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Chapter 29 The Elusiveness of White-collar and Corporate Crime in a Globalized Economy

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Abstract: We live in a time that is dominated by business firms operating across the globe. While globalization has created opportunities for many, it has also: increased opportunities for white-collar and corporate crime, led to the transference of social, environmental, and economic harms to jurisdictions vulnerable to this, and created serious problems for the regulation and enforcement of business behavior. This chapter discusses and illustrates these issues using three examples: the (mis)use of corporate vehicles for financial gain, transnational corporate bribery, and environmental crime in the waste industry. This chapter concludes with some of the key challenges for the future study of white-collar and corporate crime.

Keywords: White-collar crime; Corporate crime; Globalization; Law enforcement; Misuse of corporate vehicles; Transnational corporate bribery; Environmental crime

[word count: ~8,741]

<A> Introduction

Have you ever considered how many of the things we use on a daily basis and how many of the activities we engage in are created and enabled by business firms operating across the globe? Just think about the gasoline your car runs on. The chances are that you bought it at a gas station owned by Royal Dutch Shell, Exxon Mobile, BP, Chevron, or Total, all belonging to the Top-30 of the Forbes Global 2000 list of the world's largest companies (Forbes 2018). The chances are even bigger that most of the oil used to produce it is extracted from the Middle-East and Africa. And what about the glass of wine you drink at night, the piece of paper used to write down your list of groceries, and the electronics around the house? Almost all of these products are produced in different countries than the one where they are eventually used, and made possible by multinational business firms operating in global economic supply networks. Nowadays, companies such as Nike, Facebook, Apple, Samsung, and Google are household names and their CEOs are like celebrities.

We live in a time that is characterized by the dominance of multinational business firms. The dynamics between these firms, governments, and civil society have fundamentally changed over the past two decades. Rather than nation states, these firms are (and have been for a while) at the center of the economy. In fact, the global economy is increasingly being dominated by complex networks of production, controlled and coordinated by multinational business firms (Powell 2001; Dimaggio 2001; Forsgren 2008; Dicken 2015). Some of these firms have become so powerful that their sales and profits are greater than the gross national product of many countries in Africa and Asia (Hertz 2003; Global Justice Now 2016). While globalization has undeniably enabled firms to expand their business, this has also created greater opportunities for corporate crimes, led to the transference of social, economic, and environmental harms to other parts of the world, and increased problems for monitoring and enforcement (Passas 1999; 2000; Passas and Goodwin 2004; Friedrichs 2010; Gibbs, McGarrell, and Axelrod 2010; van Erp and Huisman 2010; Rothe and Friedrichs 2013; van Wingerde 2015). That opportunities arise within the context of globalization does not mean actual crimes will happen; opportunity is a necessary but not a sufficient condition. But where opportunities interact with actors motivated or incentivized to offend under amenable conditions and who possess the skillset, knowledge or network to realize such opportunities, corporate crimes can occur. For example, across-country differences in regulatory frameworks and low-cost solutions to dispose of and process waste provide growing opportunities for companies to relocate environmentally unfriendly operations to developing countries where environmental regulations are less strict or even absent. The recent Panama and Paradise Papers scandals illustrate the tension between creating an economic climate which is favorable towards international business while also preventing crimes such as corruption, money laundering and tax offenses. As has become apparent so far, this chapter focuses on behavior that criminologists have long been referring to as corporate crime. Corporate crime refers to those illegal or harmful behaviors committed by corporations or their officials for the benefit of the corporation (Clinard and Yeager 1980). Criminological and socio-legal research have long recognized the potential pitfalls in combating crimes by the elite and powerful. In his seminal book *Where the Law Ends* (1975), Christopher Stone already described the paradox that the largest and most powerful corporations in the world require more efforts from regulatory and enforcement agencies to limit violations, yet it is very difficult to accomplish that due to complexities of these firms, their international character, and their value for the economy.

In sum, many of the corporate crime scandals over the past decades illustrate that—given the global impact of contemporary business firms—we may also expect global damages if things go wrong (Shover and Hochstetler 2006; Gibbs, McGarrell, and Axelrod 2010; van Erp 2016). Yet, the control of multinational business firms and the prevention and enforcement of these types of crime remains elusive (Yeager 2016). This chapter discusses and illustrates these issues using three case studies: the (mis)use of corporate vehicles for financial gain, transnational corporate bribery, and environmental crime in the waste industry. The next section discusses the relationship between globalization and white-collar and corporate crime. Each of the three sections that follow introduce one of the case studies. We conclude by raising some of the key challenges for the future study of white-collar and corporate crime.

<A> Globalization and white-collar and corporate crime

While the significance of globalization for the study of white-collar and corporate crime seems self-evident, the term globalization in itself is highly contested and is used to mean many different things. We do not attempt to define globalization in this chapter as others have done so more extensively before us (see for example Rothe and Friedrichs 2013) and our key objective here is to link some of the consequences of globalization to specific cases of corporate and white-collar crime. Nonetheless, to analyze our case studies we would need to discuss the characteristics of globalization and understand its consequences. In doing so, we mainly draw on the work of Dicken (2015), Passas (1999; 2000; Passas and Goodwin 2004), and Friedrichs (2010; Rothe and Friedrichs 2013). One key theme that emerges from the literature on globalization is the increased interconnectedness of different parts of the world. This interconnectedness has several dimensions.

First, it refers to the mobility of ideas, information, capital, people, goods, and services around the globe. Globalization allows us to consume products from all over the world, to visit and learn from other cultures, to connect to people from other societies, and it has greatly enhanced the accessibility of information. Yet, this also allows for the movement of illegal goods and services, the import of tainted or risky products (contaminated food, medicine, supplements), and it means a greater supply of potential offenders and victims (Grabosky 2009). Moreover, globalization contributes to corporate and white-collar crime through so-called "criminogenic asymmetries" (Passas 1999, 400).[i] These are structural inequalities between different parts of the world in the spheres of politics, culture, the economy, and the law (Passas 1999, 400). The mobility inherent to globalization allows corporations to exploit these inequalities by moving activities that are illegal in one jurisdiction to another where they are not (legal/enforcement asymmetries), to externalize harms to countries that depend on foreign investments to foster economic growth (economic asymmetries), and by offering the rationale to engage in these harms particularly when certain behaviors, such as bribery, are normalized in some parts of the world to get business done (cultural/political asymmetries). In addition, awareness and knowledge about harms can be asymmetrical, as can the legal means to stand up against multinational business firms. Legal, political, economic, and social asymmetries thus enable firms operating in multiple parts of the world to seek a home in jurisdictions that allow their activities under the best economic circumstances. In this way, globalization facilitates 'crimes without lawbreaking' or 'legal corporate crimes' (Passas and Goodwin 2004; Passas 2005): behaviors that are essentially lawful, but extremely harmful.

Second, such mobility is no longer limited to the physical movement of people, things, finance, and ideas, but has been expanded to virtual markets, products, and services. In its most simple terms, technological innovations increasingly allow business to be conducted remotely and at long-distance from potential harms, damages, and victims, making it easier to neutralize and normalize certain unwanted behaviors. For example, in their study of telemarketing fraud, Shover, Coffey, and Sanders (2004) showed that fraudulent telemarketers (increasingly operating from overseas territories) could rationalize their potential guilt partly because they were not directly confronted with their victims. The Internet has also made it more difficult for states to govern certain types of business behavior, especially when the behavior is allowed in one country and prohibited in another. In the Netherlands, for example, at the time of writing this chapter, online gambling is prohibited (Netherlands Gaming Authority 2018). Yet, online gambling is legal in many other countries, including the United States and many countries in Europe. The World Wide Web allows gamblers across the globe to access these games nonetheless. Firms offering online betting often operate from jurisdictions where it is legal, leaving them relatively untouchable to the Netherlands Gaming Authority.

Furthermore, technological innovations have contributed to so-called hyperrealities (Friedrichs 2010, 167), meaning that modern business behavior increasingly revolves around virtual realities in complex, partly simulated markets, making business decisions more and more detached from real value as well as from real people and harms. It also contributes to new behaviors and activities that are largely ungoverned under current rules and regulations. Take, for instance, the issue of high frequency trading on financial markets (Lewis 2014). This is a completely automatized form of trading on financial markets by computers using self-learning algorithms. This allows trading companies to conduct a large number of trades at extremely high speed. In his book *Flash Boys - A Wall Street Revolt*, Michael Lewis (2014) argues that financial markets have been manipulated by the practice of high frequency trading to the extent that stock prices are rigged.[ii] Yet, what does it mean for regulation and enforcement when important decisions are no longer made by people, but by machines (similarly van Erp 2016, 11)?

A *final* dimension of interconnectedness is the interdependency of actors, markets and industries that comes with it (Friedrichs 2010, 167-168; Grabosky 2009, 133). Not only does this mean that the activities of multinational firms can have an impact well beyond national borders (the 2008 US housing market crash, for example, has led to an economic crisis with global consequences), but it also means that doing business has become more and more complex. Businesses increasingly operate in global economic supply networks that connect many different actors in many different countries. Businesses are connected through complicated corporate deals, legal contracts, different organizational components and offshore legal structures, and financial arrangements set up and maintained by a range of different actors (like lawyers, notaries, financial advisors, and so on) in varied countries. Companies increasingly use subcontractors or intermediaries in other countries to take care of business. On the one hand, this complexity makes it very difficult for all the different actors involved to fully understand the deals and activities that they are involved in, risking the situation that rule breaking by other actors goes unnoticed (Friedrichs 2010, 168). On the other hand, it may make it easier to deny responsibility for their involvement in certain unwanted behaviors, because they can easily shift the blame to other parties involved.

In sum, globalization has not only provided the (mostly legal) opportunities to firms to externalize the adverse environmental, social, and economic consequences of their activities elsewhere, but it has also provided the rationalizations to do so. In global economic supply chains corporate decision making and consumption often take place at great distance from the actual risks and harms surrounding production, making it potentially easier not to think about possible damages and victims. As decision-making becomes increasingly more fragmented and decentralized, red flags about potential harms and wrongs are easily overlooked. While the environmental, social, and economic consequences of globalization are many, one of the most significant issues is that these are often the result of business practices that are mostly legal, unregulated or happen in the grey zone between the legal and illegal—yet are unethical.

The developments described above raise important issues for the monitoring and control of business behavior. Globalization not only creates 'regulatory loopholes' (e.g. spaces between the law where certain harmful practices are unregulated), but it also makes the control and enforcement of illegal practices incredibly fragmented. In fact, while the expansion of cross-border activities by multinational business firms requires an international legal framework, cooperation, and information exchange between enforcement authorities, regulation and enforcement remain almost exclusively organized on a national level (Braithwaite and Drahos 2000; Passas 2000; 2005; Financial Services Authority 2009; Gibbs, McGarrell, and Axelrod 2010). Moreover, power asymmetries and economic dependencies between multinational business firms and various governments and regulatory bodies have often been said to explain why it is so difficult to act against harmful and illegal acts. Firms are often able to lobby against stricter regulation and enforcement and can influence laws and regulations in such a way that prevents criminalization of their activities (Snider 2010). This further impacts the possibilities to prosecute, convict, and sentence offenders. Even when investigations occur, these rarely result in official (before-the-court) administrative or criminal proceedings. For example, in his book *Too Big to Jail,* Garrett (2014) convincingly demonstrates that corporate crimes in the United States are almost exclusively dealt with through backroom deals and corporate settlements (similarly, see Steinzor 2014). What is more, aside from a small number of major cases with huge billion dollar settlements or fines, most official enforcement instruments are no match to the economic power of multinational business firms. Rather than effectively punishing corporate crimes and influencing firms to reduce the adverse consequences of their activities, regulation and enforcement may even contribute to the existing power imbalance and foster economic inequalities between the winners and losers of globalization (Friedrichs 2010; Grabosky 2010; Rothe and Friedrichs 2013; Dicken 2015).

In the next three sections we provide three examples of these issues drawing on empirical research on the (mis)use of corporate vehicles, transnational bribery, and environmental crime in the waste industry.

<A> (Mis)Use of corporate vehicles for financial gain

On 4 April 2016, the International Consortium of Investigative Journalists (ICIJ) exposed the hidden wealth of political leaders, drug traffickers, celebrities, and multinational corporations in the so-called Panama Papers scandal.[iii] The scandal revolved around 11.5 million leaked files from the Panamanian law firm Mossack Fonseca, which specialized in setting up and managing corporate vehicles and legal structures in offshore jurisdictions such as the British Virgin Islands, the Cayman Islands, and the Bahamas. The Panama Papers—and other data leaks afterwards like the Bahama Leaks (1.3 million files in 2016) and the Paradise Papers (13.4 million files in 2017)—highlight how rich global elites (both individuals and companies) exploit legal asymmetries and differences in tax rules between jurisdictions to manage their finances and wealth. Such exploitations are carried out for varied legal, but harmful, and illegal purposes, such as the avoidance and evasion of tax, the concealment of corrupt funds by public officials, and money laundering by organized crime groups, amongst others. These behaviors are facilitated and enabled by a range of legal corporate vehicles structures across jurisdictions.

The term corporate vehicle is not a legal term, yet it refers to a range of legitimate organizational structures and forms (such as Limited Partnerships, Trusts, and Foundations) used in economic trade to structure commercial activities or the control and movement of wealth and assets (OECD 2001, 13). Corporate vehicles allow natural persons not to take part in economic trade as individuals, but as corporates, separating individual and corporate liability. Corporate vehicles often have limited liability characteristics, meaning that personal assets of shareholders remain out of reach of creditors. The ownership of corporate vehicles can take many forms, with shares being issued to natural or legal persons in registered or bearer form, and they can have a variety of purposes (OECD 2001; FATF/OECD 2006). Corporate vehicles can be created (or dissolved) relatively straightforwardly, and at low cost (Sharman 2010; van de Bunt et al. 2007).

Using corporate vehicles in itself is perfectly legitimate and large flows of money move through the global financial system in this way. For instance, these vehicles allow business firms to incorporate companies in low or no tax regimes, provide flexibility in global markets, and reduce the level of regulation, particularly when set up in jurisdictions that offer great confidentiality (or secrecy). However, these licit corporate entities (or at least some of them) provide opportunities to conceal and control money by offering the possibility of anonymity of the 'beneficial owners'—the people who truly own and benefit financially from them—and by offering the appearance of legitimacy to these entities and/or the clients who use them to transfer funds. The anonymity provided by certain corporate structures has been used in a broad range of crimes, ranging from money laundering, financing of terrorism, tax evasion, corruption, etc. (Lord, van Wingerde, and Campbell 2018).

Furthermore, using corporate vehicles enables behaviors that Passas has labelled as 'lawful but awful' (Passas and Goodwin 2004; Passas 2005) and it is those behaviors that we are interested in in this chapter. Tax avoidance by multinational corporations is one such harmful act. Contrary to tax evasion, tax avoidance is formally legal in most jurisdictions, and it involves the circumvention of tax regulations in a firm's home country by shifting corporate profits to corporate entities in low or no-tax regimes (Eurodad 2016). For example, in their case study of Vodafone, Walley and Curwin (2014, 373) illustrate how Vodafone, one of the world's largest telecommunications companies headquartered in the UK, used a subsidiary in Luxembourg to reduce the amount of tax to pay. In 2000, Vodafone had planned to take over Mannesmann AG, a German-based firm. The actual purchase, however, was made by Vodafone Investments Luxembourg S.a.r.l (its Luxembourg subsidiary), meaning that Vodafone had to pay tax in Luxembourg, not in the UK. A few years later, HM Revenue & Customs (HMRC), the UK's tax, payments and customs authority, investigated how Vodafone had calculated its revenues, specifically how the company had dealt with the profitability of its controlled foreign companies. UK legislation aims to prevent companies from reducing their tax liabilities by shifting profits abroad. Yet, rather than accepting current legislation, Vodafone challenged the legality of the UK's 'controlled foreign companies' legislation. Ultimately, HMRC won the case and Vodafone eventually paid £1,25 billion (approximately $1,59 billion US dollars) to settle the case. Yet, this appeared to be a lot less than the sum of money set aside by Vodafone to settle.

As the Panama Papers (and other data leaks) indicate, Vodafone is hardly alone in using corporate vehicles across jurisdictions to reduce taxes. In fact, in his book *The Hidden Wealth of Nations,* Gabriel Zucman (2015) shows how multinational business firms avoid billions of dollars in taxes by shifting profits to jurisdictions where corporate taxes are low or zero. For example, more than fifty percent of the profits of US firms are kept in overseas tax havens (Zucman 2015, 4). While it is entirely legal to organize finances in this way, tax avoidance has extremely adverse consequences. It raises the tax burden on mostly middle class households because the taxes avoided by firms need to be compensated and it thus contributes to growing inequalities (Zucman 2015). What is extremely problematic about the misuse of corporate vehicles and tax asymmetries in this way is that—while it is often associated with offshore financial centres and offshore tax havens, like the British Virgin Islands and Bermuda—these harmful practices are mainly facilitated through tax regulations of European countries, such as the UK, Switzerland, Luxembourg, and the Netherlands. Zucman (2015) for instance shows that the Netherlands is actually the tax haven of choice for most Fortune 500 companies, because of its lenient tax climate. For example, the move of the operating headquarters of the Dutch-UK firm Unilever from London to Rotterdam (the Netherlands) can be seen in this light. When Unilever announced that it planned to close one of its offices, current Dutch Prime Minister Rutte – who happens to be a former Unilever employee – promised to lower corporate taxes and to scrap the tax on dividends for overseas investors.[iv] Furthermore, there is competition between jurisdictions to create a tax climate favorable towards international businesses in order to attract capital or new job market possibilities. In turn, however, this may also attract criminal money to jurisdictions known for their lenient tax regimes, often through shell corporations or mailbox firms that do not have any real activities and that are hard to control (Lord, van Wingerde, and Campbell 2018). Many of these complex business structures are able to withstand legal intervention as enforcement asymmetries, obstacles to cross-border information exchange, and cultures of corporate non-compliance globally create barriers to regulatory responses (Sharman 2010, p. 138). In this way, the misuse of corporate vehicles and tax asymmetries illustrates the tensions between creating an attractive economic and fiscal climate for businesses and preventing the movement of illicit finances.

In response to the scandals that we started this paragraph with, citizens around the world have urged their governments to take action against corporate tax dodging. For example, in the Netherlands, the Panama Papers have resulted in a Parliamentary Investigation into tax deals of the government with multinationals. Political will to increase transparency and to regulate tax havens now seems to be on the rise. However, it is our view that we need to question the ethics of a system which enables the accumulation of wealth that leads to growing financial inequalities. Yet in order to do this, we need systematic criminological inquiry into the organization of these practices, and to better understand how laws can be shaped or circumvented for the benefits of a minority social group. For instance, who enables these arrangements to flourish and how do they do this? Elsewhere we have argued that a whole new industry has emerged in which lawyers, notaries, advisors and so on provide advice on how to exploit legal and fiscal asymmetries (Lord, Campbell, and van Wingerde, forthcoming). A simple Google search reveals numerous so-called Trust and Company Service Providers (TCSPs) and Company Formation Agents (CFAs) that offer ready-to-use off-the-shelf limited companies for only a few hundred dollars. It is these practices that warrant further analysis.

<A> Transnational corporate bribery

As businesses expand into other markets to make their products and services available to new clients, they need to understand how business is conducted locally in those areas as expectations can vary when compared to their home countries. In terms of bribery, a key issue is that cultural asymmetries often exist, whereby local conventions may dictate that inducements ought to be offered in order to receive preferential treatment in the awarding of contracts, to obtain licenses to operate, or for other ways of ensuring business flows smoothly. This creates issues for businesses—particularly those from countries that are signatories of the OECD's Anti-Bribery Convention 1997—as such practices are considered corrupt within many legal frameworks, despite being considered 'normal' business practice in some jurisdictions. Accessing new markets is more difficult for new businesses (even if they have superior products) as pre-existing bribery arrangements between public officials and other competitor companies can restrict access, in turn incentivizing such businesses to move in line with expected local practices. Thus, the expansion of business operations globally into jurisdictions with differing normative expectations creates a fault line for businesses as they must grapple with the need to expand in the pursuit of profit generation whilst abiding by the expectations and standards of global organizations, such as the OECD, and their domestic laws. The international anti-bribery agenda (see OECD Anti-Bribery Convention 1997 and the UNCAC 2003) is primarily concerned with bribery being directed towards so-called developing countries where cultures vary and enforcement infrastructures may be less developed, but bribery can also be directed towards those jurisdictions considered more developed.

To expand into new markets, most businesses would employ local agents, intermediaries, or other third-parties to operate on their behalf, or would establish subsidiaries in these countries to utilize local actors. Such strategies would better enable access to local networks and to those key public officials with decision making responsibilities in order to 'lobby' them to favor their business. Such global interconnectedness is a feature of globalization. When inducements are offered with an intent to influence the decisions of public officials, this is considered bribery, but given the cultural asymmetries mentioned above, there is a large gray area where concepts of bribery, hospitality, marketing and influencing are intertwined and blurred. This is further complicated as companies may present themselves as being unwittingly involved in (or perhaps willfully blind to) bribery by those local third-parties and intermediaries operating on their behalf, making it difficult to establish the criminal liability of such companies in most jurisdictions. Notably, in the US, vicarious liability makes this more straightforward.

In those cases where preferential treatment in business is explicitly sought by offering or giving incentives, it is clear bribery has occurred. Such transnational corporate bribery involves the bribing of foreign (public) officials by corporations operating in international business in order to win or maintain a business advantage (Lord 2014a; 2014b; 2015). Bribery can take different forms such as monetary payments but also non-monetary favors such as trips, concert tickets, the provision of prostitutes, or the promise of employment, amongst other forms of inducement. Whilst blame is frequently placed on those companies offering or paying bribes, such inducements may also be extorted by local public officials engaging in 'rent-seeking' for personal (rather than public) gain. In addition, so-called 'facilitation payments' (i.e. small payments to expedite otherwise legal behaviors, such as providing permits or permission to travel through borders) vary in legality in different OECD countries. In the US, for instance, such payments are permitted, but in the UK and the Netherlands they are criminalized.[v] This creates further asymmetries as similar companies must operate in accordance with different laws.

As with most white-collar and corporate crimes, such transnational corporate bribery is highly elusive in the globalized economy as those illicit transactions mirror practices and relations that exist in otherwise legitimate business. In these terms, such bribery is 'parasitical' on legitimate business practice (Benson and Simpson 2018), as bribes can be easily concealed behind the daily and routine activities of those actors involved. In addition, the corporate actors implicated at the 'supply side' of bribery are often perceived to be respectable business persons; this combination of supposed virtue and actual vice has long been recognized as a key feature of much white-collar offending (see Ross 1907; Bonger 1916; Sutherland 1983). This in turn makes detection rare, and where detected, creates difficulties in the criminal courts when pursuing the criminal standard for prosecution.

A notable case of such transnational corporate bribery involved the UK's largest arms manufacturer, BAE Systems (BAES). In 2010, BAES paid criminal fines in the US (US$400 million) and the UK (£0.5 million) to settle charges related to failures in accounting and bookkeeping; these charges were—of more concern—in connection to allegations of bribing foreign public officials in Saudi Arabia, Tanzania, the Czech Republic, and Hungary to win or maintain arms contracts (for details see DoJ 2010). The bribery involved inflating prices to enable 'kickbacks' to be paid in order to cover extravagant expenses, such as yachts, sports cars, a private jet, and cash payments for public officials with decision-making responsibilities. To transfer the funds for the bribes, BAES used offshore shell companies and bank accounts, as well as local agents and intermediaries, and—according to court documents—made a series of substantial payments (recorded as fees for 'marketing advisors' or the provision of 'support services') via these 'vehicles' and actors that were not sufficiently scrutinized. In one such instance, BAES established a shell company called Red Diamond Trading International Ltd. in the British Virgin Islands (BVI) in order to: (i) conceal its marketing advisor relationships (identity and payments); (ii) create obstacles for investigating authorities; (iii) to circumvent laws prohibiting such relationships; and (iv) to assist advisors in avoiding tax liabilities for payments from BAES. Through Red Diamond, BAES made payments of more than £135 million despite being aware the funds would be used to influence contract decisions in foreign governments. In another instance, in one 20-month period, BAES paid over £8 million to a front company called Robert Lee International (RLI) created by BAES to entertain top Saudi officials with payments transferred via intermediary-owned bank accounts in Switzerland. Payments were also concealed through other front companies created by BAES. The case demonstrates many features of globalization—companies and accounts were created in different jurisdictions to facilitate business in other countries, innovative technologies enabled instantaneous movements of funds globally, and actors in different markets were highly interconnected.

A further complexity in the area of transnational corporate bribery is differential enforcement. Enforcement asymmetries exist as jurisdictions notably vary in how actively they enforce anti-bribery legislation. This raises questions over whether there is a fair playing field. For instance, corporations with some level of business in the US (even holding a US bank account), but also the UK and now France, are liable for investigation, prosecution, and sanctioning given the extra-territorial reach of domestic laws. Furthermore, some key economic players fall outside of the OECD convention (such as Russia, China and Brazil), yet these countries are direct competitors to US and European companies for international business. Such fragmented enforcement dynamics create tensions for governments between protecting economic expansion in times of social/economic change (e.g. 'Brexit' in the UK) and appeasing actors such as intergovernmental and nongovernmental organizations that promote international standards.

There are also notable information asymmetries between powerful corporate players on the one hand and investigative authorities on the other. Investigative authorities often largely depend on the cooperation and information of the perpetrators themselves to gain sufficient insight into the modus operandi of international bribery offences. In the Netherlands, for example, all known cases of international bribery were reported to the authorities by the firms themselves (van Wingerde and Smid 2015). In return, firms have the power to negotiate the conditions under which their case is being handled, often resulting in out–of–court settlements. Given the elusiveness of such bribery (due to the nature of the offences and offenders) and the difficulties of pursuing full criminal prosecution, alternative prevention and intervention measures could reduce actual and potential bribery (see Chapter 16). For instance, one possibility may be to focus on the 'money component' of bribery—the finances required for and generated from bribery—as this can plausibly offer a situational route to intervention (Lord and Levi, 2017).

<A> Environmental crime in the waste industry

Between the evening of 19 August 2006 and the morning of 20 August 2006, over 500 tonnes of toxic waste were unloaded from the Probo Koala ship and dumped in multiple locations throughout Abidjan, capital of Ivory Coast (van Wingerde, 2015). Even though the direct causality is still contested, numerous deaths were reported and over 100,000 people sought medical attention. The multinational firm Trafigura was the owner of the waste. The Probo Koala case is an illustrative example demonstrating the criminogenic and harmful consequences of asymmetries in environmental regulation and enforcement and cross-border activities of multinational firms dealing with waste.

In nearly every industrialized country, waste companies fulfill important public tasks. The collection, transportation, treatment, and processing of waste are directly associated with hygiene, environmental protection, and the state of our quality of life. Given these public interests, the waste market has traditionally been subject to a high degree of regulation and close involvement by governments. In the Netherlands, for instance, most waste facilities were owned and operated by municipalities (van Daele, Vander Beken, and Dorn 2007). However, the waste market has changed considerably over the past decades. Amongst its key developments are privatization, merger activity, expansions, and internationalization. As a result, the waste industry became a highly competitive and capital intensive industry. In other words, waste management has become 'big business' and the market is dominated by large and powerful commercial corporations who increasingly operate across national borders.

At the same time, the waste industry has often been characterized as a highly criminogenic industry, vulnerable to environmental crime (Szasz 1986; Huisman 2016). *First,* this concerns the waste product itself. Waste is a product that has a negative value attached to it—i.e., it is something to get rid of. This means that waste has an inverse incentive structure: rather than paying for it when you collect it (as with other 'normal' products), you pay for it when you want to get rid of it. So waste companies already make money by simply collecting waste before having to invest in expensive means of disposal. This inverse incentive structure thus creates an incentive for firms to 'shop' for the best deal in waste disposal, which may include the illegal dumping of waste in countries where environmental monitoring and enforcement are less strict or absent. In the Probo Koala case, for example, Trafigura had sought to dispose of the waste in Amsterdam first. However, since Trafigura and the disposal company could not agree on a price for the disposal, Trafigura decided to load the waste back into the Probo Koala and to transport it to Ivory Coast. Ultimately, a local company 'disposed' of it (as described above) for a substantially smaller fee than in Amsterdam (van Wingerde 2015). Furthermore, waste has been characterized as a product of low integrity. On the one hand, this means that it is a product which is highly vulnerable for manipulation by blending or mixing it with other products such as oil (van Erp, Spapens, and van Wingerde 2016). Yet, this also makes it difficult to assess the composition of the waste, the level of toxicity, and thus the causality between the waste and possible environmental and health consequences. Even today, Trafigura contests that the waste from the Probo Koala was the cause of the health problems of the people in Ivory Coast. On the other hand, waste is a product that is very difficult to define. In most Western countries it is a product that we want to get rid of. However, what is considered waste in one country can be perfectly useful in other countries where there is a market for secondhand goods, as the global trade in e-waste demonstrates (Gibbs, McGarrell, and Axelrod 2010; van Erp and Huisman 2010; Bisschop 2012). This ambiguity allows waste to be transported under the disguise of reusable goods, often to countries that lack the environmentally sound facilities to handle these goods that contain numerous hazardous substances like lead and arsenic.

Second, the industry in itself also has some characteristics that are considered to be criminogenic. The rapid growth and globalization of the industry have created complex global economic supply chains in which many different actors are involved in various countries, ranging from collection and transportation of the waste to treatment and processing. As mentioned before, these interdependencies make it possible that rule breaking by one actor is not noticed by the others and it creates opportunities to rationalize harmful activities. Furthermore, this contributes to difficulties for supervision and enforcement, particularly regarding the decision who is ultimately culpable and which country and authority has jurisdiction for enforcement. Again in the Probo Koala case, the ship was owned by a Greek firm; it was registered in Panama; it was chartered by a Dutch based firm with operating headquarters in London; and the ship sailed from Amsterdam to Estonia, Nigeria, and Ivory Coast where the waste was eventually dumped by a local firm (van Wingerde 2015, 267). Trafigura has always denied responsibility and shifted the blame to: the Dutch authorities who officially gave the ship permission to leave Amsterdam; the local company for the waste dump, by saying that the company was fully informed about the nature of the waste and was fully licensed to properly handle the waste; and the local authorities in Ivory Coast, by saying that Abidjan is one of the most sophisticated ports in West Africa (van Wingerde 2015, 267)

The Probo Koala case is a notorious example of how firms use legal and enforcement asymmetries and complexities in markets to trade waste to other parts of the world where the facilities to dispose of and treat harmful substances are less developed. But this case is also an example of how economic and power asymmetries hinder the enforcement and prosecution of environmental crimes and why legal sanctions often lack impact. Established in 1993, Trafigura is one of the world's largest independent commodity trading companies. The firm is privately owned and it has 62 offices in 35 countries all around the globe, almost 4,000 employees worldwide[vi] and in 2017, it ranked 32th in the global Fortune 500 ranking.[vii] In sum, this is one of the largest companies in the world. Not only does this make the company more powerful than certain governments, its size and resources also allow it to fight allegations effectively and to easily overcome the financial consequences that official sanctions may have. For instance, in 2006 (the year of the waste dump) Trafigura's turnover was US$45 billion, while the Ivory Coast (the country affected by the waste dump) had a gross national product of approximately US$18 billion. Moreover, in the aftermath of the scandal, a criminal case was initiated in the Netherlands against Trafigura, its CEO, and one of its employees. Ultimately, the company was convicted in the Netherlands to pay a fine of one million euros in 2011. Yet, in the same year, the firm was financially very successful with a turnover of over US$120 billion and a net profit of close to US$ 1 billion. In other words, official sanctions hardly impact these big corporate giants. As evidenced elsewhere, over the past few years Trafigura has fought tooth and nail against any allegations of wrongdoing and arguably was very successful in doing so—for example, by arguing that the court case in the Netherlands had nothing to do with the dumping of the waste in Abidjan[viii] as well as by threatening critical voices with court cases (van Wingerde 2015). So-called Strategic Lawsuits Against Public Participation (SLAPP-suits) are increasingly being used to silence legitimate protest (Pring and Canan 1996; Greenpeace 2018).

On the face of it, these multinational companies might literally be 'too big to deter' (Garrett 2014). Yet, it may also very well be that times are changing. The Probo Koala incident was not the first time that Trafigura was under scrutiny and, by itself, the company would make a perfect case study of the three themes discussed in this chapter (environmental crime, bribery, and the misuse of corporate vehicles). As it happens, the company was mentioned in the revelations of the Panama and Paradise Papers with regard to corruption and bribery in Angola through setting up and managing several companies.[ix] These revelations have contributed to increased public awareness and concern over the actions of multinational corporations and the growing inequality that is the result of it. While effective solutions are far from reality in most countries, transparency about firms' involvements, activities, and harms is one step in the right direction.

<A> Concluding thoughts

One of the most significant concerns in the study of white-collar and corporate crime is how to effectively influence the behavior of powerful elites and business firms operating across the globe. We have discussed three case studies – misuse of corporate vehicles, transnational bribery, and environmental crime in the waste industry – that all demonstrate the harmful consequences of doing business in a globalized economy. On the one hand, one could argue that these case studies present nothing new. Criminological research has long recognized how asymmetries in the political, legal, economic, and cultural sphere facilitate corporate wrongdoing and make the prevention and enforcement of these acts challenging. In this sense, these case studies reinforce these issues. On the other hand, these case studies demonstrate that corporate wrongdoing increasingly takes place in highly advanced, increasingly technological, and complex markets. In this way, our case studies raise the question of how different types of crime or harmful practices are interconnected. For example, the Probo Koala incident highlights that corporations engage in wrongdoing across regulatory contexts. To what extent is corporate crime consistent across different contexts? What factors influence this consistency, and what does this mean for regulation, enforcement, and the information exchange between regulatory authorities and supervisory bodies?

Second, this chapter has focused on corporate crime as a specific subcategory of white-collar crime. Needless to say that there are other types of organizations that could engage in illegal or harmful practices. What type of organizations have been neglected thus far in the study of corporate crime and would warrant further study? For example, while the Paradise Papers uncovered that over 100 US universities and colleges used offshore jurisdictions to hide their money and to help minimize paying taxes[x], universities and colleges have largely been overlooked in discussions on corporate crime. Furthermore, over the last few years we have seen many examples in which the power of multinational business has been counterbalanced by the resourcefulness, investigative, and communicative powers of NGOs. However, to some extent, one could argue that some of these NGOs share many of the characteristics of the large complex multinationals that they have been fighting against. Have these organizations also become as bureaucratic and hard to steer as multinational businesses? As one example, in 2014 the director of Greenpeace International came under scrutiny for commuting from his home in Luxembourg to his work in Amsterdam by airplane.[xi]

Finally, this chapter also demonstrates that studies of regulation and enforcement need to adopt a global angle. Traditionally, the state is seen as the key actor in regulation and enforcement of business behavior. Over the last decade or so, governance is increasingly emerging as a network of different actors—including governments, businesses, civil society organizations such as NGOs, local communities, labor and trade organizations, and the media across many different countries—all play a role in the regulation and enforcement of business behavior and in the prevention of corporate and white-collar crime. One of the ways in which this emergence of networked governance is being manifested is in so called multi-stakeholder initiatives. Despite the broad acceptance of these multi-stakeholder initiatives in the literature, little is known about the dynamics in which these initiatives develop and effectively regulate and enforce white-collar and corporate crime. How do these initiatives develop? How do they operate? How effective are these initiatives in pressurizing firms to reduce the adverse consequences of their activities? What kind of legal, practical, and social conditions are necessary to make these initiative operate effectively? And – given the fact that only a limited number of actors can play an active role in these initiatives – how do we need to conceptualize these initiatives theoretically and ethically? These are the questions that should interest future students of white-collar and corporate crime – ourselves amongst them.

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Biography

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[i] As many of the behaviors that we focus on in this chapter are not necessarily illegal, the term criminogenic may not be very accurate. We use it nonetheless here to reflect a tendency towards deviancy or illegality.

[ii] Yet, interestingly, Lewis also shows that geographical proximity allows data to travel on the server quicker if it is closer to the stock markets. So whilst decision making is all instantaneous, fractional advantages can be gained by being closer.

[iii] https://www.icij.org/investigations/panama-papers/

iv https://www.theguardian.com/business/2018/mar/14/unilever-pick-rotterdam-over-london-main-headquarters-brexit

[v] Though both the Netherlands and the UK do not actively prosecute facilitation payments due to a lack of enforcement capacity (van Wingerde and Smid 2015; Lord 2015).

[vi] https://www.trafigura.com/media/364955/2018-trafigura-corporate-brochure.pdf

vii http://fortune.com/global500/trafigura-group/

[viii] Which essentially was true. The Dutch court case revolved around the highly technical question of which regulation was applicable to the discharging and reloading of the waste in Amsterdam and whether or not the waste was allowed to be transported out of the European Union.

[ix] https://www.publiceye.ch/fileadmin/files/documents/Rohstoffe/2017_11_PublicEye_Analysis_Paradise-Papers_E_December.pdf

x https://www.theguardian.com/news/2017/nov/08/us-universities-offshore-funds-endowments-fossil-fuels-paradise-papers

[xi] https://www.theguardian.com/environment/2014/jun/23/greenpeace-defends-top-executive-flying-to-work