



Matthijs Bal · Andy Brookes · Dieu Hack-Polay
Maria Kordowicz · John Mendy

The Absurd Workplace

How Absurdity is
Normalized in
Contemporary Society
and the Workplace

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Chapter 7: Hypernormalized destruction: making sense of why business organisations are able to act with impunity

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Andy Brookes

Introduction

The current system of wealth creation is highly destructive, and the 'brutality' of contemporary capitalism leads to "catastrophic sufferings of people and the devastation of the environment" (Baxi, 2020, p.5). Business organisations are highly successful in creating and accumulating wealth, but this comes at a high cost for society and the environment. Widespread human rights abuse and environmental degradation continues despite attempts to constrain the negative impacts of business activity through legal and regulatory means. Despite the rhetoric of corporate responsibility, abuse of labour rights continues unchecked with multinational corporations implicated in the use of forced labour and modern slavery (Rauxloh, 2007). Corporate related deaths exceed all other causes of death in the United States with Bittle (2020, p.132) asserting that "corporations frequently kill with impunity". Elliot (2021) also argues that corporations continue to violate human rights without restraint or being held to account. Although this problem of the harmful costs of business applies across a whole range of organisational types and sectors, the multinational corporations (MNCs), by virtue of their size and power, have the most significant and harmful impact. The collapse of the Rana Plaza building in Bangladesh in 2013, killing over 1,000 garment workers, is a clear example of the human cost of capitalist wealth creation in the contemporary globalised economy (Bohme, 2014). The problem is not just about justice for the survivors and the families of those killed but the fact that the global clothing companies utilising these supply chains were able to exploit these dangerous conditions for profit and for so long. The Bhopal catastrophe in India in 1984 killed more than 10,000 people when a lethal chemical was released from the Union Carbide plant (Baxi, 2010). Despite this being described as "largest peacetime industrial disaster" (ibid, 2010, p.32) the Union Carbide corporation, and its successor, Dow Chemicals were never truly brought to account, in fact they continued to thrive and prosper. These individual incidents mask the bigger picture of the damage to health and well-being caused by business and work related activity. The World Health Organisation (WHO) estimates that there are 2 million work-related deaths every year (WHO, 2021). Long working hours, a direct result of how businesses choose to organise, is linked to 750,000 of these work-related deaths. Businesses and organisations inflict these high levels of harm to human well-being without any meaningful consequence, in other words they are able to act with impunity (Scheffer, 2017). In terms of the existential threat of global warming and climate change, fossil fuel corporations have continued to create vast wealth with impunity, and governments, despite grand commitment such as the Paris Climate accord, have proved powerless to bring about any meaningful change. The extractive sector in particular generates harm and destruction on such a scale that it threatens our survival as a species (Pensky, 2016). Society appears unable to hold business to account, it can cause harm and destruction without restraint or being held to account - we allow it to act with impunity (Simons, 2012).

Impunity describes the use of power without responsibility. Business organisations act with impunity when they inflict harm but do not receive the 'legal attention that is due' (Pensky, 2016, p.488). This presents an ethical problem and is a source of injustice not only

because business organisations can get away with causing harm, but it also has "adverse consequences for broader rule-of-law features that we rightly value" (Pensky, 2016, p.488). Impunity is about power and the unethical exercise and misuse of power, and when society becomes powerless to act then impunity threatens democracy itself. The direct cost of this impunity is that it undermines the hope (Reeves, 2019) that is essential for the exercise of the agency to address the destructive and harmful activities of business organisations, particularly the MNCs. Corporate power, and its concentration within a relatively small member of mega corporations, has grown to a level which can exceed the size and power of individual nation states, making it increasingly difficult to restrain and hold these corporate elites to account (Peck & Theodore, 2019). The problem of impunity is not about single acts of illegality, rather it is about the impact of a whole system of legalised impunity. This requires a critique of the destructive nature of the capitalist system and particularly of the current era or phase of capitalism that has widely been described as neoliberalism (Brown, 2015; Brown, 2019; Fine & Saad-Filho, 2017).

This chapter seeks to theorise this harmful phenomenon of business impunity. It will use the concepts of hypernormalization and neoliberalism as the primary analytical lenses. The overall approach will be critical realist, with a concern and focus on the relationship between social structure and social action (Frawley & Peace, 2007). In this chapter I will argue that the hypernormalised-neoliberalism that constitutes the current social structure is the primary cause and enabler of impunity. A society organised along neoliberal lines threatens and undermines moral agency - of businesses to act responsibly and of government and citizens to hold them to account. This situation is absurd, we know the current system is harming society and the environment, but we enable business actors to act with impunity - an act of creative self-destruction (Gould, Pellow & Schnaiberg, 2015). 'Actually existing' hypernormalized-neoliberalism resides in and is perpetuated through societal institutions, and we will focus in particular on the institutions of the corporation, the law and globalisation. Neoliberalisation of the political economy, it will be argued, is not simply an unplanned evolution of society, rather it has been a deliberate and well-coordinated discourse-shaping, ideological project.

Theoretical framework

Hypernormalization was a term coined by Alexei Yurchak in his book *Everything Was Forever, Until It Was No More* (2005). He sought to explain the paradox and absurdity of life in the last soviet generation. In this post-war period the state deliberately strove to shape the reality that its citizens experienced, and this was achieved through the production and reproduction of an authoritative ideological discourse that became hyper-normalized (Yurchak, 2006). The hyper-reality created and sustained by this discourse became increasingly detached from reality and without grounding in the lived experience of citizens. The aim was to achieve social control through the promulgation of this single ideology within a bounded domain of meaning. Adam Curtis, documentary film maker, took Yurchak's term and used it as the title of his series of documentary films *Hypernormalisation* (2016). Curtis used the concept to explore contemporary society and its harms and absurdities.

I will use neoliberalism in the sense of a way of describing the nature of the contemporary capitalist system. Neoliberalism is an "elusive and shape-shifting phenomenon" (Peck & Theodore, 2019, p. 248) but it is nevertheless useful to generate a deeper understanding of how capitalism has arrived at its current state. Neoliberalism is the dominant mode of contemporary political-economic systems, but it also provides a framework to critique contemporary capitalism and explore its downsides. There is clearly a central ideological component to neoliberalism but as a social object 'actually existing' neoliberalism also resides in the social structures and institutions that constitute the architecture of contemporary

society. The central idea that underpins all neoliberal thought is the fundamental belief in the market both as the best way to organize society and as the best solution for society's ills (Wright & Nyberg, 2015). Liberalism as a political and economic philosophy dominated western economies for two centuries (Wall, 2015) but neoliberalism believes in and envisages a much greater role for the market, leading to a full marketization of society. For the neoliberal there are almost no areas of society that do not offer the opportunity for competition and wealth generation. The current state of capitalism has not evolved naturally, it is the result of a deliberate project to bring about the neoliberalisation of the economy, politics and society. The “intellectual kernel” (Davies & Gane, 2021, p.4) of neoliberalism dates back to the 1920s but it was inaugurated as a formal movement in 1947 with the founding of the Mont Pelerin Society (Mirowski & Plehwe (Eds.), 2015). As the ideological founders of the Society, Milton Friedman and Friedrich Hayek set out their vision of a free market society in reaction to the dominance of Keynesian, government intervention in the first half of the 20th century (Davis & Gane, 2021). The project also developed the measures by which this vision could be achieved, central to which was the policy of deregulation in order to provide greater freedom for business (Bittle, 2020). A greater role for the market meant a reduced role for government and a fundamental attack on the notion of society itself (Brown, 2019). In the early 1980s neoliberalism's ideals were incorporated into government policy with Margaret Thatcher and Ronald Reagan as its earliest proponents. Neoliberalism became the "governing rationality " (Peck & Theodore, 2019, p.254) leading to policies of privatisation, deregulation, and anti-union laws. The nature of neoliberalism continues to change and evolve (Davies & Gane, 2021) and has become increasingly connected with powerful libertarian and conservative networks on the political right (Skocpol & Hertel-Fernandez, 2016).

Neoliberalism has become the hyper-normal in the same way that the state ideology provided a monosemic reality in the form of a totalised ideological space (Yurchak, 2006). For Peck and Theodore (2019, p.254), neoliberalism is a "dominant and dominating hegemonic programme". The neoliberal norms, built around a free-market fundamentalism, have become institutionalised across the majority of contemporary economies. Language plays a key role in the institutionalisation of neoliberal ideology, especially through the adoption of common forms of business and managerial language that are “context-independent” and primarily serve to demonstrate legitimacy or “ideological literacy” (Yurchak, 2006, p.48). The authoritative nature of the neoliberal discourse is achieved through its embedment within major world institutions such as the International Monetary Fund (IMF) and the World Bank which operate entirely on neoliberal assumptions (Simons, 2012). Neoliberalism, as we will explore in this chapter, is also hypernormalised through broader societal institutions such as the corporation, the law and globalisation. The purpose of hypernormalizing an ideology, as was the case in the late-era Soviet Union, is the exercise of power to control society in a way that serves special interest which in our case is the corporate elite (Rauxloh, 2007). The neoliberalisation of society is an ongoing process and far from complete. This was demonstrated by the response to the 2008 Financial Crisis which was, according to Peck & Theodore (2019, p. 249) “far from a retreat of neoliberalism, more like an audacious doubling down”. The dominant role that neoliberal ideas and practices play in contemporary economies leads to impunity because of the absence of a competing authoritative other. The imagination is dominated by a capitalist, neoliberal representation of the social structure even though it is recognised as either not working or dislocated from lived experience (Tombs & Whyte, 2015). The other purpose served by the hyper-reality of neoliberalism is that it appears fixed, unchangeable and as if it can go on forever (Economist, 2018). In this way, the corporation and other aspects of the neoliberal hegemony take on an air of permanence, as if they were natural rather than human constructs (Peck & Theodore,

2019; Bittle & Tombs, 2019). The paradox for those living within the current neoliberal capitalist era is that we can directly experience the catastrophic cost of the system but the authoritative discourse is so powerful that we cannot imagine an alternative.

Discourse

A central feature of the neoliberal discourse is the idea, the belief, in the positive role of business and that business and business activity is inherently good. Business organisations are perceived of as being benevolent entities and where they do cause harm it is unintentional (Bittle & Tombs, 2019). The neoliberal discourse goes further to promote the notion that business is not only an entirely good thing but that corporations have a "socially necessary and socially beneficial role" (Tombs & Whyte, 2015, p.2). This positivity obscures the central role of business, and particularly business corporations, which is to generate wealth. It presents business as the solution to societies problems and crises, but ignores the great extent to which commercial and industrial activity have been the primary cause of the most serious problems that society is trying to address e. g. pollution, inequality, poverty, climate change etc. The neoliberal discourse is based on a fundamental belief in the market as the best way to order society. Mainstream writing, thinking and speech about business is grounded upon this market ideology and the neoliberalized economic system is continually reproduced through the texts produced by a range of "local practitioners" of the neoliberal ideology (Yurchak, 2003, p.497).

Ideological discourse is powerful because it becomes internalised by societal actors. It becomes a part of their belief system and forms part of their identity. The romantic, mythological nature of the neoliberal discourse, including freedom, entrepreneurialism, individual wealth etc., all serve to reinforce the compelling and enduring nature of the neoliberal discourse (Cooper, 2021). Neoliberalism has endured, in part, because it deliberately and explicitly aligned itself with traditional conservative values, such as the family and Christianity (Davies & Gane, 2021). This is part of the hypernormalizing process, it becomes so compelling and attractive, it makes sense, that it becomes difficult to envisage an alternative - in this way neoliberalism has become the hyperreality, the only reality. They are taken for granted as the way things are rather than a product of human culture and history - a deliberate project of social transformation. Neoliberal discourse has succeeded in legitimising wealth production as a worthy goal in itself. This has gone further to normalise the right of business to make profits, and that corporate interests should be respected and protected (Ansari & Hernandez, 2020). There is an acceptance that corporations should be able pursue their profit maximising activity because they deliver "economically and socially productive roles" (Bittle, 2020, p.134). At the same time the lack of responsibility that business has for the harms it causes has been normalised and accepted as an unfortunate but inevitable fact.

We are currently living in a neoliberalized social system. Such political-economic systems evolve in a complex way but for deliberate projects of social system transformation, as Yurchak described in the Soviet Union, this requires an ongoing production of the ideological discourse. This project has grown in power and influence into a network of organisations, institutions and individuals all working towards bringing about free market policies, smaller government, a greater marketisation of society, and the greater freedom to create and accumulate wealth (Brown, 2019; MacLean, 2017, Skocpol & Hertel-Fernandez, 2016). It is the critics of this movement that label it neoliberalism, rather than the actors within the movement, but nevertheless the central aims of bringing about market societies are widely shared and understood. Some of the wealthiest people in the world, such as the Koch family (\$100 billion according to Forbes rich list) are key players in growing a powerful political network that builds the power and influence of big business and the influence of neoliberal and conservative ideology. Several prominent institutions have also played a major

role in building and sustaining the neoliberal project from the Chicago School of Economics (Friedman, Stigler, Buchanan et al.) as well as wealthy and powerful think tanks such as the Cato Institute. The project to realise neoliberalisation is powerful, well-funded and successful in terms of achieving its ambitions. The actors within the network are the primary producers of the neoliberal discourse and have developed highly effective ways of communicating the message for example by embedding themselves within the establishment, universities and the judiciary (Brown, 2015, MacLean, 2018).

The neoliberal project, from its earliest intellectual roots 100 years ago, has become institutionalised within contemporary political economies with highly powerful networks of think tanks, free market institutions and lobbying organisations -all engaged in active reproduction of the ideological discourse. Big business, especially the mega-corporations, are also instrumental in the production and reproduction of the neoliberal discourse. Corporate PR is powerful and well-funded and produces the ideological texts in its corporate literature. This corporate text resembles the block texts reproduced in the late Soviet era (Yurchak, 2003), a shared corporate language that offers a compelling picture of commitment to social goals and responsibility. This hyper reality of corporate integrity portrayed and presented through the corporate PR is far removed from the actual existing lived experience of exploited workers and citizens. The CSR movement illustrates the effectiveness of the ideological discourse produced by corporate PR. This leads to the absurd situation that the catastrophic consequences of climate change are already causing widespread harm and destruction yet the corporate discourse portrays a picture of corporations behaving responsibly. For Scheper (2015, p.738) CSR "marks another victory of a 'public relations exercise' by multinational firms" and as Rauxloh (2007) identifies CSR has now become reduced to a marketing strategy. The extent of the institutionalisation of the neoliberal doctrine is that the reproduction of the ideological text is also carried out by universities, especially the Business Schools, and in the wider public sector in its policy documents, strategies and guidance. The free-market ideology is also reproduced in popular culture, with increased marketization, smaller government, individualism, consumerism presented as the norm. Owners of media, particularly newspapers, are wealthy predominantly conservative, free market adherents. Where alternative, critical positions to neoliberalism are presented they are still incorporated into the broader neoliberal paradigm and marginalised in a safe, non-threatening critical space.

Impunity has also been made possible because human and ecological suffering has become normalised. The IPPC reports regularly communicate the perilous position with climate change and the limited time available to take meaningful action but these catastrophic projections register very low on the news agenda and make little difference to public opinion or concern (Swim et al., 2009). The produced neoliberal discourse actively seeks to obscure the social costs of corporate activity (Tombs & Whyte, 2015) and achieve the outcome of "concealing the manifest flaws in our economic system" (Wright & Nyberg, 2015, p.29). Ansari and Hernandez describe the hypernormal neoliberal regimes as deceptions that serve to "facilitate continued assaults upon workers' rights and freedoms" (2020, p.2) . For Wright and Nyberg (2015, xx) The neoliberal discourse, by incorporating critique, has "created a fantasy of sustainability" that obscures the actually existing devastation and destruction big caused to the environment. The more subtle aspects of this normalisation of suffering is through neoliberalism's direct attack on the notion of the social. If the social does not exist then the idea of underlying systemic inequalities and injustices can also be ignored and remain unaddressed, leaving the existing systems of power and privilege in place. The discourse shapes perceptions to the extent that harm and suffering are the unfortunate but inevitable consequences of capitalism (Bittle & Tombs, 2019; Brown, 2019) and are "rooted in the biological nature of man" (Rothbard, 2000a [1974], p.8). The downsides of capitalism

become accepted as necessary if we are to sustain our current way of life and standard of living. This normalisation of suffering has also been enabled by the financialization of everyday life which has occurred as a result of the neoliberalisation process. During the Covid pandemic the UK government emphasised the economic costs over the human costs as evidenced in its policies and decision making in response. The neoliberal discourse has the effect of “disarming public critique” (Scheper, 2015, p.738) by framing the contemporary capitalist model as the only one available thereby making moral judgement unnecessary because there is no alternative set of standards to critique it against (MacIntyre, 1999).

Once it has become hypernormalised the neoliberal system was now widely perceived as the only possible version of reality, and this means that people do not have an external or alternative frame to critique it. This limits the extent to which people can exert moral agency and in this way neoliberalism represents a real threat to moral agency (MacIntyre, 1999). The power of the neoliberal critique produced, re-produced and reinforced over a period of at least 70 years means that the role of business becomes unquestioned and escapes meaningful and widespread critical examination. The neoliberal project has succeeded in shaping societal values and, has successfully transformed societies beliefs through the 'capitalist imaginary that "extends a powerful grip on our thinking and actions" (Wright & Nyberg, 2015, p.46). Our socialisation within a dominant neoliberalized societal system shapes perceptions of governments, business and the wider public, to the extent that it achieves the "shaping (and reshaping) of common sense" (Peck & Theodore, 2019, p.255). In neoliberalist thinking the human world simply consists of individuals and markets, rather than any conception of society, thereby precluding any notion of social justice (Brown, 2019). Moral agency is impaired by corporations exerting their considerable power to "transform societies beliefs in ways that serve powerful interests" (Bittle, 2020, p.138). Individual managers might be committed to addressing social problems in their role as citizens (Wright & Nyberg, 2017) but once in the organisational setting their “habits of heart and mind” are strongly shaped by the institutionalised neoliberal discourse (MacIntyre, 1999, p. 313). The logics of corporations and business have infiltrated the human psyche to create the absurd state of affairs that holding corporations to account is considered a threat to society (Bittle & Tombs, 2019). The pervasive neoliberal discourse prevents the framing of social issues in terms of corporate harms and social or environmental injustice so there is no reason or motivation to hold business corporations to account, in other words they can go on acting with impunity. The ideological nature of the neoliberal project constrains the moral agency necessary to hold them to account and prevent impunity. Our identities have become subsumed within the neoliberal system in a "ubiquitous self-embedding or interweaving" (Yurchak, 2006, p. 7) which makes it difficult to achieve sufficient critical separation. This identification with businesses, corporations and brands further serves to limit the extent that problems are attributed to business.

The Corporation

The corporation is the primary vehicle for driving the process of neoliberalisation and therefore a key enabler of impunity. Multinational corporations play a dominant role in the contemporary political and economic system. The corporation is a legal entity that was established solely for the purpose of wealth production and the protection of the investors engaged in that wealth production (Elliot, 2021). The Corporation is an "ingenious legal device" (Barley, 2007, p.202) for creating profit without responsibility. Maximising profit is the single, driving purpose of corporations and any social considerations are secondary, and viewed only through the lens of profitability (Bakan, 2015; Rauxloh, 2003; Wright & Nyberg, 2017). The corporation is legally constituted in a way that provides special privileges to its owners, directors and investors (Bittle, 2020). There are three aspects to these special

privileges: corporate personhood, where the corporation has rights as if it were a person; limited liability, that protects the corporation from the consequences of its activities; and the 'corporate veil' that means owners and directors can avoid been held liable for the 'sins of the company' (Bittle & Tombs, 2019). The legal design of corporations means that they "are at best socially inefficient, and at worst systemically anti-social" (Tombs & Whyte, 2015, p.21) and therefore particularly "ill-suited" to address society's most pressing problems, such as climate change (Wright & Nyberg, 2017, 1635). In this way impunity is built into the fundamental nature of the corporation.

The corporation itself, although treated in law as a person, is in reality unable to exercise moral conscience because only actual embodied corporate actors can do this (Rauxloh, 2007). This means that the corporation as an entity, at least as currently constituted, can only ever be an "amoral calculator" (Bittle, 2020, p.137) that is legally required to maximise profit. The way business is legally constituted in our contemporary neoliberal political-economic system creates a legal structure of impunity and irresponsibility (Bittle, 2020). This creates the absurd situation where it is legal to inflict this social and environmental damage harm on people and the environment in the pursuit of wealth accumulating activity. Society, through its legal systems, permits powerful economic entities to inflict social and environmental damage without being held to account (MacIntyre, 1999). The hypernormalisation of our neoliberalized socioeconomic system has occluded the true nature of business corporations. Rather than being seen as relatively recent human constructions, corporations are widely accepted as the natural state, inevitable and therefore without alternative.

The purpose of the neoliberal project was always about increasing the power of big business and its wealthy owners so they could accumulate wealth without restriction. Therefore the corporation, as an entity specifically designed for wealth production, has been central to, and synonymous with, the process of neoliberalizing the political economy. Libertarian and free-market proponents present their project as a moral quest for greater freedom, especially from the state, but this is freedom in its narrowest sense i.e. freedom for a small set of wealthy business owners rather than for citizens and workers more widely. The ideology of free markets, entrepreneurialism and individual success has become the hyper-reality - far removed from the actually existing harm and destruction being inflicted on people and the environment (Kardos et al., 2016). Deregulation has been a central part of the neoliberal strategy and it has been implemented with great success, achieving a reduction in the capacity (and willingness) of government and civil society to hold the big business corporations to account. Hypernormalization generates absurdity, as evidenced by the unquestioned rhetoric of 'cutting red tape' being widely accepted as positive and in the national interest whereas in reality it will reduce protections and lead to inevitable harms to people, society and the environment. The contemporary neoliberalized political- economic system serves to create and perpetuate a "climate of impunity" (Rauxton, 2007, p.298). The shift in power that has occurred as our system has become increasingly neoliberalized has led to governments that act primarily as an enabler for unaccountable and unchecked corporate growth, where citizens are assigned the role of passive consumers.

Supporters of the neoliberal system have a strongly held belief in the positive role that the market plays, and should play, in society. There is an assumption that markets are not only the most efficient way to operate the economy but they are also the best way to regulate behaviour and prevent harm. The 'free market', as conceived by the neoliberal protagonists, is an illusion and it is disingenuous of those that present the market as an 'invisible hand' that exists independently of business and guides behaviour. In reality a central aim of the neoliberal project has been to deliberately shape and control the market in order to serve the interest of powerful corporations. In the neoliberal era a major shift in power has occurred

from governments to big business, providing even more scope for supposedly free markets to be shaped to serve corporate interests. The ability to shape markets has also reduced consumer power, for example where the Big Tech companies have created effectively monopolies.

The dramatic increase in corporate power in the neoliberal era demonstrates the success of the neoliberal project. The power of government, civil society institutions and workers has been significantly reduced. A clear example of this is with the world's inability to deal with climate change. Despite the commitments made by governments to reducing CO2 emissions the reality is that fossil fuel production and consumption continues to grow, and big corporations have been able to exert immense power to prevent charges in law and policy that would reduce or outlaw the use of fossil fuels. It is absurd that society has ceded power to corporations, in the belief that wealth production benefits society, when it is patently self-destructive and already causing harm, destruction and system breakdown. Many of the changes in society, such as reductions in union membership and the reduction of union power and rights, is not a natural and inevitable evolution of society. There is a deliberate and ongoing project by big corporations to limit unionisation of workers by demonising the role of unions and promoting the paternalistic and positive role of corporations in looking after their workers interests. This paternalism is insincere and cynical, given that US employers spend \$340 Million per year in anti-union activity (Economic Policy Institute, 2020). The phenomenon of corporate exploitation has been present throughout the industrial era but deregulation and increased corporate wealth and power has exacerbated the problem. Forty years of neoliberalizing policies has concentrated power and wealth in fewer and fewer hands (Piketty, 2014) further enabling and institutionalising impunity (Barley, 2007). Ever increasing corporate power means there is a greater likelihood of harm being caused with impunity because, according to Kelly (2012, p.341), “the relative economic and political power of corporations expands.... while largely escaping responsibility”. Corporate power itself it has become the hypernormal, as if it is the natural and only way to organise society. This is a dangerous situation because it limits the critique of corporations and their role, and also constrains the imagining of alternatives. The corporation is the pervasive social institution in the neoliberal era, resulting in a ‘corporatization’ of all modes of organising not simply business but also across government, public sector and civil society organisations.

The Law

Impunity is enabled by the law, which itself has been shaped by hypernormalized neoliberalism. The purpose of law, and the broader justice system, is to prevent impunity by holding people to account for their actions where they transgress the accepted norms and codes. Although some business organisations and individuals do get prosecuted, many of the laws are unenforceable and are simply ignored by large businesses (Bohme, 2015). Hypernormalized neoliberalism has succeeded in shaping the norms and accepted moral codes upon which laws are built. However, it is the case that most of the societal and environmental harm inflicted by organisations occurs within the law. So rather than a ‘governance gap’ (Elliot, 2021, p.197) it is more a case of legalised impunity or ‘legal lawlessness’ (Elkins, 2022). The law is a product of the prevailing or dominant social order, so it is inevitable that the law reflects the current neoliberal hegemony (Bittle & Tombs, 2019). Even where laws do exist, and are enforceable, they can still as a result of corporate influence, be unjust (Bakan, 2015). Impunity has therefore become embedded in the legal system through the process of societal neoliberalization (Elliot, 2021) and it is not just that the legal entity of the corporation that is designed to prioritise wealth production and accumulation but the whole legal system favours business over society. In practice, investor rights are afforded more protection, given higher priority, than human rights or environmental

protection. Barley (2007, 204) makes the case that legislation "benefits corporate citizens at the expense of individual citizens", this making the social subordinate to the interests of capital, in the eyes of the law (Bittle & Tombs, 2019; Bohme, 2015). Business and commerce are dependent upon the law in order to function, but neoliberalism has also succeeded in using state power in the shaping of a system of laws that serves its interest very well (Elliot, 2021; Davies & Gane, 2021).

Friedman (1970), and the other proponents of free market are disingenuous, when they claim that the only social duty of corporations entails making a profit and keeping within the law. This is to perpetuate a fiction that the market and the state are entirely separate entities (Tombs & Whyte, 2015). In practice corporations and wealthy business interests actively and successfully shape the law so that it serves their interests. States and mainstream political parties have accepted and internalised the neoliberal norms so it is inevitable that the laws they enact will be pro-market and pro-business (Skocpol, 2016). Neoliberalism, in the hypernormalized version of reality it creates, becomes the "lens that directs legal reasoning" (Bittle, 2020, p.134). Governments rationalise this pro-business shift by arguing that it is in the national interest. Big business, especially the multinational corporations, use their power and wealth to successfully lobby and influence governments, resulting in "a debilitating economization of the political" (Peck & Theodore, 2019, p.257). The extent to which political parties are funded by corporate interest enables influence to be bought but at the same time it diminishes democratic accountability and in doing so increases the risk of corporate impunity. Individual politicians, as the lawmakers, also have close links to the think tanks and free market lobbying organisations. Immense corporate influence has been achieved by embedding politicians within the neoliberal network (Bohme, 2015). However, this goes further than lobbying activities because often the business and corporate actors themselves are allowed to be directly involved in creating new legislation and regulation. For Barley this shows how "corporate actors can co-opt the regulatory agency's agenda" (2007, p.210). All of these processes of political influence have achieved pro-market and pro-corporate governance and the enabling of impunity.

Deregulation has also contributed to this shift in the balance of power from governments to business, especially the large multinational corporations. This strategy to accumulate power also reveals the essentially anti-democratic nature of the neoliberal project (Davis & Gane, 2021). It has resulted in changing the nature and role of the nation state, rendering it less able, or willing, to hold powerful business entities to account (Bohme, 2015). There has also been a dismantling and disempowering of the civil society institutions that were designed to hold economic actors to account and prevent harm. Citizens have therefore become disempowered because of the submissiveness of governments to corporate interests to the extent that, as Wright and Nyberg (2015, p.421) argue, "representative democracy has been replaced by a corporate society in which social and environmental relations are embedded within corporate capitalism." It is the largest corporations that shape the economic environment, but this enables the smaller business entities to also act with impunity within the deregulated environment that has been created in the neoliberal era.

In democratic societies civil society institutions play a vital role in holding powerful actors to account. However during the neoliberal era the relative power of civil society institutions, such as labour unions, has diminished as corporate power has significantly increased. Despite the absurd mantra that "our workers are our greatest asset", the reality is that there has been a significant shift in the balance of power from the employee to the employer. This shift in power has enabled widespread worker exploitation and human rights abuses by corporations (Federman, 2021). The neoliberal project has therefore succeeded in its aim of "vanquishing society and the social" (Brown, 2019, p. 53) and it will take a concerted counter-project to restore the balance in favour of society, citizens and workers.

When incidents of abuse of worker human rights is uncovered, corporations usually respond with an ideologically literate account that demonstrates the art of block writing (Yurchak, 2006). In 2022 when it was revealed that forced labour was being used in workers in the Dyson supply chain (Kayshap, 2022) the response of the company is in the form of pre-fabricated blocks of obfuscating neoliberal discourse, such as “We are committed to the safety, health and wellbeing of people who work for us and with us; upholding a culture where people are valued and respected” (Dyson Modern Slavery Statement, 2021).

Freedom is a core value at the heart of the neoliberal ideology and the project has been highly successful in securing the freedom for corporations to act with impunity to serve their narrow self-interest of wealth production. This freedom to act without responsibility for the wider consequences comes, of course, at the expense of a universal conception of freedom that encompasses all parts of society. The ideology of freedom of the individual, including freedom of the corporate person, has led to increasing individualism under the neoliberalisation of contemporary economies. This individualism also reduces the power of citizens and workers to act collectively, combining their individual power to challenge the overbearing power of corporations and big business (Economist, 2018). This freedom to act, along with the accumulation of wealth and power, has enabled big business to use the legal system to resist accountability through “raw expressions of corporate power” (Bittle, 2020, p.132). The liberation of capital (Peck & Theodore, 2019) means that these corporate entities are able to contest and overturn judgements made against them as well as being able to quash any moves that strengthen the law (Bohne, 2014). Corporate public relations (PR) plays a major role in shaping a discourse that limits the public's ability to attribute responsibility to big business for the harms that they cause. Corporate law also provides corporations with the freedom to avoid legal accountability through mergers and acquisitions, “corporate actors may legitimately use a subsidiary in order to shelter the parent company.... from activities that may attract legal liability” (Simons, 2012, p.32). The 40 year process of widespread neoliberalisation of economies has led to immense corporate power and a small group of elite wealthy individuals have secured the freedom to effectively operate above the law and beyond “all forms of state intervention and control” (Davies & Gane, 2021, p.14).

The high degree of corporate unaccountability has been achieved by the neoliberal project's ability to influence the trend toward ‘soft’ law or voluntary regulation (Simons, 2012). The naive faith placed by governments and citizens in soft law, i.e. the ability of big business to self-regulate, has been entirely misplaced and unfounded (Rauxloh, 2007). The neoliberal discourse, which constitutes the contemporary hyperreality, has very effectively obscured the political dimension of economic activity and led to an acceptance that rational, technocratic management is the way to address societal problems. The powerful and ongoing discourse that positions business as a positive force has led to the widespread belief that “the corporation is an inherently good and, but for the rare occasion, law-abiding entity” (Bittle & Tombs, 2019, p.569). This generally positive conception of big business has led to unfounded expectations that big business is genuinely committed to acting with responsibility. The reality, obscured beneath the ubiquitous and well communicated message of corporate responsibility, is that wealth accumulation, profitability and growth remain the single overriding purpose of business organisations. Businesses engage in CSR activity for self-interested reasons and only “to the extent to which it is profitable for the corporations to do so” (Rauxloh, 2007, p.208). Soft law and self-regulation has patently failed, as evidenced by ongoing harm and destruction at a human, social and environmental level. Nevertheless, Big Business has been very successful in incorporating the demand for greater responsibility, leading to the emergence of an absurd form of ‘corporate environmentalism’ that is cynically designed to protect business rather than the environment (Wright & Nyberg, 2017, p.1634). Even one of the prime movers of the CSR movement, John Elkington, has acknowledged that

the movement has failed and requires a rethink, to the extent that he suggested his seminal publication about the 3 Ps (People, Planet, Profit) should be ‘recalled’ (Elkington, 2018). Scheper (2015, p.745) argues that we should “understand corporate responsibility as a semantic compromise” that is in effect a licence to operate a managerial form of social responsibility that serves its own interests first. For Rauxloh (2007) the unenforceability of soft law and voluntary codes are used by big business as a means to avoid accountability for the negative social and environmental impacts of their wealth creating activity. Despite the rhetoric of corporate social responsibility, and the well-publicised policies and initiatives, the reality of continued harm and destruction suggests that these professions of commitment are hollow and progress is an illusion (Scheper, 2015).

Globalisation

The hypnormalised neoliberal discourse presents an entirely positive view of global free trade without acknowledging the downsides of actual existing globalisation (Scheper, 2015). A more critical perspective, from outside the dominant neoliberal paradigm, is that globalisation is better understood as a deliberate strategy adopted by transnational businesses in order to avoid the greater levels of regulation and accountability that their operations are subject to in their home jurisdiction (Baxi, 2010; Rauxloh, 2007). The lack of prosecutions of multinational corporations is evidence of the impunity they can achieve through a globalised strategy (Kelly, 2012). Big Business is able to violate human rights with impunity because corporations can operate so effectively and profitably outside their national jurisdiction (Elliot, 2021). The decisions by the owners, managers and shareholders to exploit the lower standards of accountability in other countries reflects a moral judgement or set of values that places more importance on wealth creation and accumulation than it does on human and environmental rights. This absence of lack of genuine ethical decision making is demonstrated in the complicity of corporations in acts of genocide. Although they do not directly commit corporations are often supplying the perpetrators, for example machetes used to kill Tutsis and mustard gas components used by Saddam Hussain against the Kurds (Kelly, 2012).

International law is inadequate for holding multinational corporations to account. The lack of meaningful sanctions (Rauxloh, 2007) provides these big businesses with the freedom to operate without responsibility. Impunity, and its harmful and destructive consequences, is therefore deeply embedded within the international legal system. Corporations have the freedom to operate because the international law protects non-state actors, such as corporations, so they cannot be held criminally liable for violations of human or environmental rights (Baxi 2010; Costa, 2017). As we saw earlier with domestic laws it is also the case that international laws and treaties are shaped to serve corporate interests and “extend TNC [Transnational Corporations] freedom to operate with fewer impediments globally” (Simons, 2012, p.26). Corporations have been able to achieve a dominance over the international system as evidenced at 26th UN Climate Change Conference in 2021 when delegates from fossil fuel corporations outnumbered the delegates from the low income countries most affected by climate change (Jacobs, 2022). This demonstrates that corporations are “privileged insiders” (Simons, 2012, p.33) and able to exert a powerful influence over lawmakers, for example in promoting the development of soft law and self-regulation (Scheper, 2015). There are a small number of elite super corporations that are able to exert formidable pressure on national governments to ensure international agreements and treaties continue to serve the best interest of big business. According to the Global Policy Forum (2022) “of the 100 largest economies in the world, 51 are now global corporations; only 49 are countries”, thus demonstrating the power shift achieved over four decades of neoliberalising policies and how this has “significantly diminished the authority of states”

(Bakan, 2015, p.232). Multinational corporations also have the wealth, power and expertise necessary to exploit international law in a way that aligns with their interests (Bohne, 2014). The corporatization of regulatory regimes means that an illusion of progress can be sustained (Scheper, 2015) despite the actually existing harms being perpetrated by the corporation. This situation is absurd, in that corporations are able to demonstrate compliance, despite causing harm! International law and trade agreements have also been shaped by high income countries to serve their interests to the detriment of lower and middle income countries (Bohme, 2015). In this way international law serves to perpetrate inequality and injustice. International Law has been used to facilitate the exploitation and dominance of other nations by powerful countries in the Global North (Simons, 2012). Corporations have been able to generate immense wealth by exploiting the structural inequalities that are sustained by the international legal system. The power imbalances between MNCs and the Low Income Countries where they carry out their activities is much more pronounced than it is in their home country. The dominance of MNCs across the world's economy has been characterised as a contemporary form of colonialism (Baxi, 2010). Corporate friendly, neoliberal international law underpins this neocolonialism and Alvarez (2008) suggests that globalisation itself is made possible by an "empire of law". The legacy of the colonial structures still ensure that extreme inequality exists between the High Income 'developed world' and the low income, developing countries. Bohme (2015, p.7) describes the relationship between the United States and Central America as a form of "informal imperialism". These power imbalances, sustained by international law and international institutions, such as the IMF and the World Bank, reduces the autonomy of lower income, developing countries to govern MNCs. Powerful countries and corporations sustain an international legal system that deliberately "restricts the freedom of sovereign states to regulate economic activity" (Simons, 2012, p.26). Powerful transnational corporations are able to act with impunity by exploiting the less powerful judicial system in which they operate globally (Elliot, 204). Nation states will also resist constraints on corporate activity so that it does not prevent inward investment by the multinational corporations (Elliot, 204). In doing this corporations are exploiting the economic powerlessness of low income countries (Bohme, 2015) because it "does not lie in the state's best interest to act against multinational corporations who offer employment, revenue, and prestige to the national government" (Rauxloh, 2007, p.305).

The state of impunity afforded to big multinational corporations by the system of international law leads to ongoing abuse of human rights and degradation of the environment (Davies & Gane, 2021; Scheper, 2015). It is absurd that impersonal corporate entities have more rights and protection under neoliberal rules of free trade than the actually existing human beings impacted by the actions of the corporations. The actions of global corporations, especially their role in human and ecological disasters, clearly demonstrates that investor rights are given priority over human rights (Simons, 2012). These imbalances are unsustainable and unethical, given that the impoverished populations everywhere bear a "disproportionate burden of human harm and hurt" (Baxi, 2010, p.26).

Conclusion

The overall argument presented in this chapter is that the impunity of business organisations is sustained and enabled by the nature of the contemporary political and economic system. We have conceptualised the current system as neoliberal capitalism and this has developed and become further entrenched by neoliberal governments over the past 40 years. In other words, the social and environmental harm that result from impunity is a systemic problem rather than the actions and malfeasance of a few "bad apples". It is the nature of free markets and ineffective regulation that have inevitably led to a prioritisation of profit and wealth

creation over social and environmental well-being. In the chapter we have sought to theorise the process by which neoliberalism has become so deeply embedded and hypernormalised. One of the mechanisms for this has been through primary social institutions such as the law. The current position is absurd, with business organisations and especially multinational corporations being able to accumulate profits and wealth with impunity i.e. without accountability for the costs incurred by society and the environment. Government and civil society allow this legalised destruction to continue and it has transferred so much power to big business that non-business actors have become seemingly powerless to address the problem.

The current era of neoliberalism, and its enabling of business impunity, is unsustainable for the future wellbeing of people and the environment. Impunity is morally unsustainable in terms of it being unjust, but it also leads to widespread harm and destruction. The hypernormalisation of neoliberalism is one of the reasons why civil society is currently unable to address because the hyperreal constrains our ability to conceive of alternatives. Hypernormalisation prevents us from “seeing” the true nature of the current economic system, because neoliberalism is the dominant paradigm through which current practice is interpreted. More problematically it leads to misdiagnosis of social problems and the pursuit of technical-managerial rather than systemic solutions, as seen in initiatives such as the United Nations Sustainable Development Goals (SDGs).

In this chapter we theorised the process by which we arrived at the current state in the era of neoliberal capitalism. This process has been the culmination of a deliberate and well organised project to increase the power and freedom to generate and accumulate wealth. This process has taken a long time to realise and has involved the neoliberalisation of key institutions. Neoliberalisation therefore is more than an abstract ideology, with ‘actually existing’ neoliberalism taking many forms in how it embedded itself across society in both institutions and mindsets.

If impunity and our current system are unsustainable, what actions can be taken to address our contemporary societal problems? If there is to be a ‘counter-project’ or movement that will bring about a post-neoliberal or sustainable political and economic era then perhaps lessons have to be learned from the success of the neoliberal project itself. The process of neoliberalization was achieved through a highly political, well-organised and well-funded project. So any movement to bring about a new sustainable political economic era must adopt equally political and well organised approach. The neoliberal project has succeeded in bringing about widescale systemic change, so in the same way the counter project must also have such an ambitious transformational goal. This highly political process will inevitably involve resistance and struggle. Immense corporate power has been achieved and this will be not relinquished easily. There is no incentive for the large corporations and their wealthy owners to change the destructive absurdity of the current neoliberal system, because it is not absurd to them as beneficiaries of it. Therefore, the process to reshape the political economy to a post neoliberal, sustainable era could entail an equally long-term project lasting 30 years or more.

Hypernormalisation creates the illusion of permanence, but the Covid-19 pandemic demonstrated that economic and political systems can be changed, and ultimately governments can act to control the actions of big business. If this can be achieved in an emergency situation then such transformational change can also be achieved to address the long term crises and emergencies that the world currently faces. The current neoliberal era is not a permanent state, it can be reformed and recreated into something more sustainable. The power shift from business to government necessary for addressing destructive impunity is demonstrably achievable as shown by the power that individual states were able to wield during the pandemic.

The transformation to a new era will require establishing new institutions, new norms and practices. It will require alternative forms of business enterprises that are by nature sustainable. It will require a social movement or social transformation that is equally successful as that which was able to realise the transformation to neoliberalism. The irony is that neoliberalism was a project of social change and transformation while at the same time its espoused ideology was grounded upon the notion that there is “no such thing as society”.

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