corporations and their detrimental effects. However, introducing this phenomenon into organizational studies helps to understand the multidisciplinary nature of human rights violations committed by corporations. Therefore, this field should not neglect this topic.

The merging of the two fields of study expanded our understanding of corporate dynamics and their societal implications. This allowed us to identify research questions that can benefit the field's development: investigate instances of human rights violations in Brazil committed by corporations, focusing on analyses of inter-organizational relations between States and the involved corporations in crimes and the established regulatory processes; explore the strategies employed by ordinary citizens on social and in national media outlets to counteract human rights violations by corporations, to understand further the normalization of this criminal practice in the Brazilian context; delve deeper into the origins of human rights, examining their scope and exclusions.

Our reflections, prompted by the valuable feedback we received, led us to understand that solutions can be envisioned, for example, the abolition of business models such as “umbrella companies” (Elliot, 2014) or even stricter regulations on operations that pose risks to human rights and the environment. Regarding regulations, one must consider the lack of political support for stricter laws, given that the industry's lobbying groups have significant backing to defend their interests.

A gap highlighted in this study is the linkage between the literature on transnational investments and the institutional voids in host countries, the Corporate crimes arising from exploiting the legal weaknesses in these nations by transnational corporations. Deepening this theoretical connection through empirical research could greatly enhance the field's understanding of these phenomena. Finally, drawing from a postcolonial theoretical framework, we explore how regional development policies in Brazil have integrated human rights themes in relation to business promotion policies.

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DATA AVAILABILITY

The dataset supporting the results of this study is not publicly available.

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