MAPPING THE CRIMES OF THE POWERFUL AND THE ECONOMIC CRISIS: CRIME, STATE AND POWER

Ignasi Bernat Molina

Universitat de Girona

MAPPING THE CRIMES OF THE POWERFUL AND THE ECONOMIC CRISIS: CRIME, STATE, AND POWER

IGNASI BERNAT MOLINA

DIRECTOR: MARCO APARICIO WILHELMI

2020

A mi Madre, por su sentido de la justicia social

A mon Pare, per la memòria de la lluita antifeixista

ACKNOWLEDGEMNTS

Si hay alguien a quien debo darle las gracias es a Dave Whtye por mil motivos, por las innumerables horas que hemos pasado hablando y trabajando en este largo camino. También quiero agradecer la ayuda de mis hermanos. Pero también a Andrés Di Masso y Andoni Egia que están siempre que se les necesita. Quiero hacer también un reconocimiento muy especial a Marco Aparicio y a Gonzalo Escobar por sus comentarios y sugerencias a este trabajo. Pero esta tesis tampoco hubiera sido posible sin la ayuda de David Brotherton, René van Swaaningen, Manuel Ballbé, del colectivo Telèfon Roig, una pequeña isla de solidaridad y apoyo mutuo en Barcelona. Anna Olivella, Mireia Vehí, Paul Ambrose, Maria Olivella, Mostafà Shaimi, Ariadna Pomar, Marta Llorca, Rams Balde, Lay Sabaly, Mariona Solé, Marta Domènech, Clara Camps, Carles Duran y Vicky Cooper también han sido muy importantes en algún momento de este trabajo.

INTRODUCCIÓN: LOS CRÍMENES DE LOS PODEROSOS: ENTRE LA CRIMINOLOGÍA CRÍTICA Y EL RÉGIMEN DE PODER

Las políticas de austeridad han trizado las condiciones de vida de las personas más vulnerables del continente durante los diez últimos años. El mantra de la austeridad para salir de la crisis permite culpar a las víctimas de la misma mientras los culpables escapan con el botín (Cooper y Whyte 2017). El continente entero se ha visto sacudido con fuerza por una de las mayores crisis económicas de la historia del capitalismo. El estallido de la burbuja de las hipotecas *subprime* en EEUU, hace ya más de diez años, desencadenó una reacción en la mayoría de países occidentales (Barak 2018). La contundencia de la crisis sorprendió a propios y extraños, la devastación social no se pudo disimular, las tasas de desempleo alcanzaron cotas dantescas en las distintas periferias europeas. Recortes en todos los servicios públicos y ayudas sociales, pensiones, educación, bajas laborales, discapacidades, mercado de trabajo. Finalmente, la oleada de la crisis alcanzó el sistema político y los gritos de "No nos representan" resonaron por todos esos países. Todavía hoy en todo Europa se deja sentir el malestar por la situación económica y social. La creciente desigualdad vuelve a tensar el espectro político con propuestas de todos los colores y con una extrema derecha cogiendo fuerza y legitimándose como opción de gobierno.

Los treinta años, ahora ya cuarenta, de neoliberalismo y consenso de Washington llevaron a semejante burbuja y a la crisis posterior. A esta crisis se llegó por el olvido de algunas de las lecciones aprendidas de la crisis derivada del crack del '29. El poder financiero volvió a primar por encima de todo y de todos. Fue el resultado un trabajo ingente de lucha ideológica, política y legislativa por volver a regular todo el sector financiero a favor del mismo capital financiero (Harcourt 2011).

A nadie se le escapa que la crisis fue resultado del gran peso y poder concentrado en este sector de la economía y por el poder corporativo (Lapavitsas 2013a). Sin embargo, hoy parece que para salir de la crisis económica hemos de volver a apostar por medidas muy parecidas a las que condujeron a dicha crisis. Más medidas privatizadoras que

abran nuevos mercados al poder corporativo, más medidas *austericidas* para volver a generar confianza en los mercados, más derechos recortados para volver a generar empleo, menos salario para volver a garantizar beneficios empresariales. El mercado, en su comprensión neoliberal, es insaciable. Cuando las medidas económicas fracasan siempre es culpa de la "poca" austeridad y de la "demasiada" intervención estatal (Tombs 2016). Mientras tanto la violencia de la austeridad (Cooper y Whyte 2017) se sigue cobrando más víctimas, víctimas de los desahucios, de los recortes sanitarios, del incumplimiento de los derechos laborales.

Esta continuada victoria del neoliberalismo se encuentra en las causas que llevaron a la gran crisis europea, pero también en el modo en que se ha gestionado el intento por salir de ella a través de las medidas de austeridad. Desafortunadamente, muchas de estas medidas se han convertido en ley para alejar la soberanía popular de las políticas económicas (Knox 2017). Mayor intervención legal en lo político y en lo económico para garantizar un nuevo acuerdo social que garantice unas relaciones sociales todavía más injustas. Este proceso se ha repetido en las distintas escalas de lo político, desde los ámbitos municipales hasta los estatales, con el aval de las grandes instituciones financieras. Grecia sería el ejemplo paradigmático de esta crisis permanente como forma de gobierno (Bernat 2018a) y de la violencia que se esconde detrás de las medidas de austeridad (Knox 2017; Cooper y Whyte 2017).

Sin embargo, una vez consolidado el régimen de poder neoliberal asistimos a un falso dilema entre los partidarios del multilateralismo y librecambio representados por la Unión Europea y los del unilateralismo y proteccionismo representados por los EEUU de Donald Trump (Fernández y Hernández 2018). El proyecto librecambista aspira a generar una nueva ronda de tratados comerciales entre países que reduzca aranceles, pero también restrinja la capacidad estatal de excluir a las corporaciones de los nichos de mercado que representan las protecciones sociales de bienestar. De hecho, estos tratados de inversión de "última generación" declaran querer abatir barreras "no arancelarias", esto es, simple y llanamente, regulaciones muchas de ellas garantes de derechos sociales, laborales y ambientales- que puedan suponer un obstáculo para la libre inversión. Al mismo tiempo, estos tratados aspiran a establecer tribunales privados

de arbitraje (ISDS) entre empresas y estados para dirimir los conflictos socavando todavía más la soberanía popular y haciendo de la *lex mercatoria* la única constitución mundial (Fernández 2018).

En cambio, la apuesta proteccionista se centra en la salvaguarda de los capitales nacional-estatales (Pérez Orozco 2018). Esta propuesta busca firmar acuerdos bilaterales donde la desigualdad de poder estatal refleje mejor esa posición de superioridad. El objetivo es proteger la industria interna en alianza con el estado sin que ello tenga porqué significar un mejor acuerdo para las clases populares, pues, el objetivo es protegerse en la guerra económica internacional. Este modelo de capitalismo de crisis se da en situaciones de conflicto político y posibilita el auge del fascismo social (Fernández y Hernández 2018). Ambos modelos consolidan el poder corporativo. Ninguno de los dos modelos permite una resolución del conflicto capital-vida que es la única posibilidad para generar las condiciones de una vida sustentable y digna de ser vivida (Pérez Orozco 2014 y 2018).

Objetivos

Esta tesis se interroga por la naturaleza de los crímenes de los poderosos (Pearce 1976) pues entiende que estos son los crímenes que mayor sufrimiento social generan (Tombs y Whyte 2003). Por este motivo hay que entender cómo se han producido en el contexto de la crisis, cómo se han generado las condiciones para que estos crímenes ocurran. Responder desde la criminología requiere entender cómo se han conceptualizado estos crímenes dentro de la disciplina, cuestión que a continuación abordamos. Para responder a tales preguntas es necesaria una criminología que vaya más allá del enfoque individualista que entiende los crímenes como un comportamiento de los individuos desposeídos. Es decir, que permita problematizar e investigar actores colectivos como las corporaciones y los estados. La criminología parece todavía atrapada en una aproximación individualista en la cual las estructuras de poder no están incluidas, a la ves que desplaza a la sociología como la ciencia social que estudia el desorden y la pobreza (Comaroff y Comaroff 2016). La criminología, mientras se centre en los crímenes cometidos en las calles por los estratos más bajos de las clases populares,

encubre los crímenes cometidos por los actores poderosos. La omisión de estos crímenes en su análisis es parte de un proceso de invisiblización, naturalización y legitimación. El discurso criminológico sobre los crímenes de los individuos desposeídos restringe el foco sobre lo que sucede en los centros metropolitanos y occidentales y se olvida de observar las atrocidades cometidas por los actores poderosos en el norte global, pero sobre todo en el sur global (Gandarilla 2018). Esta criminología responde a unos intereses, problemas y preocupaciones del norte global, pues lo que busca es consolidar el orden social en esos centros metropolitanos (Pavarini 1985). Sigue siendo necesaria una criminología que dé cuenta de los daños sociales y crímenes que sufren las personas desposeídas del norte, pero sobre todo del sur global por parte de las corporaciones y estados. Y, por lo tanto, que desplace su lugar de enunciación, el lugar desde donde mira el mundo (De Sousa Santos 2010). Junto a las epistemologías del sur habría que situar el post-positivismo como rechazo a la idea que persigue a las ciencias sociales desde su origen para convertirse en equivalentes de las ciencias naturales. El post-positivismo parte de la asunción de las diferencias entre ciencias naturales y ciencias sociales a través de una confrontación hermenéutica (Sayyid 2014). Las ciencias sociales deberían aceptar que la actividad interpretativa no es externa a la constitución de su objeto de estudio. Bajo el paraguas del post-positivismo se permiten todos aquellos desarrollos teóricos que llevan a la crítica profunda del esencialismo. Esta perspectiva llevaría a la interrogación sobre la posibilidad de la comprensión substantiva de aquello qué es el delito y de quiénes son los delincuentes realmente.

El discurso criminológico no es importante únicamente por lo que dice, sino sobre todo por lo que no dice. La criminología es el discurso culturalmente disponible que permite hablar de la criminalidad, construye qué es un crimen y quién es un criminal. El discurso criminológico reproduce un marco cultural que es tolerante con las prácticas predatorias de los grupos de poder y refuerza esas prácticas representándolas como normales y legítimas (Di Masso, *et al*. 2014). Además, la criminología es un discurso a través del cual se reproduce el poder de criminalizar a los desposeídos mientras se encierra lo que es criminal en sus prácticas. En este sentido, hay que entender cómo las estructuras de poder y desigualdad (colonial, racial, clase, género) operan en la sociedad, concretamente, definiendo qué es el crimen y las prácticas del sistema penal. El sistema

penal se encarga sobre todo de proteger unas relaciones de clase y su protagonista principal: el ciudadano hombre, blanco, occidental y burgués (Hudson 2006). Los crímenes de los poderosos y los crímenes estatal-corporativos deben ser centrales en el campo criminológico, de otro modo, no seremos capaces de entender la naturaleza de los actores colectivos que subyacen a aquellas prácticas de acumulación por desposesión. El crimen corporativo ha de ser entendido como parte y como representación del estado actual de las relaciones de poder corporativo (Bernat y Whyte 2017).

Los crímenes estatal-corporativos han de ser entendidos como un proceso en lugar de como la suma de distintos eventos aislados (Lasslett 2010). Hemos de localizarlos dentro de una economía política crecientemente financiarizada y un conjunto de relaciones de poder corporativo, pero también colonial y patriarcal que relega los recursos comunes y los derechos sociales a meras mercancías. Los crímenes corporativos juegan un rol central en el proceso actual de acumulación de poder y riqueza. La corporación es la institucionalización de relaciones de poder (clase, género y colonial) donde la desposesión y la violencia tienen lugar (Tombs y Whyte 2015). La corporación y el estado que trabaja para ella, han demostrado la capacidad de aprobar leyes en su beneficio, amenazar gobiernos, emplear prácticas ilegales, negar derechos y desposeer a la gente través del poder corporativo y de la violencia simbólica.

Los artículos que conforman el núcleo de esta tesis intentan responder teoréticamente a distintas dimensiones de estos crímenes. En trabajos anteriores desarrollé otras metodologías de aproximación de tipo etnográfico a estas cuestiones que me permitieron indagar sobre las vivencias y experiencias de las personas que sufrían la violencia de los poderosos. Así, en un artículo en la *Revista Crítica Penal y Poder* me pregunté por el diferencial de explotación en base a líneas de clase, género, pero, sobre todo migración y raza, pues era una dimensión olvidada en la mayoría de relatos (Bernat 2014). Por motivos de espacio y coherencia interna en esta tesis se incluyen solo cuatro artículos de tipo teorético. El primero de ellos intenta responder a la cuestión del papel del estado en el crimen corporativo, entender la íntima y simbiótica relación entre el estado y la corporación. El artículo en cuestión se titula “State-Corporate Crime and the

Process of Capital Accumulation: Mapping a Regime of Permission from Galicia to Morecambe Bay" y fue publicado originariamente en la revista *Critical Criminology* en 2017. A partir del estudio de caso del vertido de petróleo del Prestige en 2002, se pone el foco en el rol co-constitutivo del estado en los crímenes corporativos. Como intenta argumentar el artículo, el estado es un agente central en la comisión del delito al establecer las bases infraestructurales que van a posibilitar el crimen, pero también a asegurar la impunidad corporativa ante dicho crimen. En definitiva, busca entender cómo el estado construye un verdadero régimen de permisividad para el crimen corporativo. Esta misma perspectiva ha sido desarrollada por los mismos autores en la entrada "State-corporate crime" (Bernat y Whyte 2019a) en *The Wiley Handbook on White-Collar Crime*.

El segundo de los artículos intenta destacar el papel de la economía política en la comisión de los crímenes de los poderosos en España. Este artículo se publicó en 2017 en el libro homenaje a Frank Pearce *Revisiting Crimes of the Powerful: Marxism, Crime and Deviance* con el título "The Crimes of the Powerful and the Spanish Crisis". En él se intenta mostrar cómo la financiarización de la economía ha jugado un rol clave en la acumulación por desposesión financiera de las clases populares en el contexto del estado español. La financiarización ha convertido antiguos derechos en nichos de mercado haciendo de la extracción de rentas financieras una cuestión básica de los procesos de acumulación que se producen fuera de las fábricas en los países centrales del capitalismo contemporáneo (Lapavitsas 2013a). Esta perspectiva asume que el crimen corporativo no puede ser estudiado fuera de la estructura social y política en el cual éste se comete (Pearce 1976; Taylor 1997). Así, el artículo en cuestión busca comprender cómo operan los crímenes de los poderosos en relación con la economía política.

El tercero de los artículos se centra más específicamente en el régimen de poder europeo y en cómo las posibilidades de la soberanía estatal están restringidas por elementos que a veces escapan a las constituciones estatales, a partir de la perspectiva agambeniana del estado de excepción (1998). El artículo, publicado en el año 2018 en la revista *Oñati Socio-legal Series,* lleva por título "The Permanent State of Exception in

the Southern Periphery of Europe". Ese régimen de poder europeo obliga a introducir límites a las constituciones formales de los países para protegerlo y asegurar la posibilidad de continuar produciendo beneficios aun cuando eso implique vulnerar derechos o liquidar la soberanía nacional. De hecho, la misma noción de soberanía, considerada central en las democracias occidentales, está ampliamente cuestionada y erosionada cuando la observamos desde esta perspectiva amplia de poder soberano. Así, la posición periférica de un país respecto al centro de poder regional determinará el tipo de crimen corporativo que se da en dicho país, como ya argumentamos en la introducción al castellano de *La Empresa Criminal* (Bernat, *et. al.* 2016), del mismo modo que el nivel de violencia sobre los sujetos para resolver los conflictos sociales viene determinada también por esa posición (De Sousa Santos 2010).

El cuarto y último artículo: "Postfascism in Spain: the Struggle for Catalonia" presenta una visión tripartita del régimen de poder en el Reino de España publicado en la revista *Critical Sociology*. Partiendo de la clásica división dentro del pensamiento sociológico, analiza las que se consideran las tres esferas de poder centrales como son la economía, la política y la cultura. O por decirlo en la terminología empleada por Poulantzas (2018) o Althusser (2008), los aparatos económicos, represivos o ideológicos del estado. Desde esta perspectiva compleja se entienden mejor los problemas democratizadores (Tilly 2010) en el Reino de España y su reciente crisis constitucional alrededor de la cuestión catalana. Esta perspectiva *long durée* influenciada por el trabajo de Quijano (2000) da cuenta de la reproducción del régimen de poder. En estos dos últimos trabajos de la tesis ofrecemos un análisis de la arquitectura de poder profundamente desigual que está en la base material de las sociedades europea y española y sus relaciones de poder y acumulación, a menudo criminales.

El problema de estos tres elementos (estado, economía y poder) es que continúan evolucionando al mismo tiempo que lo hace el resto de la sociedad, por eso es difícil dar una respuesta definitiva a las cuestiones analizadas. En función de las transformaciones sociales, variará el rol del estado en la sociedad pudiendo adquirir un carácter predominante en la acumulación de capital o como proveedor de derechos sociales. Estas son sus dos funciones principales, la de permitir la reproducción ampliada del

capital y la de la legitimidad social (O'Connor 1973). Cuando una de estas dos funciones entra en crisis aparece el estado en su vertiente más cruda, a través de sus fuerzas de coerción. Es en estos momentos de crisis cuando el estado, en tanto que producto del proceso jurídico se disuelve, y aparece el estado como dominio de clase, como *raison d'état*, y autoridad garante del intercambio mercantil (Negri 2003). Pero es en el conflicto entre capital y vida (Pérez Orozco 2014) donde las fuerzas sociales podrán imponer un tipo de formación estatal u otro, pero también la transformación económica modificará esa relación antagonista y hará que ese estado adquiera una forma determinada. En el contexto globalizador, por ejemplo, el estado juega un papel central en las distintas formas de acumulación capitalista preservando nichos, mercados y comunes para el negocio privado. En el contexto del capital financiero monopolista, el estado es un actor clave en el mantenimiento del ritmo de acumulación de capital y riqueza.

A continuación, van a ser desarrollados algunos aspectos que ocupan un lugar central en la comprensión conjunta de la investigación doctoral contenida en los trabajos recién señalados. Se abordarán dos partes diferenciadas. En un primer momento, sigue el desarrollo criminológico sobre la cuestión de los crímenes de los poderosos y cómo han sido concebidos por la disciplina desde una vertiente crítica. Pero también se analizan distintas dimensiones del concepto, así como alguna de las críticas y evoluciones que ha sufrido. En la segunda parte de esta introducción restringimos el marco de análisis al contexto del estado español y a su constitución material en un enfoque que trae de vuelta a la economía política y al estado para dibujar el régimen de poder bajo el cual se han producido los crímenes estudiados en los distintos artículos.

Parte I: La criminología crítica ante los crímenes de los poderosos

Genealogía de los crímenes de los poderosos I: Más allá del delito de cuello blanco

El origen de la criminología como disciplina científica ha de entenderse, según Garland (1997), como el resultado de un doble proyecto. Por un lado, tenemos el sueño positivista del conocimiento representado por Cesare Lombroso y su hombre

delincuente (1876). La delincuencia sería el resultado de un déficit individual y el delincuente un eslabón perdido de la evolución humana arrastrando en su cerebro la marca de un estadio anterior menos evolucionado. Por otro lado, tenemos el sueño gubernamental del control representado por la cárcel y la policía para una administración más eficiente informada por los estadistas morales (Coleman y Moynihan 1996). Dos elementos claves en la (re)producción del orden social burgués y gestión de la cuestión social como se la llamó en ese momento.

Sin embargo, prácticamente desde el mismo origen la criminología también ha encarnado un proyecto que ha colocado en el centro de su ámbito de estudio las prácticas predatorias de los grupos socialmente dominantes. En el eje de este proyecto criminológico se ha situado la noción de delito de cuello blanco. En esta sección vamos a observar algunos de los debates centrales de este proyecto alternativo, aunque siga ocupando un lugar secundario dentro de la disciplina.

El debate criminológico sobre el origen del delito de cuello blanco y de los crímenes de los poderosos ha olvidado con frecuencia al que podría considerarse su pionero: William Bonger[1]. Podríamos especular brevemente sobre las posibles razones de este descuido. En primer lugar, porque este autor publicó su tesis doctoral en 1905 en Holanda cuando la sociología y la criminología, las ciencias sociales en general, trasladaban su epicentro de Europa a Norte-América. Además, Bonger, de origen holandés, publicó inicialmente su volumen en francés: *Criminalité et conditions économiques*, cuando las ciencias sociales se empezaban a expresar mayoritariamente en inglés, haciendo que aquellos que usaban otras lenguas fueran excluidos de la comunidad científica.

1 Fue este autor, como sucede a menudo en aquellos que hacen aportaciones novedosas, una biografía interesantísima. Así, fue el primer catedrático de sociología y criminología en Holanda en 1922, siempre muy implicado en la vida social y política de su país, fue miembro activo del Partido Socialdemócrata de los Trabajadores de Holanda. En 1940 se suicidó junto a su mujer justo cinco días después de la ocupación nazi de Holanda, dejando una nota de suicidio que rezaba lo siguiente: 'No veo ningún futuro para mí y no quiero bajar la cabeza ante la basura que nos domina'. Cit. en Hebberecht (2015).

Pero tal vez habría que explicar su continuada exclusión del canon académico en este campo por la perspectiva marxista empleada a la hora de abordar el fenómeno del crimen y el castigo. De hecho, Bonger es considerado el primer criminólogo marxista (Ugwudike 2015) ya que buscó ubicar las estructuras económicas y sociales capitalistas en el centro de su análisis afirmando que el capitalismo es criminógeno (van Swaaningen 2011). No es hasta la emergencia de la 'nueva' criminología de Taylor, Walton y Young en 1973 cuando este autor será recuperado. Sin embargo, se rescatará aquella parte de su trabajo que hace referencia principalmente al delito callejero dejando sus aportaciones sobre la criminalidad de cuello blanco en segundo término. Más recientemente este autor empieza a ser considerado por sus interesantes y originales aportaciones en este ámbito criminológico.

En la extensa tesis doctoral de Bonger es donde se encuentran sus aportes teóricos. Estaba dividida en dos partes, en la primera hacía una revisión de los autores que habían tratado con anterioridad la relación entre delito y condiciones económicas dirigiendo sus críticas más duras hacia los autores de la Escuela Positiva y otras aproximaciones de carácter psicológico que veían el delito resultado de déficits individuales (Bonger 1967).

En la segunda parte se centraba en la relación entre el régimen de producción capitalista, la organización social y el delito. Así, la idea central de la tesis establecía que el régimen económico de producción marcaba la organización social, entendida ésta como las condiciones de trabajo, el sistema educativo, el matrimonio, la familia y la crianza, etc. Las distintas formas de delito económico eran clasificadas en crímenes de pobreza, codicia y profesionales (1916). Así, las dos primeras formas eran las que hacían referencia a las clases populares y la última era la forma correspondiente a la burguesía. De este modo, el crimen profesional debe ser entendido como un antecedente directo del delito de cuello blanco. A pesar de ello, y en base al psicologismo dominante en la época, los crímenes eran clasificados de acuerdo a "los motivos" por los cuales se cometían (Snider 1993). Bonger señaló que el capitalismo ignora los costes sociales de la acumulación de riqueza. Así, se señala que bajo este sistema de producción hay una relativa indiferencia a determinadas formas de acumulación como por ejemplo la adulteración de la comida (Pearce y Tombs 1998). En cambio, cuando se manipula la

bolsa o se emiten acciones sin valor, semejantes prácticas son sancionadas porque dañan el progreso y funcionamiento regular del capitalismo. Los conflictos intra-clase que repercuten en el normal funcionamiento del sistema deben ser castigados.

El capitalismo, en Bonger (1967), es entendido como un sistema que mina la cooperación social y promueve el egoísmo, razón por la cual para el autor el capitalismo es un sistema económico criminógeno. No obstante, solo aquellos comportamientos que atentan contra los intereses de las clases dominantes serán considerados delito. En este sentido, pone de manifiesto que los intereses de la burguesía determinan el derecho y, por lo tanto, las leyes no criminalizan los intereses de las clases dominantes. En la actualidad, parece que esta mirada sobre la teoría económica como productora de daño social o criminógena está de vuelta. Así sucede en los volúmenes de Ruggiero (2013) y Harcourt (2011) donde se subraya cómo la teoría económica habría sido la causante de la invisibilización de resultados socialmente perjudiciales. Volveremos sobre esto más adelante

El contexto de emergencia de la noción de delito de cuello blanco hay que situarlo justo después de la Gran Crisis de 1929, mientras se empezaba a poner el acento en los comportamientos de las personas de elevado estatus y respetabilidad que en el ejercicio de su ocupación (Sutherland 1999) cometían delitos y provocaban daños a la empresa para la cual trabajaban o a sus clientes. Ese es el contexto inicial de la era Roosevelt que tuvo su comienzo en el año 1933 coincidiendo con su llegada al poder (Hagan 2010). Las medidas económicas de promoción y activación de la demanda, es decir, las medidas de tipo keynesiano con el *New Deal* como estandarte, se convirtieron en dominantes durante los siguientes treinta años (Krugman 2012).

Fue también ese año 1933 cuando se aprobó la emblemática *Glass-Steagall Act* para separar los bancos comerciales de los bancos de inversión y evitar otra debacle financiera a la vez que se limitaba el poder corporativo a través de la regulación. Efectivamente, en 1939 Edwin Sutherland acuñó por primera vez el concepto delito de cuello blanco en su discurso inaugural ante la *American Sociological Society* y lo fue desarrollando durante la década posterior cuando se acabaría por imponer al de

banksters que crudamente empleaba el Presidente Roosevelt en analogía al de gangsters para realzar su turbio proceder (Hagan 2010). El concepto de delito de cuello blanco surgió para poner de manifiesto que el crimen no era un hecho que incumbiese únicamente a las clases populares, sino que las clases poderosas también cometían actos que generaban sufrimiento social (Sutherland 1945). Además, los crímenes de las clases altas producían más daños financieros que los que se asociaban a la pobreza, pero el principal perjuicio que provocaban era en las relaciones sociales ya que el delito de cuello blanco violaba la confianza y generaba desorganización social (Sutherland 1940).

No obstante, el recorrido del concepto nunca fue pacífico y tuvo que pugnar por obtener legitimidad académica y poner bajo escrutinio los comportamientos de los grupos sociales más poderosos (Slapper y Tombs 1999). A pesar de una cierta efervescencia durante el primer período de existencia del concepto que comprendería los años 1939 – 1963, éste estuvo marcado por un excesivo empirismo y poca profundidad analítica (Geis, *et al*. 1995). Posteriormente, durante el segundo período 1964 – 1975 se produjo un fuerte estancamiento en este campo (Geis y Goff 1983), caracterizado por una menor producción de estudios empíricos (Braithwaite 1995), mientras tenían un papel destacado el miedo y las purgas universitarias en el contexto del macartismo (Lazarfeld y Thielens 1958; Geis, *et al.* 1995) y del ataque conservador al proyecto de la *Great Society* del Presidente Johnson (Beckett y Sasson 2000). Así, se hacía evidente que la propia disciplina criminológica es un campo de lucha por el poder de enunciar discursos con efectos de verdad (Foucault 2006), evidenciando que los sujetos poderosos no quieren ser objeto del discurso científico, es decir, que no quieren ser sujetados por el régimen de verdad criminológico que disciplina a los desposeídos.

Desde sus inicios, el concepto tal y como fue establecido por Sutherland, encontró reticencias desde posturas vinculadas al mundo del derecho en lo que se ha conocido como el debate Sutherland – Tappan y que vino a marcar los límites iniciales del campo (Slapper y Tombs 1999). Estas críticas afirmaban que no podía ser considerado crimen nada que quedara fuera de la ley penal, ni nadie criminal que no hubiera sido condenado, más allá de toda duda razonable, en un juzgado penal, pues eso llevaría a un debilitamiento del debido proceso (Tappan 1947). Es decir, Tappan quería evitar que

el crimen acabase convertido en una mera etiqueta moralizante o propagandística y para ello era necesario mantener una estricta definición de lo que se definía como crimen y que permitiese esperar una respuesta específica del estado y sus instituciones (Braithwaite 1995). Del mismo modo, los comportamientos de los trabajadores de las corporaciones o de las empresas mismas no podían ser consideradas crímenes aunque rompiesen alguna norma de derecho administrativo, civil o la confianza de sus clientes ya que ese es el modo normal de actuar en los negocios y, por lo tanto, no alteran las formas habituales de proceder en el mundo empresarial (Tappan 1947).

Resumiendo las diferentes posturas en el debate, cabe señalar que la diferencia principal entre los autores es que para Tappan el derecho y el sistema de justicia penal son un conjunto de instituciones que buscan llegar a la justicia y a la consistencia (Whyte 2009). Esto es, que el derecho trata de evitar el sufrimiento social por mecanismos eficientes y que la mayoría de los daños de las corporaciones no son más que negocios, como de costumbre, *business as usual* (Tappan 1947).

En cambio, para Sutherland se trataría de lo contrario, habría que pensar el derecho y el sistema penal como un conjunto de instituciones comprometidas con la reproducción de las desigualdades sociales y de poder, al tiempo que promueven la injusticia (Whyte 2009). De este modo, el sistema penal no sería una agencia neutra sino que respondería a un campo de relaciones de fuerzas claramente desigual. La capacidad para castigar, para imponer dolor institucional, sería un recurso distribuido desigualmente entre los distintos grupos sociales (Baratta 1986; Messuti 2008) a través de los principales ejes productores de desigualdad como el género, la clase, la racialidad o la ciudadanía.

Sin embargo, una crítica común al trabajo de Sutherland y que es constitutiva del primer período del concepto es su énfasis en un marco individual, ignorando factores estructurales como el capitalismo, los ciclos económicos o las tasas de beneficio (Geis, *et al.* 1995). Del mismo modo, tampoco se prestó la suficiente atención a la capacidad de las corporaciones para influir sobre los procesos legales y reguladores (Friedrichs 2010). Es decir, el proceso de descriminalización, invisibilización o legitimación del daño

social (Whyte 2009; Slapper y Tombs 1999) y la economía política de la regulación (Snider 1993).

Genealogía de los crímenes de los poderosos II: Del delito estatal corporativo al régimen de permisividad

A partir de la contradicción implícita en el texto original de Sutherland refiriéndose a delincuentes de cuello blanco mientras mencionaba las prácticas de las organizaciones para las cuales trabajaban (Braithwaite 1995; Aulette y Michalowski 1995), emergió a finales de los setenta el tercer período de estudio del delito de cuello blanco que define la escena contemporánea (Geis, Meier y Salinger 1995). Este es un período caracterizado por una mayor conflictividad social y una mayor conciencia pública del actuar criminal de los grupos socialmente poderosos como evidenciaron el escándalo del *Watergate* y la Guerra de Vietnam (Braithwaite 1995). Así, los crímenes de los poderosos emergen como una entre tantas de las estrategias empleadas por las corporaciones para obtener beneficios, y por este motivo hay que analizarlos dentro de la estructura social en la cual actúan las corporaciones (Pearce 1976).

En efecto, la contradicción implícita en Sutherland llevó a una partición del concepto, en primer lugar, el delito ocupacional que ponía el acento sobre el trabajador individual que utilizaba su posición en la empresa para la cual trabajaba para engañar a sus clientes o defraudar a la misma empresa para beneficio personal (Friedriechs 2010). En segundo lugar, el concepto fue tomando otra dirección centrada en la vertiente organizacional de la corporación, el delito organizacional o corporativo sería el que estudia los delitos que se generan en provecho de la organización misma, pudiendo beneficiar a los trabajadores envueltos en el mismo. Esto es, el delito corporativo se comete mientras se intentan alcanzar los objetivos de la empresa, generalmente, dinero o poder (Slapper y Tombs 1999).

Hay que destacar que lo relevante son los objetivos de la corporación, no la intención de la misma, pues la indiferencia sobre el daño causado no ha de eximir de sus responsabilidades (Box 1983). Pero de este modo, la noción liberal de *mens rea* ha

servido para distanciar a la corporación de la culpabilidad pues localizar la intención en una persona jurídica es ciertamente difícil, aunque probablemente sería posible retrotrayéndose hasta las decisiones tomadas por sus gestores y administradores (Tombs y Whyte 2015).

No obstante, hay quien reclama que la noción de delito de cuello blanco debería restringirse a esa primera acepción (Slapper y Tombs 1999), aunque no es una cuestión pacífica, pues tampoco faltan voces que argumentan que ambas comparten muchas similitudes y deben tratarse como un único fenómeno (Coleman 1987). En todo caso, en este trabajo entenderemos que el crimen corporativo será aquel comportamiento u omisión de la corporación, o de sus trabajadores en nombre de la corporación, que está prescrito por ley y es castigable sin importar si es en la jurisdicción civil o penal (Braithwaite 1984). Habría que añadir, obviamente, el ámbito laboral y, en último término, costitucional. De hecho, que el sistema penal decida no perseguir un determinado comportamiento no es motivo para que las y los estudiosos del delito corporativo no lo consideren (Box 1983). En los delitos corporativos es importante destacar que aunque no sean efectivamente castigados por el diferencial de poder, no por ello dejan de ser *castigables* (Braithwaite 1984).

Como acabamos de mencionar, esta capacidad de imponer dolor institucional o de castigar se distribuye desigualmente en una sociedad. Así, el acceso a este recurso por parte de los grupos sociales desposeídos se hace, habitualmente, a través de la acción colectiva. En tanto que integrantes de movimientos, los sujetos desposeídos ven aumentar su poder y pueden eventualmente derribar parte de la legitimidad o invisibilidad de aquellos actores más poderosos (Bernat 2014). La reciente crisis nos ha mostrado algunos ejemplos muy ilustrativos como los de Bankia, las preferentes, los fondos buitres o los desahucios.

De igual modo, el delito corporativo no debe explicarse por la personalidad de los actores implicados, aunque esto no significa atenuar su responsabilidad, sino que hay que fijarse en los roles que desarrollan en la estructura de la corporación y en los sistemas de creencias que se forjan en las interacciones de la corporación (Snider 2008),

en la cultura de la competición que sitúa el éxito y la riqueza en el centro de su sistema de creencias (Coleman 1987). Las relaciones de poder que en ella se dan constituyen realidades que engendran culturas corporativas que facilitan formas creativas de evadir la ley (Snider 2008).

Aparece aquí la cuestión del poder, que será clave para entender el delito corporativo intentando ir más allá de la noción de confianza que apuntó Sutherland (Braithwaite 1995; Friedrichs 2010) y que su discípulo desarrolló para estudiar cómo las personas se apoderaban del dinero de los otros a través de la violación de confianza (Cressey 1953). Tanto Sutherland como Cressey escriben en el momento álgido de la teoría de la desorganización social como factor explicativo del crimen callejero (Melossi 2002). Sus contribuciones parecen una adaptación de esa teoría a los delitos de las clases poderosas. Recientemente, esta noción ha evolucionado hacia el concepto de abuso de confianza que entiende el delito de cuello blanco, en sentido amplio, como resultado de la distribución desigual de la información entre el cliente y la persona que trabaja para la organización (Shapiro 1990). Ahora bien, aunque la violación de confianza permite poner el foco sobre la naturaleza de la ofensa antes que en el delincuente, dicha circunstancia no es un elemento exclusivo del delito de cuello blanco. Des de una perspectiva crítica, el núcleo del delito de cuello blanco está en el daño (social) causado (Friedrichs 2010) y la distribución del poder que ello implica (Agozino 2003).

En todo caso, más sugerente que la noción de confianza (Shapiro 1990) parece la acepción abuso de poder o exceso de poder (Agozino 2003), como explicación de la criminalidad corporativa debido a que estos crímenes se producen en un contexto de relaciones categóricamente desiguales (Massey 2007), es decir, no estamos ante relaciones libres entre pares. En este sentido, el poder es un elemento clave a la hora de entender cómo se produce la acumulación por desposesión (Harvey 2004) a través de una relación basada en la violencia simbólica, en la aceptación y aplicación de las categorías de los poderosos en las relaciones que los dominados mantienen con ellos (Bourdieu 2000), pero que obviamente tiene importantes efectos materiales. Los crímenes cometidos por actores como estados, corporaciones e instituciones financieras son el resultado de los excesivos recursos que poseen (Ruggiero 2005), pero

no son solo el efecto de este inmenso poder de clase, sino que, precisamente, a través de los crímenes de los poderosos, éstos consiguen atesorar más poder todavía (Whyte 2015). El abuso de poder se expande desde las relaciones interpersonales a intergrupales hasta internacionales (Agozino 2003).

En la concepción bourdiena de capital (Bourdieu 1986) podríamos afirmar que el crimen corporativo sería una estrategia más desarrollada por la corporación en el campo económico dentro de la densa malla de relaciones de fuerzas entre actores sociales. El capital criminal sería un recurso derivado de esa capacidad para acumular impune e inmunemente sin importar la legislación ni la vulneración de derechos (Bernat 2018b).

Uno de los problemas de estudiar el crimen corporativo surge cuando la capacidad de cumplimiento efectivo de la legalidad o cuando los mismos comportamientos se descriminalizan como resultado de la economía política de la regulación (Snider 1993). En el proceso de re-regulación de los comportamientos de los poderosos (Slapper y Tombs 1999), sus crímenes se descriminalizan y devienen la forma habitual de hacer negocios (Whyte 2009). En este sentido, la producción de conocimiento con relación a la actividad de las corporaciones ha venido afirmando que la persuasión y la regulación son mejores que el castigo, demostrando cuan vinculados están los conocimientos válidos con los intereses de los grupos hegemónicos (Snider 2000).

La aceptación de las verdades científicas no está basada en un juego de igualdad de oportunidades, así que cada vez más nos encontramos con una regulación de dichas actividades que tiende a hacer desaparecer el carácter delictivo de las prácticas corporativas (Whyte 2009). Resultado de su poder en el campo económico, las elites poseen un alto grado de libertad que les permite controlar los efectos de sus actos y negociar la definición que se les atribuye, no permitiendo que se designen como crímenes (Ruggiero 2005). Así, poco a poco van cogiendo fuerza las ideas que consideran óptimo el papel del mercado como regulador de las actividades de las corporaciones en lugar del derecho penal (Snider 2000). El abuso de poder corporativo sería la utilización de su inmensa capacidad de influencia para erosionar el proceso democrático y curvar

la intervención pública en favor de los intereses de las empresas en detrimento de la ciudadanía o del público en general (Friedrichs 2010).

Ante la dificultad para establecer aquello que debe ser estudiado y criminalizado, el daño social aparece como concepto que pretende, justamente, poner de manifiesto que el derecho penal no puede hacer frente a la multiplicidad de comportamientos y situaciones que son socialmente perjudiciales y que no siempre los más graves encajan dentro del derecho penal y la criminología (Hillyard 2013), como, por ejemplo, podrían ser los desahucios que siguieron a las hipotecas (Bernat 2014). Pero los daños también tienen culpabilidad y, por lo tanto, han de poder ser sancionados (Cain y Howe 2008). Es por ello que hay quien considera que se trataría de extender los marcos legales para incluir los daños estructurales ya sea a través de los Derechos Humanos (Schwendiger y Schwendinger 1977), partiendo del Pacto Internacional sobre Derechos Civiles y Políticos y el Pacto Internacional sobre Derechos Económicos y Sociales (Cain y Howe 2008).

La cuestión central es donde ubicar la responsabilidad, y es por ello que, la noción de daño social permite huir de la trampa de la responsabilidad individual y fijarse en la responsabilidad estructural y forzar un cambio en esas estructuras de posibilidad que producen daño social (Tombs y Hillyard 2004). Al mismo tiempo, la noción de daño social permite escapar de la victimización discreta o individual y emplear el término comunidad dañada (Hillyard y Tombs 2004). Así, se tratará de pensar el daño como eventos o condiciones que afectan a la gente a lo largo de su vida, independientemente de que estos sean de naturaleza física, financiera, emocional o cultural (Hillyard y Tombs 2004). Esta segunda acepción desvinculada de nociones legales permite pensar el concepto fuera de los límites de los espacios de poder estatales y vincularlo a concepciones sociológicas relativas al bienestar y las necesidades de las personas (Pantazis y Pemberton 2009).

Uno de los aspectos centrales de la noción daño social está en que permite vislumbrar las condiciones estructurales detrás de la producción de sufrimiento social y después poner de manifiesto que los estados son parte fundamental de los daños que se

producen en las organizaciones sociales del tardo-capitalismo (Pantazis y Pemberton 2009). Estas condiciones estructurales tienen mucho que ver con el funcionamiento interrelacionado de los actores socialmente más poderosos en el contexto del neoliberalismo, donde estados, mercados y derecho producen una concentración de poder económico que promueve el proyecto hegemónico de la globalización y la 'desregulación' hacia el incremento de la desigualdad y que considera que éste es el único capaz de alcanzar el progreso (Tombs y Hillyard 2004).

Uno de los elementos importantes de la perspectiva zemiológica es que pretende ir más allá de aquello definido como criminal y las respuestas a implementar por el estado, al mismo tiempo que quiere poner de manifiesto que dicho comportamiento no tiene porqué ser el más grave (Hillyard 2013). De hecho, la criminología, como discurso culturalmente disponible que permite hablar de la criminalidad, construye quién es el criminal y qué es el crimen (Foucault 1991). Este discurso criminológico reproduce un marco cultural que es tolerante con las prácticas predatorias de los poderosos, es un discurso a través del cual se reproduce el poder de criminalizar a los desposeídos y que encierra aquello que es delictivo en sus prácticas (Di Masso, *et al*. 2014).

Precisamente, el concepto de crimen estatal corporativo, en su formulación original, remite a las acciones ilegales o socialmente dañinas que resultan de la interacción reforzada para la consecución de sus objetivos entre las instituciones de gobierno y las instituciones económicas (Kramer y Michalowski 2006). El término pretende capturar la importancia del papel del estado, pero también de los actores privados en la producción de daño social, es decir, cubrir aquella vinculación entre lo público y lo privado (Michalowski y Kramer 2006). El delito de estado corporativo incumbe la participación de organizaciones de la esfera civil y estatal, provocando consecuencias dañinas como resultado de las relaciones inter-organizacionales entre gobierno y negocios, cuando estas instancias institucionales persiguen o colaboran en la consecución de un mismo objetivo (Kramer, *et al.* 2002).

De nuevo, pretende visibilizar que la producción de sufrimiento social es el resultado de la interacción de varias instancias públicas y privadas. Y lo hace intentando, en primer

lugar, recuperar la importancia de la economía política para comprender la producción de daño social, pero al mismo tiempo, resaltando que el estado no es un mero agente pasivo de esa producción de daño, sino que está plenamente integrado en ese proceso ya sea regulando, actuando, omitiendo, etc. De hecho, el daño social por abuso de poder corporativo no alcanzaría semejante volumen sin la participación de las instituciones y agencias del estado, pero además este concepto pretende enfatizar que no se trata de una serie de eventos discretos, sino que es resultado de una relación continuada entre las instituciones públicas y privadas (Kramer y Michalowski 2006).

Dentro de esta corriente de estudio han surgido derivadas que entroncan con nuestros casos de estudio como es el caso de la noción crímenes de la globalización (Friedrichs y Friedrichs 2002). En el marco de la globalización las corporaciones transnacionales y las instituciones financieras internacionales están ganando una capacidad de influencia y poder que estaría golpeando duramente los países con menos poder a nivel internacional y erosionando la calidad de vida de sus poblaciones. Las prácticas y políticas de estas instituciones serían una forma específica de crimen estatal corporativo donde el daño social es resultado de su aproximación mercado-céntrica y donde hay que asegurar el retorno de las inversiones por encima de cualquier otra consideración (Friedrichs y Friedrichs 2002). Estos crímenes de las corporaciones y de las instituciones financieras son resultado de una estructura criminógena como consecuencia de la colusión del estado en la protección de su propia población y que golpea severamente a aquellas poblaciones más vulnerables socioeconómicamente, a las mujeres en primera instancia (Wonders y Danna 2006).

Críticas feministas y decoloniales a la noción de crimen corporativo

La perspectiva de análisis feminista de la economía nos permite entender la extensión, las repercusiones y los objetivos de la violencia corporativa (Pérez Orozco 2014). Desde este punto de vista, entendemos que el poder corporativo se basa en una división patriarcal del trabajo. El poder corporativo se asienta sobre la continuada expropiación del trabajo de las mujeres haciendo del trabajo no remunerado de cuidados un elemento central de la reproducción de la fuerza de trabajo. Todo el trabajo no

remunerado hecho por las mujeres es apropiado por las corporaciones y los estados (Federici 2010). Desde su origen el capitalismo ha requerido de la violencia generalizada para apropiarse de los recursos de la naturaleza, pero también del cuerpo y trabajo de las mujeres (Federici 2019).

Existe una relación de causalidad entre capitalismo y violencia contra las mujeres en la medida que estas se resisten a la apropiación de sus cuerpos y trabajo (Mies 2019). Esto es especialmente importante desde el giro neoliberal y la financiarización de la economía donde muchos tratados de libre comercio e inversión como el NAFTA (TLC entre México, EEUU y Canadá), TTIP (Acuerdo entre la UE y EEUU, no concluso) o el CETA (Acuerdo entre la UE y Canadá) producen una intensificación de la carga global de trabajo sobre las mujeres (remunerado o no remunerado/productivo y reproductivo-cuidados), empeoran las condiciones laborales de las mujeres (precariedad y vulnerabilidad) y empobrecen a muchas mujeres y precarizan sus condiciones de vida, sobre todo en el sur global (Pérez Orozco 2017). Los mercados solo funcionan sobre la base de unas relaciones sociales de cuidado que sustentan al mismo mercado (Fraser 2015). De este modo, el neoliberalismo y el poder corporativo están basados en la división sexual del trabajo. Los procesos de valorización capitalista se construyen a partir de esconder la reproducción social que los hace posibles (Gago 2019). Toda esta violencia capitalista y financiera genera una intensificación de la violencia machista que se capilariza en todas las relaciones familiares y sociales (Cavallero y Gago 2019). Así, la deuda es un mecanismo de dominación y desposesión que se impone a los estados del sur, pero también tiene una dimensión comunitaria y familiar cuando se privatizan los derechos sociales y financiariza la vida cotidiana (Gago 2019). La deuda es un mecanismo de desposesión de las poblaciones migrantes y negras (Cavallero y Gago 2019; Bernat 2014) que las ata a relaciones familiares de dependencia y violencia (Cavallero y Gago 2019).

Así, necesitamos tener en cuenta los impactos negativos del proceso económico en el lado comercial, pero también sobre el trabajo no asalariado (Pérez Orozco 2018). Las relaciones económicas de género incluyen aquellas que son el resultado directo del capitalismo como las maquilas, pero también aquellas que sitúan a las mujeres en

posiciones particulares dentro de la familia y la comunidad (Sassen 2003). Solo incluyendo estas relaciones de poder más amplias entenderemos la extensión de la violencia del capital, el ataque del capital contra la vida, en sus diversas formas y conexiones entre capital privado, dentro y fuera de los márgenes de la legalidad, y estados: militarización, seguridad privada y violencia, crimen organizado, narco represión contra cualquier forma de protesta, el asesinato de periodistas o los feminicidios (Pérez Orozco 2017). Estas acciones son todavía más violentas cuando hay mujeres implicadas ya que se conectan con la violencia patriarcal y los feminicidios.

El poder corporativo y el extractivismo parecen directamente vinculados al aumento de la violencia contra la mujer. Las mujeres que están luchando en la defensa del territorio, la comunidad y particularmente aquellas implicadas liderando la resistencia de sus comunidades como Berta Cáceres están en el punto de mira. Están siendo atacadas porque tiene un impacto mayor en la comunidad, pues ellas son fundamentales en la reproducción de la vida y en el sostén de la comunidad (Federici 2010). Así, la violencia corporativa y patriarcal se superponen y se refuerzan. De este modo, en el contexto de las luchas campesinas e indígenas podemos hablar de feminicidios corporativos (Pérez Orozco 2017).

La cadena global de valor se refuerza a través de las divisiones espaciales desiguales (Amin 1986) que continúan estructurando el capitalismo global actual. Esta lógica global del capital, a la que algunos han llamado globalización, es la que lleva a procesos extractivistas donde la lucha por los recursos se vuelve un elemento central. Entramos en una nueva etapa violenta de acumulación originaria (Marx 1985; Luxemburg 1913) o acumulación por desposesión (Harvey 2004) pero bajo una lógica colonial donde los estados vuelven a ser un agente fundamental para la mercantilización de todas las dimensiones de la vida y todos los recursos comunes y naturales. Así, la extracción y despojo de los recursos minerales, fósiles, comunes, financieros (Kepner y Soothill 2015) se ha venido generalizando por el poder corporativo (Gandarilla 2018). Pero también recursos personales o humanos, que han sido previamente expulsados (Sassen 2015), ya sea para ser explotados en sus países de origen como en las maquilas o en nuestros

propios países gracias a irregularidad legalmente construida (Lugones 2015; Calavita 2005).

Esta cadena global del crimen corporativo es el resultado de la mercantilización por parte del estado de lo que en algún momento en el pasado fueron recursos comunes a través de la colonialidad del poder (Quijano 2000). La acumulación por desposesión colonial está manchada de sangre, pues, parafraseando a Pascal podríamos decir que más allá del Ecuador no hay crímenes. La producción, distribución, intercambio y consumo de los recursos mercantilizados manifiesta las condiciones subyacentes para que se den esos crímenes. Si queremos confrontar esos crímenes y las relaciones sociales que los hacen posibles debemos analizar cómo podemos gestionar los comunes de un modo sustentable para el bien común. Esto parece poco probable bajo relaciones coloniales, patriarcales y corporativas. Así, los crímenes estatal-corporativos han de ser ubicados dentro del desarrollo actual de las relaciones de poder coloniales, patriarcales y corporativas (Gandarilla 2018).

El actual y continuado desarrollo geográfico desigual, en el contexto de la financiarización de la economía y la facilidad para mover capitales, continúa facilitando la apropiación de los capitales del sur global. El Banco Mundial (2007) estima que entre 500.000 y 800.000 millones de dólares son enviados ilegalmente cada año fuera de los países empobrecidos. Este flujo de dinero ilícito es una de las formas más dañinas de extraer recursos financieros del sur global proveniente del crimen (corrupción, saqueo de recursos, guerras, blanqueo de capitales, minería, defraudar impuestos). Este vuelo de capital seca las economías de estos países enviando los recursos hacia el norte global, usando habitualmente compañías *offshore* y paraísos fiscales para lavar el dinero. Los bancos y las corporaciones de los países occidentales usan sistemas *offshore* para lavar el dinero que proviene de los países empobrecidos que llegan a esos países. El sistema de limpieza y beneficios está adecuadamente preparado para enviar el dinero del sur al norte. Esto es posible gracias a un sistema de regulación global que permite la extracción de estos recursos gracias a estos sistemas de paraísos fiscales y compañías *offshore* (Baker y Joly 2011).

Estos crímenes financieros y coloniales operan a menudo extendiendo la democracia (formal) a la vez que expolian los recursos de los países como, por ejemplo, en Irak (Whyte 2007). El dinero que proviene de la corrupción financiera, la extorsión, el tráfico de drogas, el fraude fiscal, los bienes y servicios ilegales, acaba beneficiando las corporaciones de países occidentales (Ruggiero 2005). Es decir, el reverso desviado de la globalización y de la financiarización de la economía ha sido edificado para beneficio del capital financiero global y formal (Gilman, *et al.* 2011). Esta dimensión gris de la economía se lava gracias a regímenes reguladores, o regímenes de permisividad (Whyte 2014), en los cuales la cadena global de valor se refuerza a través de las divisiones espaciales que continúan estructurando el mundo de hoy, como hizo con el mundo de ayer (Valdés 2015). Es decir, la acumulación de capital a escala mundial está sustentada sobre una cadena desigual y global de crimen y daño social.

Límites del concepto de crimen estatal-corporativo

El concepto de crimen estatal corporativo ha sido también criticado porque pese a haber traído al estado de vuelta (Tombs y Whyte 2003), lo ha hecho de un modo reificado, sin analizar las batallas y luchas que se dan en su interior, presentando de esta manera los crímenes de los poderosos como actos discretos, como momentos de ruptura de la capacidad reguladora del estado frente a las instituciones privadas, como situaciones puntuales de omisión o acción de las instituciones públicas donde éstas yerran en su rol constitucional de protección del interés del gran público. Estos momentos de ruptura serían resultado de la connivencia o colusión entre estado y corporación en favor de los intereses de la segunda (Whyte 2014). En cambio, esta crítica ha venido a evidenciar que no se ha prestado suficiente atención a las relaciones simbióticas entre los estados y las corporaciones, atravesadas por procesos sociales más amplios que hacen que éstas estén en constante movimiento y evolución (Tombs 2012).

El estado no es un actor autónomo, natural e inalterable, un poder constituido *ad eternum*, que actúa más allá de lo social (Negri 2003), sino que el poder del estado se constituye a través de las fuerzas que actúan en él y lo atraviesan (Jessop 1990). El estado debe ser entendido como un conglomerado relativamente unificado alrededor

de instituciones y organizaciones estratégicamente seleccionadas intentando tomar decisiones vinculantes para una comunidad política (Jessop 2002; Green y Ward 2012). La división reduccionista entre lo público y lo privado en dos esferas constituidas por los aparatos del estado y las instituciones de la sociedad civil no da cuenta de la complejidad de la relación entre el estado y la corporación (Bernat y Whyte 2017). No se puede hablar de una división antagonista entre estado y corporación como si fuera un juego de suma cero (Tombs 2012). Ambos ámbitos están constituidos y reconstituidos por batallas alrededor de la forma estado (Coleman, *et al*. 2009).

La visión que presenta al estado en una relación de oposición a la sociedad civil luchando heroicamente contra los intereses del capital, como si el estado fuera el garante último del interés general, es profundamente ideológica, velando, precisamente, las relaciones sociales (Tombs y Whyte 2009). Esta mirada prefigura una función del estado como mediador en el conflicto de clase entre capital y trabajo (Tombs 2012), lo que no permite observar que no hay un afuera constitutivo del capitalismo, los estados son hoy, por definición, capitalistas. El error proviene de identificar el estado, únicamente, con la función de 'estado como policía' (Tombs y Whyte 2009), siguiendo la famosa definición gramsciana, que se centra en las funciones negativas, represivas y centradas en la tutela del orden público (Gramsci 1971). Es decir, de entender al estado *únicamente* con su función de mantenimiento, reproducción y coerción del orden social que señala Tilly (1985) como origen del moderno estado-nación capitalista. O por decirlo como Althusser (2008), además de los aparatos ideológicos y represivos, hay que comprender los aparatos económicos del estado. Las agencias reguladoras no coercitivas del estado también desarrollan un papel fundamental en la reproducción de las condiciones necesarias para el mantenimiento del orden social capitalista (Tombs 2012; Tombs y Whyte 2009). Es decir, el estado en tanto que partido de la clase dominante (Pashukanis 2001) tiene una doble función que se expresa "como dominio directo y dominio indirecto, como violencia y como derecho" (Negri 2003: 280).

De este modo, podemos ver en la regulación un doble significado, primero, como límite y coerción. De este modo, podemos afirmar que en el núcleo del estado hay agencias dedicadas al control y a la coerción (Green y Ward 2012), lo que podríamos definir en

un sentido amplio como los aparatos represivos del estado (Poulantzas 2018), aunque cuando se refiere a los crímenes de los poderosos la regulación no se aplique efectivamente o, en otras ocasiones, no sea ni siguiera legislada. En este sentido y, en primer lugar, tenemos que el papel de la regulación y su aplicación no constituyen una relación lineal ni monolítica, si no que encontramos lucha y resistencia por contener el poder corporativo y por ello, en ocasiones, el estado se ve forzado a legislar y a aplicar cierta coerción sobre éste, llegando a perjudicar a fracciones de las élites corporativas (Snider 1993). El poder de mando de las élites fundado en el derecho es fundamental para asegurar la estabilidad necesaria para la reproducción de las relaciones sociales y de la acumulación capitalista (Pashukanis 2001). No obstante, la regulación es el resultado temporal de las luchas de los distintos grupos sociales con las élites estatales y corporativas, es un producto de las relaciones sociales de poder (Tombs y Whyte 2009). Empero, el estado no puede nunca dejar de atraer capital y buscar el crecimiento económico, incluso porque de ello depende también el pago de los servicios sociales y su propia supervivencia. El nivel de regulación y su aplicación efectiva depende precisamente del consentimiento entre estado y corporación, de su mutua interdependencia (Snider 1993).

El segundo significado del término regulación se refiere a esta parte menos visible, menos espectacular pero no por ello menos imprescindible para la construcción y mantenimiento de los mercados y que requieren de la actuación coordinada de las agencias e instituciones del estado (Tombs y Hillyard 2004), es la vertiente infraestructural del estado que penetra y se infiltra a través de la sociedad civil (Mann 1984). Nuestros mercados contemporáneos están expuestos a una masiva actuación del estado que favorece una redistribución constante de la riqueza (Harcourt 2011). Las corporaciones, en tanto que forma socialmente organizada para valorizar el capital, reciben su forma de la regulación jurídica del estado, de cómo éste constituye un mercado para las mercancías y el trabajo, de las formas jurídicas y administrativas que establecen su marco de actuación y sus obligaciones económicas y sociales, aquellas se encuentran siempre en una relación de autonomía relativa respecto al estado operando dentro y fuera de él (Tombs y Whyte 2009). Es decir, el foco de atención no debe situarse únicamente en las prácticas y en las declaraciones sobre los desposeídos o el uso

coercitivo de la fuerza que parecen ser el objeto de la actividad estatal, y muy particularmente en relación a la noción de crimen, sino también con relación a la actividad estatal respecto a los poderosos, incluyendo las relaciones entre las distintas ramas de los aparatos institucionales y los distintos bloques que desarrollan las políticas y las ponen en práctica (Coleman, *et al.* 2009).

De hecho, una imagen distorsionada de los comportamientos antisociales y dañinos emerge de las prácticas del sistema penal y de las imágenes proyectadas por los códigos penales que sirven para perpetuar las relaciones sociales de desigualdad al presentar el crimen como consubstancial a los desposeídos (Reiman 1976). Es decir, de la actuación del sistema penal surge una imagen del derecho donde el delito es algo relativo a los pobres. En efecto, pensar el delito y el delito corporativo no puede desprenderse de un análisis del poder estatal corporativo y de clase, y para ello hay que ir más allá de los delitos de los pobres y poner bajo escrutinio la relación entre estado y capital (Tombs y Whyte 2009). En este sentido, cuando analizamos los crímenes de los poderosos nos vemos obligados a preguntarnos por la naturaleza misma del sistema y del mundo de la empresa libre (Pearce 1976). Las corporaciones han conseguido, como efecto de las relaciones de poder, imponer que las sanciones a su comportamiento predatorio se gestionen habitualmente en la jurisdicción administrativa y por agencias reguladoras distintas a la policía, pero es precisamente esta forma de regular, y nombrar, los crímenes y los daños generados por las corporaciones lo que dificulta que los imaginemos como crímenes y sigamos pensándolos como una forma menor de acto predatorio (Tombs y Whyte 2015).

De este modo, la articulación entre la vertiente estatal, pública y la vertiente corporativa, privada, engendran una dimensión política que se pierde si nos fijamos únicamente en una de sus dos vertientes, como si estas estuvieran en lucha constante. El estado constituye a la corporación, a la vez que ésta curva la regulación estatal. La parte infraestructural está completamente regulada por el estado en todos sus ámbitos conformando de este modo a la corporación y su capacidad para acumular (Aglietta 1979). Los estados tienen un papel posibilitador para los regímenes de acumulación. Establecen el marco jurídico y administrativo para las corporaciones que devienen la

institución clave para movilizar y acumular capital. Definen cómo se constituyen y establecen su responsabilidad (Whyte 2014). Hecho que les asegurar diversos privilegios como la responsabilidad limitada o su capacidad para actuar como personas jurídicas (Tombs y Whyte 2015).

Pero los estados también proveen de las infraestructuras de transporte y las comunicaciones facilitando las oportunidades para comerciar, establecen relaciones diplomáticas que abren canales para la importación y exportación. El estado regula las relaciones laborales, el mercado residencial, las condiciones del transporte de mercancías, así como las condiciones bajo las cuales se puede producir. Este régimen de permisividad viene definido por una arquitectura de poder en la cual es borrosa la distinción entre el poder corporativo y el estatal (Whyte 2014). Por ejemplo, en el caso de la producción y distribución de petróleo es la regulación estatal la que posibilita que los desastres que estudiamos (Bernat y Whyte 2015 y 2017) sean posibles. La extracción de petróleo es lo que no debe ser cuestionado pues es un elemento central de la capacidad de acumular, por ello la regulación para minimizar el daño medioambiental apunta hacia la distribución y el consumo. Al analizar el régimen de permisividad es cuando mejor comprendemos el funcionamiento de las relaciones sociales extensas mistificadas por la ley (Bernat y Whyte 2017).

En el nivel de la economía global suceden lógicas muy similares a través de la formación de capitales concretos para ser reproducidos. Para comprender esto con más claridad es necesario que ahora nos centremos en la economía política de los crímenes de los poderosos.

Parte II: La constitución material y régimen de poder

Financiarización: la economía política de los crímenes de los poderosos

El capital financiero ha ido ganando peso sobre el capital productivo durante toda la historia del capitalismo y las crisis han acompañado sus burbujas sucesivas (Arrighi 1999; Foster 2010). Desde los años 70 del pasado siglo esta tendencia parece haber cogido un nuevo impulso ante la caída de la productividad y de la acumulación real (Lapavitsas 2009a). De hecho, este período de la historia del capitalismo que empieza en el último tercio del siglo XX es el que se conoce como el de financiarización (Lapavitsas 2013a). Un elemento decisivo es que el proceso que convirtió al sector financiero en preponderante está claramente vinculado al poder político y al cambio hegemónico que empezó en la década de 1970 y se consolidó a partir de 1980 con las victorias de Reagan y Thatcher que entronizaron el proyecto neoliberal de las elites occidentales (Harvey 2010).

Los consensos que se establecieron con posterioridad a la Segunda Guerra Mundial, en plena era Roosevelt (Hagan 2010), fueron substituidos por el nuevo consenso de Washington, inspirador de una serie de reformas para favorecer a las instituciones financieras (Aglietta y Moatti 2002). El mito de la eficiencia del mercado (Harcourt 2010) ha sido la fuerza motora de la era Reagan (Hagan 2010), buscando reconducir toda acción humana a la esfera del intercambio monetario (Ruggiero 2013). Este giro hacia la financiarización tiene un momento álgido simbólicamente con la derogación por parte del presidente Clinton de la *Glass-Steagal Act* en el año 2000, facilitando que la banca comercial virase definitivamente hacia la mediación en el mercado financiero (Hagan 2010).

De este modo, el sector financiero ha conseguido introducirse en todos los ámbitos de las sociedades occidentalizadas (Lapavitsas 2009a), ganando peso institucional gracias a un esfuerzo estatal de re-regulación económica (Harcourt 2010). Ha habido cambios institucionales y tecnológicos que favorecen la innovación financiera (Sassen 2001), pero también en el tamaño de los mercados y de las instituciones que en ellos

participan, en el número de empleados y en el volumen de sus beneficios (Lapavitsas 2009b). El beneficio financiero es el término amplio para referirse a la multiplicidad de formas de obtener ganancias con el retorno de capital (Lapavitsas 2013a), sin embargo, el cambio más significativo se ha realizado en el peso de la expropiación financiera de los y las trabajadoras (Harvey 2006). Es decir, la naturaleza misma de la acumulación de capital se ve alterada ya que la acumulación real, esto es, la formación de capital a través de la producción y distribución de bienes y servicios, tiene un papel cada vez más subsidiario respecto a las finanzas (Foster 2010). La acumulación financiera se origina en la esfera de la distribución y no de la producción, ésta precisa que las instituciones financieras movilicen y comercien con capital prestable. De hecho, la acumulación financiera requiere del aumento de los flujos de capital prestable y no de los stocks industriales ni de la producción de valor y plusvalía (Harvey 2006).

Así, una de las máximas expresiones de este proceso lo tenemos en la burbuja inmobiliaria americana, consecuencia directa de esta forma de acumulación financiera. La burbuja fue el resultado de la bajada de los tipos de interés por parte de la Reserva Federal a partir de 2001 para evitar una recesión después del pinchazo de la burbuja precedente, la de las empresas tecnológicas de internet conocidas como puntocom, y de los ataques a las torres gemelas (Lapavitsas 2009a). Esta bajada de tipos permitió a mayores capas de la población acceder al crédito, pero esta supuesta democratización del crédito fue un desastre para muchos bancos y para millones de personas que perdieron de la noche a la mañana su hogar. La democratización del crédito no era nada más que extender la expropiación financiera hacia los sectores más humildes de la población para convertirlos en fuente de beneficio para bancos y otras entidades financieras gracias al cobro de intereses, tarifas y comisiones (Graeber 2012).

Es decir, se produjo un giro en la práctica bancaria hacia la gestión de los activos y los ingresos de las familias, para ello convirtieron en objetivo prioritario la provisión de servicios y créditos necesarios para las familias y sus hogares tales como pensiones, seguros, hipotecas, sanidad, educación, consumo en general y un largo etcétera (Lapavitsas 2011). Esta falsa democratización del crédito permitió mantener elevada la demanda privada en un contexto de estancamiento de los salarios desde prácticamente

los años 70 gracias a la financiarización de la vida cotidiana y de los derechos de los y las trabajadoras, es decir, el sector financiero mediaba para proveer bienes y servicios a los hogares (Sassen 2001).

El acceso a la vivienda ha sido el elemento más importante en este proceso ya que ha supuesto una gran dependencia de los bancos y otras entidades, precisamente como proveedores de financiación (Lapavitsas 2013a). Así, la hipoteca es lo que ha hecho aumentar más el endeudamiento de las familias, a pesar de que haya habido variaciones considerables dependiendo del país, aunque las pensiones también han jugado un papel destacado en la financiarización de los ingresos de las clases trabajadoras (Lapavitsas 2013a). Por lo tanto, la expropiación financiera es más factible en un contexto de derechos sociales escasos o que necesitan complementarse a través del mercado (Taylor 1997). Sin duda, la financiarización ha sido un elemento clave para el retroceso del estado social. Además, no se puede obviar que este asalto sobre los ingresos de las clases populares puede ser definida, en gran medida, como una expropiación financiera racializada, debido a que han sido las minorías étnicas las que más han sufrido este ataque, pues eran las que menos habían accedido a esos bienes y servicios, pero también por una estrategia directa de dichas instituciones financieras tanto en EEUU como en España (Dymski 2009; Bernat 2014).

Las causas inmediatas de la crisis financiera que se desató a partir de 2007 en Estados Unidos y que posteriormente devino global hay que ubicarlas en el hundimiento de las hipotecas *subprime* (Mazzucato, 2013; Toussaint 2014). Unas hipotecas que acabaron contaminado a todo el sector financiero occidental, desde los bancos americanos a los europeos (Lapavitsas 2013b) y que no eran más que la conversión de los créditos bancarios a familias con bajos recursos en títulos financieros para poder revenderlos, reduciendo pasivos y facilitando la especulación (Toussaint 2014). A pesar de la complicada ingeniería financiera, el estallido de la burbuja del ladrillo americano expuso sobremanera a los bancos europeos, y a los alemanes especialmente, por el alto nivel de títulos de alto riesgo que atesoraban (Lapavitsas 2013b). No obstante, a partir de 2007 cuando los problemas para los bancos americanos eran ya evidentes por la caída del precio de los bienes inmobiliarios y las dificultades de las familias para pagar las

letras, la mayoría de bancos europeos siguieron prestando e invirtiendo erróneamente dinero a los de la periferia europea hasta que se sucedieron una serie de quiebras en bancos americanos en septiembre de 2008 y posteriormente en Europa (Lapavitsas 2013b). Los bancos del núcleo de la eurozona se encontraron con que habían prestado enormes cantidades de dinero a los de la periferia sur europea creyendo que eran mercados seguros a raíz de su entrada en el euro, pero las distintas burbujas inmobiliarias fueron estallando una detrás de otra por las inmensas deudas privadas contraídas por los bancos principalmente (Aglietta y Brandt 2015; Mazzucato 2013). Cuando la crisis global ya era una realidad, los bancos dejaron de prestarse dinero para hacerse cargo de sus gastos corrientes y por el miedo a que los demás bancos también quebrasen; nadie sabía cuál sería el siguiente banco en quebrar provocando la restricción total de liquidez, cuando anteriormente ocurría justo lo contrario y que actuó como detonante de la burbuja (Toussaint 2014).

Sin embargo, una explicación alternativa a la crisis en Europa proviene de la geografía económica (Krugman 1992). Ésta encuentra el origen de la misma no en la financiarización de la economía, sino en la polarización industrial y la desigualdad regional entre el centro y la periferia de esta región (Aglietta y Brandt 2015) (Krugman 2012), aunque probablemente ambas explicaciones, más que antagónicas, sean complementarias. En este sentido, los problemas que ha tenido que afrontar España son también el resultado del acuerdo espacial europeo que ha reforzado la división espacial del trabajo a nivel europeo previa a la entrada en vigor de la moneda única, aumentando la tendencia existente hacia la especulación financiera y la desindustrialización (Aglietta y Brand 2015). Este acuerdo favorece la desinversión industrial en el sur del continente porque dejó de ser competitivo por el fuerte incremento de sus costes laborales y, por lo tanto, también de sus déficits comerciales (Krugman 2012), mientras que consolida al norte de la Unión, especialmente el polo germánico con Alemania a la cabeza pero también sus aliados principales como Austria, Finlandia y los países del este europeo que están bajo su influencia como la República Checa, Polonia y Eslovaquia (Aglieta y Brand 2015).

El desarrollo desigual entre regiones está basado en efectos acumulativos de los rendimientos crecientes, es decir, la interacción entre la demanda, los rendimientos crecientes y los costes de transporte favorecen procesos acumulativos que refuerzan las desigualdades regionales (Krugman 1992). De este modo, si no hay una política coordinada decidida a nivel europeo de inversión industrial en los países del sur, la desigualdad de partida en los sectores industriales se refuerza puesto que las economías de escala causan efectos de aglomeración (Aglietta y Brand 2015; Mazzucato 2013). Esto es, la Unión Económica Monetaria provoca que los territorios con una ventaja productiva mejoren más su posición, mejorando su competitividad y productividad, mientras que sucede lo opuesto en aquellos territorios menos competitivos.

El euro creó una estabilidad monetaria ficticia que hizo bajar los tipos de interés y así inundó los bancos del sur continental y españoles especialmente de capitales procedentes de otros bancos europeos en busca de beneficios, especialmente, alemanes y franceses, que acabaron por hinchar la burbuja inmobiliaria (Krugman 2012). Es decir, ésta no hubiera podido adquirir semejante tamaño sin la lluvia de millones que se destinaron a la actividad más lucrativa, sin duda, el sector de la construcción en todas sus dimensiones, compañías constructoras, promotoras, agencias inmobiliarias y, evidentemente, la concesión de hipotecas (García-Montalvo 2008) y es que no podemos obviar que todo este sector representaba el 60% del total del crédito bancario en 2007 (García-Montalvo y Raya, 2012).

La escalada de precios derivada de la burbuja generó inflación, el aumento de créditos al consumo y el descenso del ahorro, la subida de los costes laborales y el descenso de las inversiones bancarias para el sector industrial (Aglietta y Brand 2015; Aguilera y Naredo 2009). En resumen, este círculo vicioso del sur europeo es, al mismo tiempo, el reverso del círculo virtuoso del bloque alemán, pues la caída de las diferencias en los costes salariales no permite compensar las diferencias con la competitividad alemana, acentuando de este modo la polarización en el comercio exterior y en los déficits comerciales entre países excedentarios y deficitarios (Aglietta y Brandt 2015). De igual modo, la división espacial ha favorecido la concentración industrial con procesos de especialización en las distintas regiones de mayor tradición industrial en Alemania y en

sus países satélites favorecidos por su reestructuración industrial (Aglietta y Brandt 2015). El régimen de poder europeo germanocentrado está detrás de la pérdida de soberanía del sur del continente, a la vez que explica las salidas divergentes de la crisis (Bernat 2018a).

El régimen de poder español: la constitución material

Este apartado pretende contextualizar y poner de relieve que las formas concretas que han tomado los crímenes de los poderosos que queremos analizar, toman su forma histórica y su especificidad en la intersección entre lo político y lo económico, que a su vez están siempre en constante reconfiguración. Es en estas batallas donde los actores con más poder consiguen, aunque temporalmente, imponer acuerdos parciales de esas fuerzas sociales en conflicto. Precisamente, ha sido en el transcurso de la financiarización del capitalismo hispano donde se han sentado las bases para que estos crímenes del estado corporativo pudieran acontecer. Así, intentaremos situarnos en el contexto desdemocratizador actual desde el cual los actores más poderosos han podido curvar la constitución material y formal gracias a la correlación de fuerzas, como se solía decir, generando regímenes de permisividad y estructuras de impunidad corporativa (Whyte 2015). Pero para entender cómo se ha producido la financiarización del capitalismo español echaremos un momento la vista atrás.

El fordismo español tuvo una vida muy breve que no permitió la consolidación de un modelo de bienestar equiparable al de las democracias representativas del occidente europeo. El periodo conocido como desarrollismo, fue el breve intento de la tecnocracia franquista de implementar un modelo fordista a la española entre 1959 y 1973 (López y Rodríguez 2010). Esta etapa histórica provocó un cambio importante en la estructura social, incrementando de un cuarto a la mitad, la población que trabajaba en el sector industrial (Domènech 2011a). Durante más de una década el país creció a un ritmo del 7% (Rodríguez 2015). Empero, el estado franquista nunca dejó de ser expresión de unas elites reaccionarias, limitando la propia capacidad de provocar una transformación dentro de la sociedad española (López y Rodríguez 2010). A pesar de todo, este periodo facilitó la creación de una escasa clase media y un nuevo proletariado que fueron claves

para entender la reforma pactada de la transición española, pero también sus limitaciones posteriores. Es decir, el breve período del capitalismo fordista español, con todas sus particularidades: capitalismo familiar y clientelista, sin sindicatos de clase, dependencia de las subvenciones a la energía, coadyuvado por la construcción de infraestructuras y el turismo, etc., generó la sociedad civil que promovió el proceso de movilización social más fuerte después de la Guerra Civil.

Así, se pueden destacar dentro de este proceso democratizador la creación de sindicatos clandestinos, infinidad de partidos de izquierda radical, experiencias de democracia obrera, asociaciones de vecinos y vecinas, un movimiento feminista y un largo etcétera (Rodríguez 2015). Los movimientos sociales están en el centro del proceso modernizador y de cambio político, con una clara centralidad del movimiento obrero: mientras éste tuvo fuerza y provocó conflictividad hubo democratización, pero en el momento negociador el cambio político se estancó (Domènech 2011a). Fue este proceso de movilización social lo que llevó a una desestabilización política y económica del régimen autoritario (Rodríguez 2015). La movilización obrera de 1976 fue tan intensa que forzó la caída del primer gobierno de la monarquía, gracias a su capacidad para marcar la agenda. Fueron los movimientos sociales, y el obrero en particular, los que más hicieron avanzar la democratización y el cambio de régimen (Domènech 2011a).

En la esfera política, durante la transición se produjo una sustitución generacional en las elites del país. De este modo, una generación más joven accedió al poder en todos sus ámbitos, políticos e institucionales, pero también académicos, culturales y mediáticos. Ésta era una generación formada en las universidades del franquismo y que habían empezado su militancia política en la clandestinidad. A pesar de que en la lucha antifranquista tuvieron una participación fundamental las clases trabajadoras, fueron los estudiantes, básicamente, los que ocuparon cargos de privilegio y poder con el tránsito hacia la democracia formal (Rodríguez 2015). En cambio, para la gran mayoría de trabajadores industriales, la transición no trajo aparejada los cambios esperados y la democracia obrera y el poder de las asambleas de trabajadores decayó rápidamente con la única excepción del País Vasco, que requirió de una década más para consolidar los acuerdos de la transición (Rodríguez 2015).

Las asociaciones de vecinos y vecinas vivieron un proceso más largo de decadencia, pero sin llegar nunca al nivel de las asambleas de trabajadores. Así, su capacidad de influencia fue socavada, por un lado, porque sus líderes se pasaron muy pronto al ámbito institucional en los nuevos ayuntamientos democráticos, sacando provecho particular del capital obtenido en las luchas colectivas, pero también porque desde esos mismos ayuntamientos se afirmaba que habían perdido sentido los procesos de movilización social, mientras aquellos se reivindicaban como los legítimos representantes del pueblo. No obstante, en los primeros años de la transición y hasta bien entrada la década de 1980, las asociaciones jugaron un papel destacado consiguiendo muchos servicios y recursos en los barrios periféricos de las grandes ciudades (Rodríguez 2015; Domènech 2011b).

En el plano socioeconómico, durante la transición, las reivindicaciones salariales obreras, junto con la crisis del petróleo, llevaron a una inflación difícil de sostener, de hecho, durante el trienio 74-76, los salarios en España aumentaron tres veces más que la productividad, reduciendo la tasa de beneficio empresarial (Domènech 2011b). La contraofensiva patronal fue muy dura y llevó al cierre de muchas empresas, un fuerte aumento del paro y terminó en los pactos de la Moncloa, que significaron un cierre del régimen político por arriba aun cuando se había abierto por abajo, para permitir de nuevo el beneficio empresarial gracias a una nueva paz social entre los actores salientes de la Transición (Rodríguez 2015). Es por ello que hoy, como ya apuntábamos en la introducción se habla de una segunda transición a la democracia, pues esta implementación del modelo democrático fue incompleta, porque aunque ya sin dictador, la democratización no se pudo consolidar. Es decir, el cambio político estuvo muy ligado al proceso de reconstrucción de la hegemonía perdida por las elites españolas (Domènech 2011b).

El arreglo espacial del capitalismo hispano ha sido precisamente muy dependiente de la financiarización y del territorio basándose en el turismo, la construcción y el fomento de la propiedad como ventajas competitivas para desarrollar un keynesianismo de precio de activos (Busqueta 2013). En este arreglo espacial ha habido tres constantes

clave, el desarrollo de infraestructuras, el crecimiento de las *growth machines* y la destrucción del medio ambiente (López y Rodríguez 2010).

En primer lugar, la construcción de infraestructuras supuso el intento de generar un keynesianismo *sui generis* para dinamizar la economía generando ocupación y aumentando la demanda interna, pero que trizó todo el territorio del estado con autopistas y líneas de ferrocarril, así como una red de aeropuertos no siempre bien planificadas (Busqueta 2013). Otro de los objetivos era facilitar la entrada de turistas con distintos medios de transporte como forma de atraer capitales para favorecer la inversión y el consumo, ya des del franquismo, a causa de la debilidad de la demanda interna (Busqueta 2013). Al mismo tiempo, el turismo permitió que el mercado inmobiliario español entrase en el flujo financiero global (López y Rodríguez 2010). Esta densa malla provocó la interconexión de prácticamente todos los territorios de la geografía, lo cual permitió una valorización de sus distintas áreas y facilitó que hasta el último trozo de tierra pudiera entrar a formar parte de las diversas burbujas (1975-85, 86-91, 96-2007) que han ido promoviendo el crecimiento del PIB y sus recesiones posteriores (López y Rodríguez 2010).

Este modelo de crecimiento no es únicamente resultado del tardofranquismo, sino que precisamente los distintos gobiernos posteriores a la transición han hecho gala de un continuismo sorprendente en el modelo productivo, buena prueba de ello es la mayor red de trenes de alta velocidad del mundo y la construcción de aeropuertos en cada provincia española a los que se destinaron prácticamente la mitad de los elevados fondos de cohesión europeos que percibió España desde 1986 hasta 2004 (López y Rodríguez 2011; Fernández Durán 2006). La contrapartida fue la aceptación de la desindustrialización del país para evitar la competencia a los países que ya estaban presentes en la UE (Rodríguez 2015).

Este modelo de desarrollo necesitó enseguida de grandes compañías constructoras y de bancos fuertes para poder realizar y financiar las obras, hecho que llevó muy tempranamente a la consolidación de grandes poderes financieros (Rodríguez 2015; Juste 2017). Las compañías eléctricas y de telecomunicaciones anteriormente

monopolios estatales, fueron las que se salvaron de ser despedazadas, pero que el primer gobierno de Aznar privatizó para beneficio de los grandes grupos financieros del país y favoreciendo el surgimiento de grandes grupos industriales y de servicios (Fernández 2016; Juste 2017). Ha sido la acción combinada entre el estado y las corporaciones la que ha permitido "una refundación oligárquica del poder" donde la construcción de infraestructuras, megaproyectos y privatizaciones ha facilitado el enriquecimiento de los grupos más poderosos siempre respaldados por el estado (Naredo 2009).

En este sentido, hemos hablado de postfascismo para evidenciar que a pesar de que hoy no estamos en un régimen fascista, elementos clave en las dimensiones cultural económica y política, anteriores a la constitución de 1978 perviven en el sistema político español (Bernat y Whyte 2019b). Este remanente del proceso político que empezó en 1939 no ha sido extirpado de muchos patrones de la memoria preservados por el estado, la administración, el derecho, la policía o la misma estructura constitucional.

En segundo lugar, las máquinas de crecimiento o *growth machines* han sido una de las características del modelo de especialización territorial hispano (López y Rodríguez 2011). Hay que entender que este modelo se basa en una descentralización administrativa territorial donde las administraciones locales y autonómicas tienen amplias competencias en materia urbanística (Molotch 1976) y, de hecho, gran parte de los recursos de las administraciones locales dependen de las plusvalías generadas por las recalificaciones de suelo y de los impuestos que éste genera (Velázquez-Gaztelu 2015). Los ayuntamientos están subordinados fiscalmente a los mercados inmobiliarios a través del Impuesto sobre Bienes Inmuebles o los impuestos sobre los valores patrimoniales, pero también a la producción de nuevo suelo urbano como licencias de obras, licencias de reformas, así como de ingresos por la venta de suelo municipal (López y Rodríguez 2010), aunque para ello se sacrifique el derecho a la vivienda de capas amplias de población (Fernández Durán 2006).

En este modelo, el suelo es una mercancía de mercado que provee riqueza y poder (Molotch 1976). De este modo, los consistorios se han visto atrapados en una dinámica

de creación de rentas monopolistas sobre el suelo (Harvey 2005) y de promoción de marcas urbanas para seguir atrayendo inversiones de capital y visitantes. Ha sido necesario para ello la dinamización de eventos urbanos: desde festivales de música, ferias de negocios, citas deportivas, publicidad turística y un largo etcétera se han hecho indispensables como forma de gestión urbana (Harvey 2005; Naredo 2010). Así, los poderosos a nivel local definen las prioridades, las decisiones alrededor del uso del suelo y del presupuesto público, estructurando de esta manera, la vida urbana (Molotch 1976), obteniendo grandes beneficios económicos con la especulación inmobiliaria legalizada (Fernández Durán 2006) y la extracción de rentas junto con bancos, promotoras y constructoras (Naredo 2009).

Pero no solo las comunidades autónomas y los ayuntamientos han tenido un papel destacado, pues sin la participación activa de la administración central del estado este desarrollo no hubiera sido posible (Busqueta 2013). Así, el período de la última burbuja (1995-2007) hay que entenderlo también como el resultado de las condiciones económicas y políticas que convirtieron hasta el último municipio del estado en una máquina de crecimiento, desde las grandes ciudades y las zonas turísticas hasta las áreas más remotas del territorio (López y Rodríguez 2011). La extensión de la urbanización permite capturar el excedente de capital generado por la sobreproducción y, por lo tanto, retrasar la crisis de subconsumo (Harvey 2010).

Esta es la clave para comprender todas las medidas en esa dirección: la promoción de la propiedad y la subsidiariedad del mercado de alquiler, la liberalización del suelo, la desregulación de los mercados hipotecarios, la subvención fiscal al sector inmobiliario, además de la sobredotación de infraestructuras que han sido los elementos catalizadores de la burbuja y la extensión de las *growth machines* generando una fuerte cohesión territorial. Efectivamente, el sector urbanístico e inmobiliario están fuertemente regulados por el estado en cada una de sus múltiples esferas (García-Montalvo 2008) y es por ello que podemos decir que han sido producidos por el estado para el fomento de un keynesianismo de precio de activos, como un verdadero régimen de permisividad (Whyte 2014).

En tercer y último lugar, la especialización territorial del capitalismo hispano ha provocado un inmenso perjuicio al medio ambiente, ha sido un modelo que desde los años del desarrollismo franquista ha sido dependiente de los ciclos de energía y materiales, con un gran impacto ambiental en el consumo de recursos y en los vertidos a la naturaleza (Naredo 2010). Desde finales de los años 50 del pasado siglo, las subvenciones a la energía fueron fundamentales para fomentar el corto invierno del fordismo español (López y Rodríguez 2010). Sin embargo, las crisis del petróleo y de la minería española agudizaron la dependencia sobre las fuentes energéticas externas, optando entonces las empresas industriales que sobrevivieron a estas crisis por deslocalizar las fases más dependientes del proceso de producción e intentando mantener aquellas que generaban mayor valor añadido (López y Rodríguez 2010).

A pesar de todo, esta política decidida desde el franquismo permitió la creación de potentes compañías petroquímicas y eléctricas (Repsol, Endesa, Iberdrola, etc.) que unidas a los bancos en el proceso de privatización de los años 90 usaron su poder financiero y político-colonial (Juste 2017; Velázquez-Gaztelu 2015) para adquirir empresas homólogas con la ayuda de los bancos españoles con disposición de recursos físicos en América del Sur (Fernández Durán 2006). Este proceso hubiera supuesto un descenso de la huella ecológica en España, externalizándola a países más vulnerables en el arreglo espacial global que han sido usados como recursos para el abastecimiento y vertido, pero este descenso no se concretó por el modelo de crecimiento español y su uso intensivo del territorio.

Esta destrucción del medio ambiente ha sido muy acuciada en todo el litoral debido a la presión urbanística, de las *growth machines* y del turismo, ligada al desarrollo de las infraestructuras necesarias para unir el territorio, provocando el abandono del suelo rústico, a la espera de poder desarrollar nuevas construcciones (Fernández Durán 2006; Naredo 2010). El consumo de recursos en los años de la burbuja se debe en parte a este conjunto de relaciones de poder neocoloniales que ha disparado el impacto ambiental tanto en nuestro suelo como en el de otros países, permitiendo la acumulación por especialización inmobiliaria que lleva aparejado un coste altísimo con el *urbansprawl* y el uso del coche como medio prioritario de transporte diario para desplazarse del lugar

de residencia hacia los centros de producción y consumo. Las infraestructuras turísticas con la colonización de la costa y su uso del avión también han tenido un rol significativo en la huella ecológica. Este modelo ha provocado un fuerte incremento de las emisiones de CO2, de extensión del cemento sobre antiguas zonas de cultivo y de consumo de energía y demás recursos (Fernández Durán 2006).

Esperando a ver cumplido el cometido de introducir los principales debates disciplinares damos paso a los artículos a examen. Después de la bibliografía se encuentran tres artículos más en los anexos para dar cuenta de un recorrido intelectual en estos años que escapa del examen de esta tesis.

FIRST PAPER:

STATE-CORPORATE CRIME AND THE PROCESS OF CAPITAL ACCUMULATION: MAPPING A GLOBAL REGIME OF PERMISSION FROM GALICIA TO MORECAMBE BAY

Ignasi Bernat and David Whyte

Abstract

This paper seeks to develop the principal concerns of the state-corporate crime literature by drawing connections between two incidents that occurred 15 months apart: the sinking of the oil tanker the Prestige in Galicia in November 2002 and the killing of 24 Chinese migrant workers at Morecambe Bay in the North West of England in February 2004. It begins by introducing the key features of the two cases, before exploring how they might be described and understood as state-corporate crimes. It then identifies a tendency within the literature to analyse state-corporate crimes as 'moments of rupture' in the regulatory relationship. Seeking to move beyond such 'moments of rupture', the paper argues for an understanding of regulatory relationships as part of a broader regime of permission that seeks the smooth and uninterrupted accumulation of capital. It thus identifies the 'process' that must be analysed as a process of capital accumulation. This process is illustrated by focusing on the spheres of production and distribution in this story of capital accumulation. In the course of describing the complex 'regime of permission', the paper uncovers a structure of impunity that generally enables the most powerful architects and beneficiaries of state-corporate crime to sustain a process of capital accumulation.

Introduction

Studies in state-corporate crime, organised around a growing and relatively new agenda in corporate crime research, take the on-going and often symbiotic relationship between state/public actors and private actors (normally large corporations) as the point of departure for its analysis (Kramer et al. 2002). There are three major challenges to criminology that this approach implies. First, by developing an analysis of power

relations beyond the immediate circumstances of a particular moment, fixed in time, with very particular circumstances, it takes us beyond a paralysing fixation that mainstream criminology has with criminal 'events', a fixation that is of limited value because it does not allow us to view the conditions that produced those crimes as rooted in more on-going and ever-present social conditions of unequal power (Pearce 1976). The state-corporate crime literature thus points consistently to a structure of political economy which creates the particular conditions that shape the relationship between states and corporations (Kramer et al. 2002; Kramer and Michalowski 2006). In this sense, the literature seeks to develop an understanding of the social content of the relationship between states and corporations in modern liberal democracies. A similar critical observation is made consistently in feminist analyses of male violence; which is conceived of as a form of violence that can only be understood as part of an on-going state of gendered power relations (Walklate 2003: 127–129). Second, moving from event to process poses a difficulty for more statist or administrative criminological approaches, since it shifts the terrain on which we search for who might be held 'criminally' responsible. Third, this literature locates the production of crime in the structures of capitalism, not least in the drive for accumulation that shapes the relationship between states and corporations (the motivations for crimes the lack of control and regulatory structures and the relative impunity granted to corporate actors). The literature that points to 'empire crime' is particularly illuminating in this respect, highlighting as it does, the deep historical origins of state-corporate collusion (for example, Iadicola 2010; Iadicola 2011; see also, Kauzlarich and Matthews 2006).

We develop the latter point later in this paper, and argue that understanding statecorporate crime as part of a historically configured process of capital accumulation impels us to look beyond the actors and social relationships that are immediately visible in the circumstances of the 'crime' or 'event'.

The importance of understanding of state corporate crime as an historically and socially situated process is illustrated by our analysis of the sinking of the Prestige oil tanker in Galicia in November 2002 (an environmental catastrophe reportedly with greater economic and environmental costs than the Exxon Valdes spill; Carstens 2003) and the

killing of 24 Chinese migrant workers at Morecambe Bay in the NorthWest of England in February 2004 (the worst industrial multiple fatality in the UK since the Piper Alpha disaster). As we uncover the historically and socially situated immediate conditions of those cases, we argue that the Prestige disaster to some extent accounts for the conditions that produced the Morecambe Bay disaster (see, for example Bernat and Whyte 2015). We explain how we come to this conclusion in the discussion below, before returning to uncover the historical and broader social content of those 'events'.

From Galicia to Morecambe Bay: Connecting Two Criminogenic 'Events'

The sinking of the Prestige oil tanker in November 2002 created a spill that polluted thousands of kilometres of coastline and in terms of the ecological and economic damage suffered in the aftermath, was certainly the worst oil spill in Spain's history and perhaps the worst in Europe's history. The immediate crisis was immeasurably worsened by the Spanish government's order to tow the vessel out to sea, away from Spanish waters, despite warnings that the ship would not be able to withstand the storm conditions forecast for the area (Naucher 2013). In trying to remove the threat of both the environmental and political fall out from the spill, the Spanish government caused a further major rupture in the vessel and turned a manageable spill into the disaster of unmanageable proportions. Had it followed its own protocols set out in the Spanish National Emergency Plan, it would have towed the vessel into the port to deal with the spill (Greenpeace 2012). Ángel del Real, Maritime Captain of the port of La Coruña gave the order to tow the vessel 160 km from the coast escorted by the Spanish Navy. The decision was approved by the Minister for Development, and later by the Prime Minister José María Aznar. The ship owners and the company of the rescue opposed the decision to tow the vessel away from the coast. Moreover, it seems that the decision to change the direction of the vessel was also taken partly due to pressure from the French government (Catalán Deus 2003: 82).

Measured in terms of the impact on biodiversity and the environment, the collective cost of the catastrophe was huge. The 'black tide' was certainly the biggest ecological disaster to hit the Spanish coast, and was possibly the most damaging oil spill in

European history. More than 2000 km of coast were affected. Shellfish, particularly mussels, were badly affected, as were other staple seafoods. For example, octopus catches fell by 50 % in 2004 and 2005 in many areas. The Spanish Society of Ornithology estimated the number of sea birds deaths caused by the oil at between 115,000 and 230,000, one of the highest sea bird mortalities by non-natural causes ever seen (Ecologistas en Acción 2012). These are aspects of the consequences of the disaster, related to the loss of biodiversity, that are difficult to translate into monetary terms (Prada *et al.* 2002). At the same time, the cleaning and the restoration are collective costs that are measurable in monetary terms. The cost of the post-disaster clean-up was estimated at around 107 million euros.1 The most affected people were relatively low paid workers in the fishing and seafood industry. The impact on those sectors can be calculated according to the transformations in quantity and quality of the goods and services offered in the market (Varela Lafuente *et al.* 2003: 139). In 2003, the value of fishing and tourism lost totalled around 1.4 billion euros (ibid.: 148). The effects of the disaster are aggravated due to Galicia's status as one of the poorest areas in Spain together with its dependence on natural marine resources (Surís and Garza 2003: 317).

The circumstances of this tragedy seem rather distant from the Morecambe Bay disaster. Yet, both tragedies can be understood as part of the same complex chain of events. It is a chain that is connected by the dramatic impact upon market conditions precipitated by the Prestige disaster. One consequence of the Prestige disaster was the banning of all fishing and shellfish harvesting along the Western and Northern coasts of Spain. The ban, combined with what was generally a poor harvest year in Europe, intensified demand for a number of seafoods, including cockles. This intensification of demand led to pressure on other areas of shellfish production to maximise production in order to meet the demand. One of those areas was the west coast of Britain. In April 2002, it was reported that the price of cockles in the UK had soared from £200 per tonne in 2000 to £2000 per tonne in the months prior to the disaster (The Independent, 29th April, 2002; The Guardian 7th February 2004). The period between 2003 and 2004 was exceptionally good period for the cockle harvest in Morecambe Bay, making a significant increase in production possible. High prices were sustained over the next 2–3 years following the closure of the Galician cockling sites. In late 2004, 9 months after the

disaster local newspapers in the North West of England were reporting the need for more migrant cocklers to meet a sustained demand.

On 5th February 2004, 23 cockle pickers were drowned at Morecambe Bay on the English Lancashire coast. The dead were immigrant workers from China who had been put to work on the cockle beds of the Fylde coast. The tides at Morecambe Bay are notoriously quick and the area was known for its difficult currents and quick-sands. On the day of the disaster, the tide times allowed for only 3 h of work before dusk, and the cockle pickers had begun work just as daylight was fading. The fact that the cockle pickers were working under highly dangerous conditions was largely due to the intensification of global demand for cockles.

Following the disaster, major questions were asked about the negligence of the British state. Several clear warnings about the possibility of fatalities occurring at Morecambe Bay had gone unheeded. In June 2003, the local MP Geraldine Smith had written to the Home Office with concerns that inexperienced Chinese cocklers were being employed on a fifth of the wages of British workers and that the conditions that they worked under were more acutely dangerous than the conditions faced by their British counterparts. A rescue of 40 workers from the sands occurred just 6 weeks before the disaster had been reported, yet no action was taken in response (Liverpool Daily Post, 7th December 2005).

Because we can identify a role played by the state in either producing or failing to prevent what happened in Galicia and in Morecambe Bay harms, they begin to look like archetypal state-corporate crimes. That is, they appear to fit closely with a standard definition of state-corporate crime as ‘‘illegal or socially injurious actions that result from a mutually reinforcing interaction’’ between state and corporation (Kramer and Michalowski 2006: 20). It is this focus on the ‘‘mutually reinforcing interaction’’ between state and corporation that is the point of departure for our discussion in the following section.

Beyond State-Corporate Antagonism

Generally, when we analyse problems of regulation, we impelled to look for a breakdown in the relationship between two, potentially antagonistic, parties (the state and the corporation). Yet, as the literature on state-corporate crime illustrates clearly, often there no clear antagonism or opposition of interest in those relationships, since those crimes often occur as a result of commonly shared or mutual goals (Kramer 1992; Aulette and Michalowski 1993; Kramer et al. 2002).

The state-corporate crime framework advances this approach by identifying two types of institutional relationships: those that are state-facilitated and those that state-initiated (Kramer et al. 2002; Bruce and Becker 2007). It is this duality that the literature uses to explore the full complexity of state involvement in, and contribution to, the circumstances that lead to corporate crimes. In the former type state-corporate crimes are the result of negligence or inactivity on the part of the states or their regulatory agencies in ways that collusively facilitate corporations in the commission of state-corporate crime. Thus, the state fails to provide the necessary mechanism to effectively balance or control the corporate activity. Often, a concept of ‘‘nested contexts’’ is introduced to show there is always a political economy that shapes the conditions for state-corporate facilitated crime, particularly when failures of regulation are discussed (Kramer 1992; Aulette and Michalowski 1993; Matthews and Kauzlarich 2000; Cruciotti and Matthews 2006). In the case of the latter—state initiated crime—state institutions pursue pro-active strategies that play a leading role in the commission of state-corporate crimes. Here, the state not only fails to regulate the private sector, but it has a paramount role in fostering the criminal activity that benefits corporations (see, for example, Rothe 2006; Whyte 2007).

At the global level, international financial institutions such as the World Bank or the International Monetary Fund can play the same role as public institutions or nation-states in facilitating or initiating corporate crimes (Friedrichs and Friedrichs 2002; Wonders and Danner 2006). A variation in the literature points to corporate-facilitated and corporate initiated state crimes, a modification which foregrounds the agency of

the corporation and the primary casual nature of capital accumulation in state-corporate crimes (Matthews 2006; Whyte 2009; Lasslett 2014).

The state-corporate crime approach has been subject to some critique on the basis that it does not go far enough in revealing the social content of state corporate crimes. As Tombs (2012) has argued, for example, the state-corporate crime literature retains a tendency to focus upon the immediate circumstances of:

> discrete joint ventures between corporations and states, either at specific moments or towards specific ends, thus abstracting these from a more generalized set of social relationships, which are on-going, enduring and more akin, in fact, to a process.

Similarly, Lasslett (2010: 212) has noted that this literature is characterised by its inability to concretise state-corporate crimes as part of a broader system of production and ‘‘orient the researcher to less evident, but extremely important social realities that inform the crimes of the powerful.’’

We would agree with both Tombs and Lasslett. The description of our cases above provides the basis for launching an exploration of state-corporate crimes as events that are produced as part both of a more generalized set of social relationships, and a broader system of economic production. We say this because the most apparent link across those cases seems to be that they are ‘‘crimes of the economy’’ (Ruggiero 2013) in the sense that their circumstances are rooted in a classical political economy understanding of the human consequences of shifts in the forces of supply and demand that are shaped and co-ordinated in a global economy. The abstraction that both Tombs (2012) and Lasslett (2010) point to in their critique of state-corporate crime, however, is something that occurs outside the observable features of political economy. They are concerned with the way that particular approaches to political economy produce an abstraction of social relationships.

In order to deepen their critique—and to begin to see how we might make social relationships more concrete in the analysis of state-corporate crimes—we argue that much of the scholarship in what Lasslett (ibid.) calls orthodox studies of crimes of the powerful tends to develop its analysis around a particular flaw or problem in the institutional relationship between the 'state' and the 'corporation', or what we call in the discussion that follows, a regulatory pathology. Indeed, it is this understanding of the regulatory process that constitutes a primary example of the tendency to abstract social relationships that those previous critiques have identified.

From Regulatory Pathology to the Regime of Permission

The state-corporate crime literature has produced significant analyses of the subject of this paper: oil spills.

Bradshaw's (2014) discussion of the criminogenic structure of the industry represents a development of the conceptualisation of state-corporate crime by introducing the concept of 'industry' level to those of 'institutional', 'organizational' and 'interactional' levels that were firstly advanced by Kramer et al. (2002). Thus, the article points to the competition between business organizations that lead to more ''criminogenic industry structures'' (p. 380), showing how governmental regulatory processes shape patterns of state-corporate harm. What is more, Bradshaw signals the role of the state apparatuses in fostering markets in the industry.

In this vein, Cruciotti and Mathews' (2006) article on the context that produced the Exxon Valdez spill highlights the importance of ''a complex series of interactions between social actors'' (p. 149). The paper, following Aulette and Michalowski (1993), argues that the ''nested contexts'' made this crime inevitable; that is, that societal, political and regulatory contexts established the basis for the crime to happen. The state-corporate crime occurred, the authors say, as a result of the profit motive intersecting with a lax regulatory environment. Thus, we are encouraged not to see these events as 'accidents', but as the result of a series of practices engaged in by a range of relevant actors. But what is interesting in this chapter is that the authors go

way beyond their conclusion that the disaster resulted from the ‘‘wrongful intersections of government and business.’’ In doing so, they point to a more historically and socially complex set of circumstances, including: the way that automation had led to fundamental changes in the labour process; the origins of Alaskan state government in the 19th century Gold Rush; and the emergence of a political economy of speed following the discovery of oil in 1968 and the OPEC embargo of 1973. Thus, the chapter actually goes much further in its analysis than simply elucidating some ‘‘wrongful intersections’’, but develops a complex and historically situated political economy. The paper in fact exposes a set of circumstance that are neither related to: (a) the failure of government in fulfilling its in vigilando role; nor (b) practices that were clearly initiated by the government authorities involved in taking decisions that led to the disaster. The paper shows how both those ‘state-initiated’ and ‘state-facilitated’ features were shaped by a deeper political economy of oil production.

Indeed, neither Bradshaw nor Cruciotti and Mathews’ cases appear to us to be merely illustrating deviant state practices—rather they illustrate practices that are constructed within those states as normal and acceptable. Of course, the particular events that occurred can be understood as both deviant, and in any interpretation of those terms, their effects are criminogenic. But, the circumstances that led to the events cannot be regarded as deviant practices. As Bradshaw indicates, the political economy of hydrocarbon production is rooted in a much greater human catastrophe—climate change—and yet this is constructed only as deviant when a major event like the Gulf of Mexico spill occurs. Likewise, as we have indicated, Cruciotti and Mathews’ discussion of the Exxon Valdes case is rooted in a ‘normal’ political economy of hydrocarbon production that produces ‘deviant’ outcomes. The implication of what we are arguing here is that the state-corporate crime approach usefully draws attention to some kind of constitutional flaw, or moment of rupture in the relationship between public (state) institutions and private (corporate) institutions. It is this tendency in the literature to focus upon what might be called moments of rupture in the constitutional public/private relation that leads us to analyse state-corporate crimes in a particular way, impelling us to look at immediately apparent empirical conditions where public authorities have either colluded in ways that breach the normal constraints of their ‘public’ role, or have

failed to protect us, the public, from the harmful activities of the private (corporate) sector (Whyte 2014).

In this sense, we are arguing that state-corporate crime should not be pathologised. That is to say that state-corporate crimes are not necessarily accurately described as ‘‘wrongful interactions’’ because they are not necessarily deviations from a normal social path or social state in which a ‘better’ relationship between government and corporation can guarantee protection from the process of capital accumulation. Rather, corporate crimes are better understood as interruptions or unplanned phenomena that arise from the normal conditions of doing business. As this article will argue, in order to fully understand the formative conditions of state-corporate crime, it is not enough to look to regulatory pathologies; it is not enough to limit our analysis to the empirical conditions of regulatory ‘collusion’ and ‘failure’.

How, then, could we think about the deeper architecture of corporate power in order to take us beyond the immediately observable conditions of those regulatory pathologies? We approach corporate crime and its regulation as a distillation of a range of social relationships, institutions and practices that exist prior to the immediately observable conditions and relationships that produced the criminal event. In doing so, this shifts our focus away from the moment of rupture towards a concern with recovering the social content and the historical context of those immediately observable relationships.

We therefore note at this stage something that none of the state-corporate crime scholars we cite would disagree with: that states or governments do not merely facilitate or initiate criminal and harmful practices. Rather, capitalist states produce the entirety of the social conditions that enable criminal and harmful practices to occur. In capitalist social orders, states play a creative and enabling role for regimes of capital accumulation; corporations are the key institutions in realising capital accumulation. Governments establish the juridical and administrative framework for corporations, transport and communication infrastructures, and organise diplomatic relationships with states to enhance opportunities for import, export and investment and so on.

States help to constitute capital, commodity, commercial and residential property markets; help to produce different kinds of 'human capital'; constitute labour markets; regulate the employment contract; constitute corporations through the rules that permit particular forms of ownership; specify the rules of corporate liability and so on (Tombs and Whyte 2015).

The corporation, in the sense that it is established formally, is permitted through its legal and political status to structure its activities in particular ways. Those include: its ability to trade as a separate entity; its ability to structure ownership in particular ways, its ability to attract investment through a range of incentives and so on. Those privileges are generally guaranteed by the rules of incorporation in a given national state. Corporations are normally registered by the state for commercial purposes and are granted a legal identity. This legal identity enables corporations to exist as an entity wholly separate from the individual identities of its owners or stockholders. It is this identity that enables corporations to assume a status as holder of particular rights, to own property and to exploit particular privileges such as 'limited liability'. As part of this process of incorporation, companies are permitted to establish complex ownership chains in which their operations are spread across a number of formally separate companies.

By foregrounding this deeper, constitutional, relationship, we are beginning to probe the a priori—historically constituted—architecture of state-corporate power as part of what Tombs calls ''a more generalized set of social relationships''. In this sense, we are seeking to conceretise, following Lasslett, the ''a broader system of production'', which in capitalist social orders, is organised around a process of capital accumulation. In order to do so, we see the observable institutional relationship between 'state' and 'capital' as merely an epiphenomena of a broader regime of permission, and therefore an epiphenomena of how capital accumulation is more generally reproduced through regulatory structures. It is this understanding that can more fully illuminate the social content of corporate crimes. And it is to this task that the rest of the paper turns.

The Regime of Permission from Galicia to Morecambe Bay

Here we specify the regulatory process—or the regime of permission—that enables capital accumulation to be reproduced. This is how we begin to discover the entirety of the social conditions that enable criminal and harmful practices to occur.

The broader regime of permission that we point to can be usefully delineated into four major spheres, the categories that Marx called the 'moments' of capital accumulation: the spheres of production, distribution, exchange and consumption (Marx 1993). He argues that since production is the predominant sphere, the latter categories of distribution, exchange and consumption merely represent different stages or 'moments' in the life of a product. However, the three other spheres also determine the form that production takes (ibid.). In this analysis we are largely concerned with the social content of the spheres of production and distribution because this is most clearly where we can observe the regime of permission in our cases. It is clear that there is a lot to be said about how the events that we describe here have impacted upon exchange and consumption, not least how the profound reshaping of seafood markets and the fluctuation of seafood prices in the wake of the Prestige undoubtedly had socially harmful effects (for example in the emergence of intensified demand, a decline in the quality of food products and so on). Whilst this is beyond the scope of this paper, we would therefore stress that there is much to be learned from a fuller analysis of the spheres of exchange and consumption as part of the totality of the regime of permission.

Our priority here, however, is to see a little more clearly how both the Prestige and the Morecambe Bay disaster were made possible through a set of a priori social relationships that in each of those spheres of production and distribution are reproduced. By doing so, we uncover a highly complex regime of permission, a core part of which materialises in each case as a structure of impunity. Though this analysis we can see precisely how the major players are the architects and key beneficiaries of each 'crime', but in its aftermath are permitted to continue as if nothing had happened.

Although our case is largely a case of oil distribution, we offer our first set of observations, on the sphere of oil production, as context for understanding the social content of our case.

Oil Production

The regulatory practices that govern the production of oil are based upon one over-riding principle: the permission to continue the extraction of oil at the most profitable rate of production. The regulation of oil production is highly regulated in this sense by oil producing states. The US, as the major oil producing nation, controlled oil prices for the early half of the 20th century, ceding its influence to the OPEC countries in the 1970 s. The current global dip in the price of oil is a result of the weakening of this system of production controls in the OPEC oil producing countries and a re-shifting of the balance back to Western producers (Harvey 2010; Arrighi 1999).

The sphere of exchange comes to life here since the regulation of production in oil markets is concerned largely with price regulation. Of course, there are a complexity of social and environmental regulatory structures that, for example, aim to mitigate spills and impose particular safety protections for workers. Those standards apply differently across jurisdictions. However, although they may impact on the conditions of production, those forms of regulation are not concerned with limiting the volume of production per se, but with minor adjustments to the way that oil is produced. Environmental controls are also imposed after the production process: at the stage that the product is used. Thus, emissions controls on industry or on the use of road vehicles seek to limit use at the point of consumption. Climate change treaties or international agreements that seek to mitigate the impact of the use of hydrocarbon fuels seek to limit carbon emissions. If there is a rudimentary system of regulation set out in agreements such as the Kyoto protocol, it is one that seeks to regulate the end point of the production cycle, rather than control the level of extraction per se. Whilst our very truncated and selective over view of some key of dynamics in the regulation of oil production may not seem empirically relevant to what follows (and we note at this stage the origin of the heavy fuel being transported by the Prestige is not known) we have in

this section identified a core principle of regulation: a clear regime of permission principle at work, in which the potential harms of hydrocarbon production are subordinated to the production process itself. This is the broader regime of permission that frames our discussion here: one that sets the coordinates for understanding the principle on which the distribution of oil proceeds.

Oil Distribution

The regime of permission that is significant in the distribution of oil by sea is notoriously complex and fragmented. Each nation state has its own regulatory structure for merchant shipping. At the same time, there is an international treaty structure and a number of international organisations responsible for regulation. A UN organisation, the International Maritime Organisation (IMO) is responsible for developing and maintaining safety, environmental protection, and security issues relating to shipping. IMO regulations on the transportation of oil cover a range of issues including the technical specifications applying to ballast and stability, the location of oil storage on ships, the hull structure (single hull tankers are being phased out as a result of IMO double hull regulations), and the rules for assessing risk and reporting requirements. In this industry, a very specific process of regulating the ownership of vessels is organised under a system commonly known as using a 'flag of convenience' or 'open register'. Employment practices in shipping are governed by other sets of regulations, namely the standards set by another UN organisation, the International Labour Organisation.

However, a system of 'flags of convenience' generally enables national regulations to be flouted in marine employment. This basically means that a vessel can be registered in a different national state than the ship's owners under a 'flag of convenience' or 'open register'. Owners' reasons for opting for an open register are many and varied and may include secrecy, tax avoidance, and avoiding national labour or environmental regulations. Flags of convenience therefore make it difficult to obtain any detailed information about the company. In the case of the Prestige, the device of open registration served the owners well.

As Hansen's (2008) forensic analysis shows, the company that owned the Prestige, Mare Shipping, was registered in Liberia, a flag of convenience jurisdiction. The oil tanker was chartered by a Swiss company, Crown Resources, also the owner of the cargo who set it on course for Gibraltar where it was to wait for new instructions. Crown Resources itself was owned by a holding company based in Luxemburg, which in turn was owned by another holding company, based in Gibraltar, in turn owned by third company based in Liechtenstein. The third holding company was owned by Alpha Group, one of Russia's largest investment fund groups that has major interests in commercial and investment banking, asset management, insurance, retail trade, water utilities, and a wide range of other investments. Alpha Group is therefore the real owner of the oil carried by the Prestige. Using different companies located in several jurisdictions made the attribution of liability difficult. The countries outside Russia involved in this secondary chain of ownership (Luxembourg, Gibraltar and Liechtenstein) are all tax havens, and are known for the protection of commercial secrecy. This ownership chain, involving three different secrecy jurisdictions, made it difficult to obtain reliable information on the circumstances leading to the disaster. It is this complexity of the ownership chain that also minimized financial and reputation damages to the ultimate owners, Alpha Group. Following the disaster, the various assets of Crown Resources were sold off in separate parts, and then reconstructed around new enterprises, 'Energy Resources' and 'Commodities Trading Company' both based in Switzerland. This strategy enabled the real owners to further distance themselves from the Prestige disaster and to avoid accusations of wrongdoing, as well as continue trading in exactly the same way as before (Catalán Deus 2003: 224–225).

It took 14 years before a judgment in the Spanish Supreme Court in January ruled that Mare Shipping, along with the ship's insurer were jointly liable for the spill (Spain. Supreme Court 11/2016). It remains to be seen if there will be any action to recover the damages. However, even if damages were sought, because they are owners of incorporated businesses, it is highly unlikely that the individual owners of those companies will be required to pay full costs of the disaster.

Instead, criminal responsibility has been focussed on the individuals involved in the immediate circumstances of the disaster. A similar observation, as we shall see later in this paper, can be made about the Morecambe Bay disaster. The criminal trial of three men, the captain, the chief engineer and the Spanish government's General Director of Marine Affairs, López Sors, began in Spain in November 2012 in the Audiencia Provincial de La Coruña, and was finally confirmed in the Spanish Supreme Court case in January 2016 noted above. The court delivered its sentence 1 year later, 11 years after the disaster. The captain had been found guilty in an earlier case and sentenced to 2 years in prison (serving 9 months of the sentence). Only the captain was found guilty of crimes against the environment. Lo´pez Sors, the only representative of the Spanish government to be indicted was acquitted, even though the government's negligence was clear: a Governing Committee was never constituted, no qualified personnel were sent to the ship, and the ship was knowingly sent into a storm and then ordered to change the direction several times, making a spill inevitable. Thus, the judgement against the captain effectively absolved both the government its responsibility for managing the crisis along with the owners of the oil and the vessel (Naucher 2013).

What we have described here is a series of complex regulatory mechanisms that originate in the process of capital accumulation, and in the way that a particular form of property ownership (the corporation) is reproduced in regulations that are universally applied across capitalist states. Those mechanisms have reproduced a structure of impunity that enabled both the owners of the vessel and the oil to escape liability for the disaster. A crucial aspect of regimes of permission, is, in other words, revealed clearly here as a complex structure of impunity.

This structure of impunity extended to the US regulator. In a failed attempt to obtain compensation for the disaster (El Paı´s, 9th June, 2008), the Spanish government, instead of pursuing Mares Shipping or the Alpha Group, which would have proved difficult for reasons set out in the preceding discussion, attempted to prosecute the regulator that permitted the Prestige to operate, the American Bureau of Shipping (ABS). In this case, the US courts ruled that Spain could not prove that the actions of ABS constituted a cause of the wreck of the Prestige. Spain made several arguments in the

case. The first related to the failure to ensure compliance of standards relating to the inspection of condition of the vessel. After the Erika disaster off the coast of France in 1999, the ABS proposed that major classification organisations must adopt a number of measures, including classifying old tanks, organising annual inspections, and the mandatory use of the SafeHull program. ABS had been accused of failing to act on knowledge of structural damage to the hull of the Prestige that it had possessed since 1996 (ibid.; Reino de España v. American Bureau of Shipping). The court found that although the regulations were not followed in the case of the Prestige, they were not mandatory at the moment of the wreck and thus ABS was not liable.

The Prestige was inspected but remarkably, the results of the Marine Services inspection were not reported because the Crown Resources did not pay the fee that was due for the full inspection program. This is remarkable, because the condition of the vessel was hidden simply because the Prestige's charterer had refused to pay a statutory fee. Because of this and ABS's failure to share the information of the previous tests with local surveyors, Spain alleged that ABS was reckless. Spain additionally suggested that ABS was reckless as the Prestige's then Captain Kostazos sent a fax to Marine Services in August 2002 alerting the regulator of the serious condition of the Prestige and asking for an emergency inspection. According to the American court that since ABS was a parent company, then it could not be held liable for the knowledge held by its subsidiary company. Spain could not prove that Marine Service ever informed ABS, or that ABS was aware of the issue; or even that the fax arrived to its destination. Thus, the court dismissed the Spanish petition and decided that ABS had no legal responsibility for the condition of the Prestige (Reino de España v. American Bureau of Shipping). The latter finding is particularly instructive, since we can discern a principle of outsourcing within the administration of the US regulatory system itself (Hansen 2008). It is this principle of outsourcing that enabled the regulator—as well as the owners of the vessel and the oil to escape liability!

In sum, this structure of impunity ultimately ensured the status quo: the commercial strength of the corporate owners of the oil was maintained; the system of shipping regulation and of oil distribution remained unchallenged; and crucially, the pattern of

ownership was undisrupted. Those different forms of impunity, drawing upon a myriad of different legal structures and different institutional forms converge as part of the general regime of permission.

Seafood Production

The production of seafood is, in general terms, regulated in ways that seeks to limit its environmental impacts at the point of production and to ensure a stable and sustainable fishing industry. This is not to say various international mechanisms have been successful in meeting this aim, but social protection is at least one of the stated aims of such regulatory policies. International fishing limits, such as those imposed by the European Union are aimed at precisely this form of control (Pearse and Walters 1992). The closure of the fishing grounds by the Spanish government following the Prestige disaster was done ostensibly to protect human health, but also to enable fish stocks to recover and be replenished. As we have seen, one of the effects of this ultimately was to create a new set of risks to the safety of workers in UK shellfish production.

In times of shortage or environmental disaster, production controls on cockle picking in Morecambe Bay are similarly imposed by a statutory government agency. The regulator currently empowered to do this notes that its formal aim in law is to secure ‘‘the right balance between social, environmental and economic benefits to ensure healthy seas, sustainable fisheries and a viable industry.’’2 At the time of the Morecambe Bay disaster, stocks were healthy, and therefore did not require such controls.

Labour conditions in the production of seafood in the UK are the responsibility of a range of agencies. Foremost amongst those is the Health and Safety Executive, responsible for enforcing safety standards that are designed to protect workers across the seafood production sites that are the concern of this paper. In practice, however, in the context of the regulation of the undocumented labour market that the Morecambe Bay cockle pickers were part of, the regulatory authorities have neither the resources nor the political will to inspect and investigate unregistered enterprises and seek compliance or take enforcement action in this sector. In any case workplace safety regulators are

operating in an environment that is dominated by immigration control. In the months and weeks leading up to disaster, cocklers on Morecambe Bay might have had a chance of seeing immigration officers, but would have had little chance of seeing workplace safety regulators (for example, The Daily Mail, 23rd August, 2003). Certainly the level of state effort directed at controlling 'illegal' workers dwarfs the state effort that seeks to ameliorate the conditions that enable migrant workers to be exploited (Burnett and Whyte 2010).

Indeed, it is in this context that we must understand the prosecution of the Chinese 'gangmaster' who employed the cockle pickers. In March 2006, Lin Liang Ren was convicted for the manslaughter of 21 cockle pickers (by the time of the court case, two of the bodies had not recovered from the sea) and given a 14 year jail sentence. Two others involved in their employment, Zhao Xiao Qing and Lin Mu Yong were also convicted of facilitating contraventions of immigration law. They were sentenced to 2 years and 9 months, and 4 years and 9 months respectively. The two owners of the Liverpool Bay Fishing company that bought the cockles from Lin to sell on to larger producers were cleared of facilitating the crime. All of the larger market players: the canning factories, the exporters and the corporations marketing and selling the cockles were sufficiently distanced by the supply chain to prevent them from even being questioned in public discussion about their role in the deaths of the 24 workers. The role of those players is discussed briefly in the section that follows.

Seafood Distribution

Responsibility for seafood distribution is similarly spread across a complex chain of different entities. A large part of the global demand for shellfish is driven by Spanish consumers. Indeed, the Spanish market is certainly the most important market for cockles in Europe, buying most of its cockles from European countries. This market had previously been supplied mainly from Galicia (Pawiro 2010). Recognising the opportunities in Britain, some of the Spanish companies moved into buy cockles from producers they have not dealt with before. One indication of this entry into the market by big Spanish players illustrated when in 2002 the Spanish company Conservas Dani

bought a family-run firm based in Wales which had previously preferred to deal with established cocklers (Herbert and Nash 2004). The net effect of the entry into the market of the large Spanish market players was therefore that pre-existing supply chains were re-configured.

The intensification of market conditions had some very direct impacts on labour conditions. An ongoing dispute between British and Chinese gangs of cocklers intensifiedduring the months and weeks leading up to the disaster. The dispute was partly about the territorial rights to work the Bay, but was also fuelled by the assumption that Chinese labourers were gaining a competitive advantage because they were more likely to take risks than locally established cocklers. In the week before the disaster, buyers were being asked by British cocklers not to purchase cockles harvested by Chinese gangs (ibid.). However, the reconfiguration of trading relationships in the industry most probably made it easier for new sellers of British-harvested cockles to enter the market. Indeed, it was reported in court that the Liverpool Bay Fishing Company that was buying the cockles from the direct employer of the 24 workers was selling to the large Spanish market players (Daily Post, 20th September 2005). If the shift in conditions of the normal sites of shellfish production in Europe intensified demand for production in Britain, the restructuring of ownership patterns in the industry thus led to the repositioning of trading relationships in the industry. Those changes in economic relationships combined to create new opportunities for gangmasters employing Chinese workers to enter those markets.

In the aftermath of Morecambe Bay, none of the key players in the labour market described above were even questioned, never mind investigated for their role in creating the conditions of the crime. In many ways this is a very obvious point, for the structure of regulation in both the seafood and labour markets, and the regulatory regimes that governed those markets, enable the most powerful players to remain distant from the conditions of exploitation that they benefit from. In this context it almost seems ludicrous to question why they were not prosecuted. How could the most powerful players—the buyers of the cockles that operated several stages along the supply chain from the point of production—possibly be questioned when the likely

destination of the cockles—and the source of the demand—was masked by the same complex supply chain?

The production and distribution of oil and seafood, though organised in different geographical and regulatory spaces, are organised using the same principles. There is a principle of outsourcing and fragmented structure of ownership across production and distribution in both industries. It is this organised fragmentation that guarantees a number of crucial outcomes: cost reduction, labour casualization and ultimately distancing the most powerful players from the entry-end of the supply chain. A complex regime of permission thus provides the foundations for capital accumulation before it establishes regulatory protections for the environment or workers.

Conclusion

Systematically drawing the connections across two connected 'events' reinforces the problems we face in focusing on immediately perceived criminal practices. Both are disasters that must be understood as part of what Ruggiero (2013) has called the collateral damage of the market. So both disasters are linked in this broad sense. Making those connections also demonstrates more specifically the inadequacies of a pre-occupation with either the moment of 'failure' of the state to regulate or control (and the state-corporate crime literature very often points to such moments of failure), or with the moments at which we can identify visible collusion between states and corporations.

The state-corporate crimes described here can not be explained by a breakdown in the regulatory function of the state; they occurred not because the state was disobeyed, but either because the state was obeyed, or merely because it upheld a pattern of social relations—embedded in particular social and economic practices—that has existed form many decades. In neither case were the formative conditions of the criminogenic 'event' found in particular decisions and actions or non-decisions and inactions of state or government institutions. There were elements we could describe as state initiated or state facilitated, but those conditions don't fully describe those state-corporate crimes.

The circumstances that led to the Prestige and Morecambe Bay disasters can therefore only be partially explained using a concept of state-corporate crime. The corporate crimes we describe here emanate from an architecture of power in which states guarantee corporations various privileges and infrastructural capacities. As we have noted in some detail here, the Prestige crisis was certainly aggravated as a consequence of the negligence of the US regulators, and the international systems of regulation. In this sense, some elements of the Prestige can easily be described as state-facilitated. But what was facilitated here? It makes little sense to describe the immediate circumstances in those terms, since the US state had no direct stake in the structure of profit or ownership in this case. Rather, it had a stake in a global regime of permission that enables capital accumulation from oil markets generally. The Spanish state similarly benefits from this regime of permission.

The response of the Spanish state to the disaster indicates the complexity of tracing any common goal here. After all, the Spanish government clearly attributed the problem of regulation to the US state, as is indicated by its attempt to sue ABS. This complexity is also illustrated also by the immediate response of the Spanish government in the ordering of the vessel to be towed out to sea away from Spanish waters, an order that was strongly resisted by the ship's owners. Again, if there is a common goal, it is not clear in relation to the immediate circumstances of the disaster, but at a very general level in the global regime of permission.

It is a process of capital accumulation that is guaranteed and under-pinned at every turn by this complex regime of permission. And this process of capital accumulation reveals much about the real structure of social relations. The workers at Morecambe Bay died producing value for corporate players from a commodity that at some time in the past was a common resource. Their position was made more vulnerable by the commodified distribution of another common resource, oil.

If the social relations of expropriation and exploitation that created the Prestige and Morecambe Bay disasters are to be fundamentally challenged, then we must

contemplate something more profound that a shift in the relationship between the state and the corporation. We must contemplate how we can sustainably manage common resources for the common good. Clearly this is not possible under a capitalist regime of permission. We must therefore begin to explore exactly how we can manage those resources under a different system of social relations, one in which corporations are no longer permitted to function in the way they currently are. And to do so we need to think about how social relationship should be altered not merely in the conditions that we find in the moments of rupture, but in the social relations that are deeply conditioned in moments of production, distribution, exchange and consumption.

References

Arrighi, G. (1999). *The long twentieth century*. London: Verso.

Aulette, J., & Michalowski, R. (1993). The imperial chicken fire: States, corporations, and public health. In K. Tunnell (Ed.), *Political crime in contemporary Am*erica. New York: Garland Press.

Bernat, I., & Whyte, D. (2015). Entendiendo los Orígenes del Crimen Estatal-Corporativo: un análisis de los desastres del Prestige y Morecambe Bay. *Crítica Penal y Poder*, no. 9, September, pp. 255–278.

Bradshaw, E. (2014). State-corporate environmental cover-up: The response to the 2010 Gulf of Mexico oil spill. *State Crime*, 3(2), 163–181.

Bruce, A., & Becker, P. (2007). State-corporate crime and the Paducah Gaseous Diffusion Plant. *Western Criminology Review*, 8(2), 29–43.

Burnett, J., & Whyte, D. (2010). *Wages of Fear*. Leeds and Liverpool: PAFRAS and University of Liverpool. Carstens, K. (2003). Ready (or not) for oil spills—EU waters mapped for risk. Politico.eu. 17th September.

Catalán Deus, G. (2003*). DesPrestige: el ocaso del Partido Popular ante la mayor catástrofe ambiental en España.* Madrid: La Esfera.

Crucciotti, T., & Matthews, R. (2006). The Exxon Valdez oil spill. In R. Michalowski & R. Kramer (Eds.), *State-corporate crime: Wrongdoing at the intersection of business and government.* New Brunswick: Rutgers.

Ecologistas en Acción. (2012). *¿Nunca más? Una catástrofe como la del Prestige puede volver a ocurrir. Los problemas de una sociedad adicta al petróleo*. www.ecologistasenaccion.org.

Friedrichs, D., & Friedrichs, J. (2002). The World Bank and the crimes of globalization: A case study. *Social Justice*, 29(1–2), 13–36.

Greenpeace. (2012). *Otro Prestige es Posible. Reflexiones para evitar otra marea negra*. www.greenpeace.es.

Hansen, R. (2008). Multinational enterprise pursuit of minimized liability: Law, international business theory and the prestige oil spill. *Berkeley Journal of International Law*, 28(2), 410–451.

Harvey, D. (2010). *The Enigma of capital and the crisis of capitalism*. New York: Oxford.

Herbert, I., & Nash, E. (2004). How Spain's insatiable appetite fuels a desperate pursuit of cockles in Morecambe. *The independent*, 15th February 2004.

Iadicola, P. (2010). Controlling crimes of empire. *Social Justice*, 36(3), 98–110.

Iadicola, P. (2011). Do empires commit state crime? In D. Rothe & C. Mullins (Eds.), *State crime: Current perspectives.* New Brunswick: Rutgers.

Kramer, R. C. (1992). The space shuttle challenger explosion: A case study of state-corporate crime. In K. Schelgel & D. Weisburd (Eds.), *White collar crime reconsidered*, pp. 212–241. Boston: Northeastern University Press.

Kramer, R., & Michalowski, R. (2006). The invasion of Iraq. In R. Michalowski & R. Kramer (Eds.), *State-corporate crime: Wrongdoing at the intersection of business and government*. New Brunswick: Rutgers.

Kramer, R., Michalowski, R., & Kauzlarich, D. (2002). The origins and development of the concept and theory of state-corporate crime. *Crime and Delinquency*, 48(2), 263–282.

Kauzlarich, D., & Matthews, R. (2006). Taking stock of theory and research. In R. Michalowski & R. Kramer (Eds.), *State-corporate crime: Wrongdoing at the intersection of business and government.* New Brunswick: Rutgers.

Lasslett, K. (2010). Scientific method and the crimes of the powerful. *Critical Criminology*, 18(3), 211–228.

Lasslett, K. (2014). *State crime on the margins of empire: Rio Tinto, the war on Bougainville and resistance to mining.* London: Pluto.

Marx, K. (1993[1857]). *Grundrisse: Foundations of the critique of political economy*. London: Penguin.

Matthews, R. (2006). Ordinary Business in Nazi Germany. In R. Michalowski & R. Kramer (Eds.), *State-Corporate Crime: Wrongdoing at the intersection of business and government*. New Brunswick: Rutgers.

Matthews, R., & Kauzlarich, D. (2000). The crash of valujet flight 592: A case study in state-corporate crime. *Sociological Focus*, 33(3), 281–298.

Naucher. (2013). El proceso del 'Prestige'. Once an˜os a la deriva. www.naucher.com.

Pawiro, S. (2010). Bivalves: Global production and trade trends. In G. Rees, K. Pond, D. Kay, J. Bartram, & J. Santo Domingo (Eds.), *Safe management of shellfish and harvest waters.* London: IWA.

Pearce, F. (1976). *Crimes of the powerful: Marxism, crime and deviance*. London: Pluto.

Pearse, P., & Walters, C. (1992). Harvesting regulation under quota management systems for ocean fisheries: Decision making in the face of natural variability, weak information, risks and conflicting incentives. *Marine Policy*, 16(3), 167–182.

Prada, A., Varela Uría, M., & Vazquez, M. J. (2002). Dos preguntas sobre el caso 'Prestige'. El País, 7th December 2002.

Rothe, D. (2006). Iraq and Halliburton. In R. Michalowski & R. Kramer (Eds.), *State-corporate crime: Wrongdoing at the intersection of business and government.* New Brunswick: Rutgers.

Ruggiero, V. (2013). *The crimes of the economy: A criminological analysis of economic thought.* London: Routledge.

Surís, J., & Garza, M. D. (2003). Evaluation of direct and indirect damages. Methodology and work programme for the Prestige case. In A. Prada & M. J. Vazquez (Eds.), *Economic, social, and environmental effects of the 'Prestige' spill.* Santiago de Compostela: Consello da Cultura Galego.

Tombs, S. (2012). State-corporate symbiosis in the production of crime and harm. *State Crime*, 1(2), 170–195.

Tombs, S., & Whyte, D. (2015). *The corporate criminal*. London: Routledge.

Varela Lafuente, M., Garza, D., & Prada, A. (2003). Impactos económicos del vertido. In Ernesto Sánchez (Ed.), *La Huella del Fuel*. A Coruña: Fundación Santiago Rey.

Walklate, S. (2003). *Understanding criminology: Current theoretical debates (2nd ed.). Buckingham*: Open University Press.

Whyte, D. (2007). The crimes of neo-liberal rule in occupied Iraq. *British Journal of Criminology*, 47(2), 177–195.

Whyte, D. (2009). *Crimes of the powerful: A reader*. Maidenhead: Open University Press.

Whyte, D. (2014). Regimes of permission and state-corporate crime. *State Crime*, 3(2), 237–246.

Wonders, N., & Danner, M. (2006). Globalization, state-corporate crime, and women. In R. Michalowski & R. Kramer (Eds.), *State-corporate crime: Wrongdoing at the intersection of business and government.* New Brunswick: Rutgers.

Cases

Reino de España v. American Bureau of Shipping, United States Court of Appeals for the Second Circuit, No. 10-3518-cv.

Spain. Provincial Audience (Section 1). Sentence num. 2641/2013 13th November.

Spain. Supreme Court (Room II). Sentence num. 11/2016 14th January.

SECOND PAPER:

THE CRIMES OF THE POWERFUL AND THE SPANISH CRISIS

Ignasi Bernat

The financial and economic crisis has hit Spain unexpectedly hard since 2007. This fact brought several economic and social issues to the surface: massive unemployment; youth emigration; draconian cuts to education, health and welfare; labour counter-reforms; hundreds of thousands of evictions; and so on. At the same time, new scandals have been continuously exposed since the beginning of the crisis. They are often understood as a continuum of bad practices and wrongdoing by politicians and business leaders who are either inefficient or directly corrupt. This particular idea has been known as the "Transition Culture" (Fernández – Savater 2013) and – despite its negative meaning – is also being widely promulgated as an explanation of the crisis. More and more people are stating that the entire political regime born in the aftermath of Franco's dictatorship needs to be transformed.

This explanation of the current crisis in Spain has the value of enabling us to understand that crimes of the powerful are not an isolated element, but sit on a continuum in the Spanish system. Nevertheless, it has the limitation of conceiving them as the result of a political culture lacking in ethical values. In fact, a new penal populism seems to be rising – but this time directed against corrupt politicians and businesspeople (eldiario.es 25 February 2015). But are we just facing a problem of "rotten apples"? To solve this problem, do we need more or better accountability? Is it a problem based simply on a lack of regulation and enforcement?

I will address the most widespread form of corporate crime before and during the Spanish crisis as a case study – the mortgage lending concession to benefit banks and other corporations involved in this form of accumulation by financial dispossession (Bernat 2015). But to do so, I will focus on some lessons from Frank Pearce's book to suggest one possible interpretation of the unpunished crimes (Jiménez 2014: 96) of the powerful.

Since 2013 the Court of Justice of the European Union (CJEU) has ruled several times against the Spanish state on several dimensions of the mortgage issue according to the strand of jurisprudence that protects consumers from judicial procedures regarding the interpretation of the general contracting conditions' directive (Directive 93/13). Mostly, the Court ruled on the lack of protection of the consumer in the foreclosure procedure, claiming that Spanish law had to be amended in order to strengthen the position of the consumer in regard to the banks (Sentence 14 March 2013). Thus, the Spanish legislator urgently introduced a new law in May 2013 (Law 1/2013). This legal reform of the Spanish government has opened new prejudicial questions due to the lack of sensitivity to the CJEU jurisprudence. Again, the Court has questioned the limitations of the Spanish law and opened the possibility of appeal for consumers (Sentence 29 October 2015). At the same time, the Court has ruled against Spain because of the high interest rates in cases of non-payment, claiming that they are too rigid and not fair considering the costs that banks should assume (Sentence 26 October 2016). It has been very critical of the Spanish Supreme Court (Sentence 21 December 2017) in limiting the time of a judge to expel land clauses, and it has warned that judges have the power to nullify land clauses and also to prevent other banks from introducing abusive clauses (Sentence 26 January 2017).

However, without denying the political and ethical corruption of the Spanish elites, we want to focus our attention on the specific regime of power that arises from the financialization of the economy as a political process (Harvey 2010), which has reshaped previous power relations and the access to rights and services. This power reconfiguration enables crimes involving several predatory practices (Taylor 1997). This new regime of power is the result of the assemblage of an increasingly financialized political economy (Lapavitsas 2013a), the peculiarities of the Spanish spatial fix (López and Rodríguez 2011) and an institutional architecture characterized as an "incomplete democracy" (Navarro 2002) from its origins – but in a current process of de-democratization (Tilly 2010: 43) due to the corporate power attack. Thereby, corruption or corporate crime is not a pathology of the system, but just another mechanism to accumulate capital (Pearce 1976). This chapter approaches the social agreement that

conceals corporate power and the structure of impunity that fosters the crimes of the powerful as an outcome and a means to further concentrate class power (Whyte 2015: 26).

Nonetheless, before scrutinizing these mortgage concessions as predatory practices of accumulation by dispossession (Harvey 2004: 186), the chapter now turns to the financialization of the economy, the Spanish subsidiary position within the EU and the institutional role of the Spanish state in fostering corporate power in order to locate the relationship between the state and the corporation within the overall social structure (Pearce 1976: 105) that gave momentum to the crimes of the powerful.

Financialization and the European arrangement

Financial capital has been gaining strength over productive capital throughout the history of capitalism (Arrighi 1999; Foster 2010), although this tendency seems to have gathered momentum since 1970 with the drop in productivity and real accumulation (Lapavitsas 2009a). This recent period of capitalist history is characterized by financialization (Lapavitsas 2013a: 169). Nevertheless, the process that made financial capital paramount is clearly linked to political power and the hegemonic change that started in the 1970s and consolidated in the 1980s with the Regan and Thatcher victories that strengthened the neoliberal project of the Western elites (Harvey 2010). The consensus established after WWII in the midst of the Roosevelt era (Hagan 2010) was replaced by the new Washington consensus inspiring a set of financial changes to foster financial institutions (Aglietta and Moatti 2002). The myth of market efficiency (Harcourt 2010) has been the leading force in the Reagan era (Hagan 2010) seeking to redirect all human action to the exchange sphere (Ruggiero 2013). This shift towards financialization was marked symbolically and significantly with the derogation of the Glass–Steagall Act in 2000 by Clinton, when commercial banks turned definitively to the financial market (Lapavitsas 2009b; Hagan 2010).

The financial sector has penetrated all domains of Western societies (Lapavitsas 2009a), gaining institutional salience through state efforts at economic re-regulation (Harcourt

2010: 85). There have been institutional and technological changes fostering financial innovation, but also growth in the size of the markets and the institutions participating in them, in the number of employees and in the volume of profits (Lapavitsas 2009b). Financial profit is the broad term used to refer to the multiplicity of forms to obtain revenues with return on capital (Lapavitsas 2013a), although the most important change has been in the financial expropriation from working people (Lapavitsas 2009a, 2013a). The nature of capital accumulation has been altered due to the patently subsidiary position of goods and services production and distribution with regard to finance (Foster 2010; Lapavitsas 2013a). Financial accumulation originates in the sphere of distribution and not in the production, the former requiring financial institutions trading with loanable capital. Financial accumulation needs increasing financial flows of loanable capital and not industrial stocks, neither value nor surplus value production (Lapavitsas 2013a: 202).

The American real estate bubble is the outcome of this accumulation process. The bubble resulted from the drop of interest rates by the Federal Reserve since 2001 to avoid recession after 9/11 and the failure of the dot.com economy (Lapavitsas 2009a). This rate drop allowed wider sectors of the population to gain access to credit, but this supposed democratization of money meant expanding financial expropriation towards more vulnerable populations, converting them into a source of profit for banks and other financial institutions through fees, tariffs and commissions (Lapavitsas 2011, 2009b). A shift in banking towards family assets and revenues occurred via the provision of household services and credit, such as mortgages, education, health, insurance or pensions, etc. (Lapavitsas 2011). This false credit democratization maintained private demand in a context of wages stagnation since the 1970s. The financial sector mediated as a provider of goods and services to homes which financialized everyday life (Lapavitsas 2013a). Housing access became the key element in this process due to the dependency on banks to provide housing financing. Mortgages exponentially increased household indebtedness, albeit with international and intranational variations (Lapavitsas 2013a). Further, because financial expropriation is more likely in a context of scarce social rights or when these need to be complemented through the market (Taylor 1997), financialization and the withdrawal of the social state have to be

understood as intertwined trends. Moreover, it cannot be denied that financial expropriation from the working classes had racialized aspects in many countries as those groups who were previously excluded from certain goods were now included as consumers – if, in fact, targeted as more vulnerable groups (Dymski 2009; Bernat 2014).

The immediate causes of the financial crisis of 2007 in the United States, which spread globally, have to be located in the sinking of subprime mortgages (Mazzucato 2013; Toussaint 2014). These mortgages ultimately polluted the entire financial sector of the Western world (Lapavitsas 2013b), with nothing more than the conversion of loans to poor families into financial assets, reducing passive investment and encouraging speculation (Toussaint 2014). Even with the elaborate financial engineering of banks, the burst of the construction bubble exposed European banks, the Germans particularly, as the number of assets accumulated (Lapavitsas 2013b). American banks were having problems due to the fall in valuation of real estate assets and also because many households had trouble meeting mortgage payments. Most European banks continued to loan money and to invest in the European periphery until the bankruptcy of American banks in September 2008 and in Europe thereafter (Lapavitsas 2013b). Banks from the core of the Eurozone loaned massive sums to those on the periphery, believing that they were stable markets after their incorporation into the euro, but the real estate bubbles burst one after another because of the private debt held mainly by banks (Aglietta and Brand 2015; Mazzucato 2013).

A complementary element in the theoretical explanation of the crisis is provided by economic geography (Krugman 1992). This would see the genesis of the crisis in Europe rooted in the industrial polarization between the core and the periphery of the European region (Aglietta and Brand 2015). According to this geographical interpretation, the key element to understand the depth of the crisis in the Southern European periphery would be the regional inequality and industrial polarization (Krugman 2012). In this regard, the problems faced by Spain are also the result of the European spatial agreement reinforcing the uneven spatial division prior to the euro, which increased the existing trend towards deindustrialization and financial speculation in the periphery of the EU (Aglietta and Brand 2015). This agreement facilitates

industrial disinvestment in the South because it is less competitive with rising labour costs and, thus, trade deficits because of the negative trade balance between exports and imports (Krugman 2012). At the same time, it consolidates the North of the EU, particularly Germany, but also Austria and Finland, and those under their influence such as the Czech Republic, Poland and Slovakia (Aglietta and Brand 2015).

The uneven development between regions is based on the cumulative effect of rising outcomes, that is, the interaction between demand, transport costs and rising outcomes that reinforces regional inequalities (Krugman 1992). Therefore, if there is not a coordinated policy at a European level of industrial investment in the South, existing inequalities in the industrial sectors are reinforced by scale economies and the agglomeration effects (Aglietta and Brand 2015; Mazzucato 2013). Monetary union is ensuring that the countries with a productive advantage can improve their position, reinforcing their competitiveness and productivity, whereas the opposite occurs in the less competitive territories. The euro made for a false monetary stability that reduced interest rates and flooded the banks of South Europe with largely French and German capital in search of profits, inflating the real estate bubble (Krugman 2012). In other words, it could not have reached such a size without the millions allocated to the most profitable activity, the construction sector in all its domains, that is, construction companies, real estate agencies, promoters and mortgage concessions (García-Montalvo 2008). We cannot forget that this sector represented 60% of all bank credits in 2007 (García-Montalvo and Raya 2012: 22). The bubble-related sky-rocketing of prices produced inflation, the increase in household debt, the fall in the value of savings, the rise of labour costs and the drop in investment in the industrial sector (Aglietta and Brand 2015; Aguilera and Naredo 2009). Therefore, the uneven spatial division has stimulated industrial concentration, with processes of specialization in Germany and its satellites driven by industrial restructuring. Unequal political power held by certain European states, influencing the policy making of the EU, lies behind this understanding of the crisis in the Eurozone (Aglietta and Brand 2015).

The Spanish spatial fix

The Spanish spatial fix has relied on financialization and territory-based tourism, construction and ownership promotion as competitive advantages to foster asset price Keynesianism (López and Rodríguez 2010). In this spatial fix have been two constant elements: infrastructure development and the promotion of city making. In the first place, the construction of infrastructure aimed to foster a sui generis Keynesianism to catalyze the economy, creating employment and increasing internal demand. Another objective was to make tourist arrivals easier through several means of transport to attract capital for investment and consumption because of the weakness of internal demand (López and Rodríguez 2010). At the same time, tourism allowed the Spanish housing market to enter into the global financial flow. This tight net also aimed to produce the interconnection of every territory of the state which allowed the valorization of every area entering in several economic bubbles (1975–1985, 1986–1991, 1996–2007) that fostered economic growth and the recessions afterwards. This model is not only the result of the late development of Francoism, but there has been a strong continuity during different governments after the transition to democracy (López and Rodríguez 2011). It is for this reason that Spain holds a wide network of high-speed trains and airports in every region built with the European cohesion funds from 1986 to 2004 (López and Rodríguez 2010; Fernández Durán 2006). The quid pro quo was accepting deindustrialization to avoid competition with existing EU members. This model required huge building companies and strong banks to carry out such projects which created tremendous financial power (Rodríguez 2015). The former electric and telecommunication national monopolies were privatized, benefiting national and financial powers. That is, the state action and corporations allowed the "democratization" of oligarchical power. Infrastructures, megaprojects and privatization have fostered powerful groups backed by the state (Naredo 2009).

Second, the promotion of cities as "growth machines" (Molotch 1976: 360) has been another key element in the Spanish territorial specialization (López and Rodríguez 2010). This model is based on territorial administrative decentralization where regional and local bodies have greater autonomy in urban issues. Actually, an important part of their

budget comes from the added value of rezoning land and the taxes it generates (López and Rodríguez 2010). Municipalities are fiscally subordinated to the revenues of real estate markets through taxation upon assets, the selling of urban land, licenses to build or reform and so on. In this model, land is a market commodity which provides power and economic resources (López and Rodríguez 2010; Molotch 1976), but the right to housing is dismissed (Fernández Durán 2006). Municipalities are then trapped in a race to create monopolistic rents over land and urban brands to attract capital investment and visitors (Harvey 2005). That is the reason why urban events are so important: music festivals, business fairs, summits, sporting events, marketing, etc. In this way powerful groups shape priorities and decisions affecting urban life and public budgets, enabling them to obtain huge profits from housing speculation and rent extraction with banks, builders, construction firms and promoters (Naredo 2010; Harvey 2005). Indeed, this growth model and its two main features have been devastating for the environment, criss-crossing territory with highways and train lines, airports not always well planned and promoting urban sprawl with the car and fossil fuel dependency at its centre (López and Rodríguez 2010; Fernández Durán 2006).

Although regions and municipalities are very important in the making of the bubble, we cannot forget the central administration's role in the final outcome. The last bubble (1996–2007) has to be understood as the result of the economic and political conditions that allowed every piece of land to become a growth machine, from big cities to tourist regions and even remote areas (López and Rodríguez 2010). The extension of urbanization allows the capture of surplus capital in order to delay the crisis of under-consumption (Harvey 2010). This is key to analysing all of the measures taken by the Spanish state: promotion of ownership instead of renting, land liberalization, deregulation of the mortgage market, fiscal subvention to the real estate sector and building infrastructure to inflate the bubble and to foster strong territorial cohesion (López and Rodríguez 2011). Actually, urban and real estate sectors are strongly regulated in each domain (García-Montalvo 2008). In this sense the co-production of the state in promoting a Keynesianism of price assets can be discussed as a crime of the powerful exemplified in the following case study.

Case study: mortgages

The case we want to explore is the most paradigmatic state–corporate crime (Michalowski and Kramer 2006) in the financialization context. Provision of mortgages can be considered crimes during the 1996–2007 bubble for two main reasons: first, because of the way the state paved the conditions for this massive approval of mortgages; and second, because of the wrongdoing of all the corporations involved in this context. These crimes have produced not only the eradication of the right to housing, but also the variety of social harms associated with eviction (Bernat 2014; Forero 2014).

As mentioned earlier, the crisis has its immediate origin in subprime mortgages (Mazzucato 2013; Lapavitsas 2013b; Toussaint 2014). In the Spanish case we have three years in a row of more than 1.5 million mortgages, and during the triennium 2005–2007 (Figure 16.1), Spain built more houses than Germany, France and Italy put together, even though each country alone has a greater population than Spain (Akin et al. 2014). Such volume of construction was the catalyst of the Spanish economy, representing 20% of gross domestic product (GDP) and receiving 60% of banking credits (García-Montalvo and Raya 2012). Mortgages and financial mechanisms such as securitization made the ongoing transfer from the working wages towards financial institutions possible (López and Rodríguez 2010); through mortgages, working wages went to financial institutions and in this way the main way accumulation occurred is by financial dispossession (Bernat 2015).

In order to understand how the right to housing has been turned into an inaccessible commodity, we need to understand the state co-production of the crime. In fact, we reached this point precisely through several measures implemented by the state administration. The situation was so worrying that in the middle of the bubble the United Nations rapporteur for housing urged the Spanish government to tackle the situation (Kothari 2008). But now we will focus on those policies deployed by the central administration in this context.

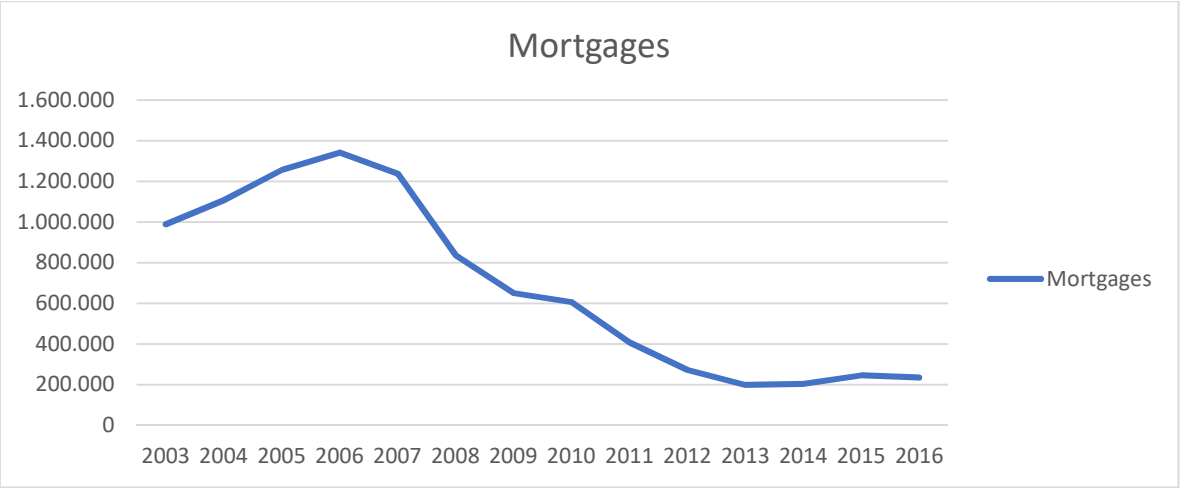

Figure 16.1 Spanish mortgages 2003–2016

Source Instituto Nacional de Estadística (National Institute of Statistics)

The role of the state

First, there was the housing policy implemented by the late Franco's regime to foster ownership as a primary way of accessing housing, which is in contrast to other countries. A key point in understanding the scale of the problem is that even public housing was aimed at turning renters into owners (Observatori Desc 2013). Two reasons lay behind this: politically this allows the subjection of and governing of working people (Stavrakakis 2013), but economically it fosters asset price Keynesianism (López and Rodríguez 2010). Housing policies, like housing plans and urban renting laws, were addressed at discouraging renting, while creating an unstable situation due to the liberalization of the urban rental market (López and Rodríguez 2010; Observatori Desc 2013).

Second, the market for land was another key element in creating the bubble. A law passed in 1998 and known as "all developable" was aimed at the supply side. This supply policy made the assumption that liberalizing land, that is, supplying more and more land, would result in price decreases. Yet the opposite happened, because when there is an expectation of housing revalorization, prices increase (López and Rodríguez 2010). This situation cannot be explained as the result of fundamental factors such as the income

per capita, construction costs or demographic growth and the real need for first or second residences. The explanation is that housing became an investment instead of a good to be used (García-Montalvo 2008). In the decision to buy, the potential value was more important than the actual use value that the buyer would attribute to it. This is a clear indicator that we were in a bubble (García-Montalvo 2008).

The direct influence of the state in the creation of the bubble can also be seen in two further factors associated with the gradual introduction of the Spanish mortgage market into the global financial markets. This incorporation occurred at two key stages. First in 1981 when it was allowed by law to increase the amount borrowed and the variable credit rate increased to 80%, which facilitated longer loans to return the capital and transferring the risk to households. Second, in 1992, when the hedge funds and the securitization funds were regularized in order that mortgages could be sold into to the financial global market, which established the basement to the economic cycle 1995–2007 boosted by construction and mortgages. Securitization allowing more mortgages was granted under the wrong assumption that risk was neutralized (López and Rodríguez 2010).

The last big expansion of the bubble came through fiscal relief for house buying, that is, public subsidies for real estate purchases instead of promoting other forms of access to housing, even including second and third residences (Observatori Desc 2013). Lastly, state influence was extended to the construction of infrastructure that we have analysed earlier, which generated the territorial homogenization allowing every area to become part of the bubble and the promotion of growth machines to maintain high demand for housing and land (López and Rodríguez 2010).

A further element showing state complicity in the production of social harm lies in evictions that followed the mortgages. Data on housing evictions are shocking; according to the INE (National Institute of Statistics) from 2014 to the third quarter of 2016 some 161,648 evictions were initiated in Spain. These routine practices of corporations were facilitated by the state: a mortgage law dating from 1909 had established that in the case of non-payment eviction is almost immediate and that even

after returning the mortgaged property the debt is not cancelled. If the auction of the asset has no buyer, the bank keeps it for 70% of the valuation amount, but when the debt is not fully covered, it produces new interest to be repaid by the mortgage holder (Colau and Alemany 2013).

The role of corporations

Having discussed the different dimensions of state involvement, now we turn to the role of corporate actors, including banks, real estate agencies, taxation companies and notaries involved in the production of harm through their modus operandi. These routine practices of corporations were possible because of the state setting a framework of permission. At the same time, as we mentioned earlier, the eurozone ensured that banks enjoyed massive liquidity coming from other European banks and hedge funds (Krugman 2012). The Spanish bubble was a great opportunity to put up great amounts of money which gave the banks huge sums to borrow at a low interest rate (Ballbé and Caicedo 2012, El País), but increased competition for new customers. This process made the goal of getting new clients paramount, and banks and real estate agencies proliferated throughout Spain. To increase their volume of business, banks used several dubious (at best) practices. First, customers were not sufficiently aware of the conditions of their mortgage (García-Montalvo 2008), not least the fact that banks would cover their costs and then begin to make profits after just three years of repayments by the lender. Second, banks gave mortgages in certain periods based on the sole aim of increasing the volume of business in their balance sheets (Bernat 2014). Third, they accepted dirty money for the repayment of mortgages (García-Montalvo 2008). Fourth, much of the wrongdoing by banks was directed at their own customers, namely the inclusion of products of scarce utility that the mortgage applicant signed unknowingly, such as swaps; mortgages that a few years after signing, people were paying sometimes double the amount; guarantees by relatives, friends or sometimes unknown people; and promoting bridging loans in order to access better houses that ended up with many people being doubly mortgaged (Colau and Alemany 2012; Observatori Desc 2013).

Valuation agencies also had a key role in creating the bubble due to appraisal value being used as a proxy of the value of a property in the market and which either stimulated or disincentivized a transaction (García-Montalvo and Raya 2012). But these companies are dependent on banks as customers when they are not directly outsourced from them. The most common predatory practice was inflating valuations in order that mortgage credit was inferior to the 80% under the Bank of Spain's guidelines; in this way, subprime mortgages were camouflaged. Appraisal value was manipulated according to the necessities of those involved in the transaction. A good proxy of this is comparing the average of the loan with the transaction price, which was over 100% (García-Montalvo and Raya 2012). This exemplifies the overvaluation of the balance sheets of the Spanish banks at the time.

Real estate agencies have also been implicated because of a list of bad practices in the network of offices throughout Spain (Akin et al. 2014), influencing every last town and operating sometimes without license. Among their practices they falsified pay slips and promoted cross-guarantees to secure mortgage approvals by banks, as well as contracting migrants with influence in their communities to cheat their compatriots (Bernat 2014), and engaging in racist discrimination involving offering property in certain neighbourhoods only for migrants (Observatori Desc 2013).

Conclusion

For a better understanding of the permanent crisis in Spain (Agamben 2014), this chapter has discussed two paramount elements. The first of these elements is the relationship between the state and the corporation within the overall social structure (Pearce 1976: 105). In this context, Pearce emphasizes the impossibility of successfully studying the crimes of the powerful as isolated acts. Today, this forces us to locate the crimes of the powerful within the financialization of the economy as a resource to squeeze yet more corporate profitability within the frame of the neoliberal turn (Laval and Dardot 2013). In this regard, a critical analysis of the role of the state in financialization is essential. Thus, this analysis has considered the relationship between the public and the private sectors as an instance where corporate crime is shaped and

gathers momentum. Financialization has ended up blurring the dichotomy between the public and the private (Tombs 2012; Tombs and Whyte 2015) that works in the imaginary social order (Pearce 1976). Certainly, the crimes of the powerful are produced in an era where there is a tendency to underestimate the state prevalence in many analyses of economic globalization. As we have seen, the state is a key player in such offences, establishing ideal conditions for corporate power to conquer new domains in which to do business and to foster higher levels of corporate profitability (Whyte 2014).

The second element of analysis echoes another point of emphasis of Pearce. He stressed the need to take into account "the international nature of the capitalist system to wholly understand the crimes of the powerful" (Pearce 1976: 105). In the peripheral and semi-peripheral countries of global capitalism, this statement is essential to capture the dynamics of corporate regulation and its crimes at the local level; thus international financial institutions are key players to study as to how regulation that addresses economic growth – ignoring social development – is produced (Friedrichs and Friedrichs 2002; Wonders and Danner 2006). What is more, in the Spanish case the political economy is shaped by international relations that restrain – de iure and de facto – its sovereignty in many senses. Indeed, institutions and treaties of the European Union pave the road to a neoliberal agenda that fosters the power of capital, allowing and securing its investments at a regional and global level (Etxezarreta 2002). EU institutions and actions – such as the European Commission; the Single European Act in 1986; the liberalization of capital; and the treaties of Maastricht, Amsterdam, Nice, Lisbon or Dublin, as well as some directives as the Bolkestein Directive for the liberalization of services, the Directive on Working Hours or the enacted measures of the European Central Bank – promote norms which benefit corporate power, an ongoing regional regulation which is a way to increase corporate power. Despite this we cannot ignore that this process is an outcome of power relations inside the EU, as it is shown by an economic geography (Krugman 1992) that establishes a strong core, but with the southern and eastern peripheries that keep their markets open to economic and financial power in neocolonial dynamics (Fernández Durán 2006: 67).

Therefore, corporate crime and victimization – not least in the form of mortgages and evictions – should be understood as a process instead of the summation of several events. In this way, we can locate corporate crime within a wider political economy and a set of social relationships that relegates rights (Bernat and Whyte 2017). Corporate crimes then play a key role within the ongoing process of accumulation of power and wealth (Whyte 2015). In this sense, corporations are not only institutional actors, but institutionalized power relations where profit accumulation takes place. Although this is a domain for struggle, resistance and challenge, different rules apply to each set of actors in the field. The limits and rules in this terrain are framed and established by the crimes of the powerful, allowing corporate players to accumulate through financial dispossession. In this sense, corporations have proved the capacity to have laws passed on their behalf, to threaten governments, to deploy unlawful practices, to neglect rights and to dispossess people as possessing a sort of criminal capital that guarantees impunity for their behaviour and a steady rhythm for wealth accumulation.

References

Agamben, G. (2014) *Archeologia della Politica*. Seminar at University of Girona, May 2014.

Aglietta, M. and Brand, T. (2015[2013]) *Un New Deal para Europa. Crecimiento, euro, competitividad.* Madrid: Traficantes de sueños.

Aglietta, M. and Moatti, S. (2002[2000]) *El FMI: Del orden monetario a los desórdenes financieros*. Madrid: Ediciones Akal.

Aguilera, F. and Naredo, J.M. (2009) "Introducción," in Federico Aguilera (Coordinador), *Economía, poder y megaproyectos*, 3–18. Lanzarote: Fundación César Manrique.

Akin, O., Montalvo, J.G. Villar, J.G., Peydró, J.-L. and Raya, J.M. (2014) "The Real Estate and Credit Bubble: Evidence from Spain." *SERIEs*, 5(2-3): 223–243.

Arrighi, G. (1999[1994]) *El largo siglo xx: Dinero y poder en los orígenes de nuestra época*. Madrid: Akal.

Ballbe, M. and Caicedo, Y. (2012) "El ataque alemán desahucia a España." noviembre 29, *El País*.

Bernat, I. (2014) “Desahuciando a inmigrantes: una etnografía en una comunidad dañada.” *Crítica Penal y poder*, 7: 35–63.

— (2015) “Entendiendo los desahucios: financiarización, poder corporativo y derechos mercantilizados.” *Sortuz*, 7(2): 88–104.

Bernat, I. and Whyte, D. (2017) “State-corporate Crime and the Process of Global Accumulation.” *Critical Criminology*, 25: 71–86.

Colau, A. and Alemany, A. (2012) *Vides Hipotecades. De la bombolla hipotecària al dret a l’habitatge*. Barcelona: Angle.

— (2013) *¡Sí se puede! Crónica de una pequeña gran victoria*. Barcelona: Destino.

Dymski, G. (2009) “Racial Exclusion and the Political Economy of the Subprime Crisis.” *Historical Materialism*, 17: 149–179.

eldiario.es (2015) “Un populismo punitivo contra las elites.” febrero 25.

Etxezarreta, M. (2002) “Europa S.A.,” in Gemma Galdón (ed.) *Mundo S. A*., 151–159 Barcelona: La tempestad.

Fernández Durán, R. (2006) *El tsunami urbaizador: Sobre sus causas y repercusiones devastadoras, y la necesidad de prepararse para el previsible estallido de la burbuja inmobiliaria.* Barcelona: Virus.

Fernández-Savater, A. (2013) “La cultura de la transición y el nuevo sentido común.” *Cuadernos de eldiario.e*s, 1: 16–18.

Forero, A. (2014) “Soberanía limitada, delitos estatal-corporativo y daño social: los desahucios y suicidios en España,” in Iñaki Rivera Beiras (ed.) *Delitos de los Estados, de los mercados y daño social*, 167–181. Barcelona: Anthropos.

Foster, J.B. (2010) “The Financialization of Accumulation.” *Monthly Review*, 62(5): 1–17.

Friedrichs, D. and Friedrichs, J. (2002) “The World Bank and the Crimes of the Globalization: A Case Study.” *Social Justice*, 29 (1–2): 13–36.

García Montalvo, J. (2008) *De la Quimera Inmobiliaria al Colapso Financiero*. Barcelona: Bosch.

García Montalvo, J. and María Raya, J. (2012) “What is the Right Price of the Spanish Real State.” *Spanish Economic and Financial Outlook*, 1(3): 22–28.

Hagan, J. (2010) *Who Are the Criminals? The Politics of Crime Policy From the Age of Roosevelt to the Age of Reagan*. New Jersey: Princeton University.

Harcourt, B. (2010) “Neoliberal Penality: A Brief Genealogy.” *Theoretical Criminology*, 14(1): 74–92.

Harvey, D. (2004[2003]) *El Nuevo Imperialismo*. Madrid: Akal.

— (2005) “El arte de la renta: la globalización y la mercantilización de la cultura,” in David Harvey et al. (eds.) *Capital financiero, propiedad inmobiliaria y cultura*. Barcelona: Macba.

— (2010) *The Enigma of Capital and the Crisis of Capitalism*. New York: Oxford University.

Jiménez, D. (2014) “Crímenes que producen castigo. Sobre el sentido del jubileo en una administración general del daño.” *Crítica Penal y Poder*, 7: 85–121.

Kothari, M. (2008) Informe del relator especial sobre una vivienda adecuada como elemento integrante del derecho a un nivel de vida adecuado A/HRC/7/16/Add 2, de 7 de Febrero, *Naciones Unidas*.

Krugman, P. (1992[1991]) *Georgrafía y comercio*. Barcelona: Bosch.

— (2012[2012]) *¡Acabad ya con esta crisis!* Barcelona: Crítica.

Lapavitsas, C. (2009a) *El capitalismo financiarizado: expansión y crisis*. Madrid: Maia Ediciones.

— (2009b) “Financialised Capitalism: Crisis and Financial Expropriation.” *Historical Materialism,* 17: 114–148.

— (2011) “Theorizing Financialization.” *Work, Employment and Society*, 25(4): 611–626.

–— (2013a) *Profiting Without Producing: How Finance Exploits us All*. London: Verso.

— (2013b[2012]) *Crisis en la Euro zona*. Madrid: Capitán Swing.

Laval, C. and Dardot, P. (2013[2010]) *La Nueva Razón del Mundo*. Madrid: Gedisa.

López, I. and Rodríguez, E. (2010) *Fin de ciclo. Financiarización, territorio y sociedad de propietarios en la onda larga del capitalismo hispano (1959–2010)*, Madrid: Traficantes de sueños.

— (2011) “The Spanish Model.” *New Left Review*, 69: 5–28.

Mazzucato, M. (2013) *The Entrepreneurial State: Debunking Public vs. Private Sector Myths.* London: Anathem.

Michalowski, R. and Kramer, R. (2006) “The Critique of Power,” in R. Michalowski and R. Kramer (eds.) *State-Corporate Crime: Wrongdoing at the Intersection of Business and Government*, 1–18. Brunswick: Rutgers.

Molotch, H. (1976) “The City as a Growth Machine: Toward a Political Economy of Place.” *American Journal of Sociology*, 82(2): 309–332.

Naredo, J.M. (2009) “Economía y poder. Megaproyectos, recalificaciones y contratas,” in *Economía, poder y megaproyectos*, 19–52. Lanzarote: Fundación César Manrique.

— (2010) “El modelo inmobiliario español y sus consecuencias,” in *Coloquio sobre urbanismo, democracia y mercado: una experiencia española (1970–2010)*, 13–27.

Navarro, V. (2002) *Bienestar insuficiente, democracia incompleta*. Barcelona: Anagrama.

Obsevatori Desc. (2013) *Emergencia habitacional en el Estado español: La crisis de las ejecuciones hipotecarias y de los desalojos desde una perspectiva de los derechos humanos*. Online. Available HTTP: http://observatoridesc.org/sites/default/files/2013-Emergencia-Habitacional.pdf

Pearce, F. (1976) *The Crimes of the Powerful. Marxism, Crime and Deviance*. London: Pluto.

Rodríguez, E. (2015) *Por qué Fracasó La Democracia en España. La transición y el régimen del ’78.* Madrid: Traficantes de Sueños.

Ruggiero, V. (2013) *I crimini dell’economia: Una lettura criminologica del pensiero economico.* Milano: Feltrinelli.

Stavrakakis, Y. (2013) “La sociedad de la deuda. Grecia y el futuro de la postdemocracia,” in Alain Badiou et al. (eds.) *El sintoma griego*, 7–28.

Taylor, I. (1997) “The Political Economy of Crime,” in Mike Maguire et al. (eds.) *The Oxford Handbook of Criminology* (2nd ed.), 265–303. Oxford: Oxford University.

Tilly, C. (2010[2007]) *Democracia*. Madrid: Akal.

Tombs, S. (2012) “State-Corporate Symbiosis in the Production of Crime and Harm.” *State Crime*, 1(2): 170–195.

Tombs, S. and Whyte, D. (2015) *The Corporate Criminal: Why Corporations Must be Abolished.* London: Routledge.

Toussaint, É. (2014[2014]) *Bancocracia*. Barcelona: Icaria.

Wonders, N. and Danner, M. (2006) “Globalization, State-corporate Crime, and Woman,” in Raymond Michalowski and Ronald Kramer (eds.) *State-Corporate Crime*, 98–115. Rutgers, Brunswick.

Whyte, D. (2014) “Regimes of Permission and State-corporate Crime.” *State Crime*, 3(2): 237–246.

— (2015) “Introduction: A Very British Corruption,” in David Whyte (ed.) *How Corrupted is Britain?* 1–37, London: Pluto.

THIRD PAPER:

THE PERMANENT STATE OF EXCEPTION IN THE SOUTHERN PERIPHERY

Ignasi Bernat

Abstract

The permanent crisis in the southern periphery of Europe has been deep socially, politically and economically. In order to contain it the sovereign power has shown all its majesty. The state of exception has been the mechanism deployed to introduce the political decision within the legal framework. Departing from Agamben's understanding of this mechanism of power, the paper directs its attention to several dimensions in Portugal, Italy, Greece and Spain. That is, the financial crisis, the corporate impunity and the migrants death have been handled to silence the *potentia* to disrupt the ongoing capitalist and colonial regime of power. Actually, the state of exception has secured the current *status quo*, but also has intensified the ongoing regime of power. This dispositive is always accompanied by a legitimising discourse which essentialises and otherises these countries. After observing how this mechanism has operated in Southern Europe, the paper turns on discussing how to abandon this regime of power.

Key words

State of Exception; permanent crisis; European regime of power; Southern Europe

Resumen

La crisis permanente en la periferia sur de Europa ha sido profunda. El estado de excepción ha sido el mecanismo desplegado para introducir la decisión política en el marco jurídico. Partiendo de la interpretación de este mecanismo de poder por parte de Agamben, el artículo se fija en varias dimensiones en Portugal, Italia, Grecia y España. Es decir: la crisis financiera, la impunidad de las grandes empresas y la muerte de migrantes han sido gestionadas para acallar la *potentia* para perturbar el régimen de

poder capitalista y colonial. En realidad, el estado de excepción ha reforzado el status quo, pero también ha intensificado el poder establecido. Este dispositivo siempre viene acompañado de un discurso legitimizador que esencializa y alteriza esos países. Tras observar cómo este mecanismo ha funcionado en el sur de Europa, se propone un debate sobre cómo abandonar ese régimen de poder.

Palabras claves

Estado de excepción; crisis permanente; régimen de poder europeo; sur de Europa

> The tradition of the oppressed teaches us that the 'state of exception' in which we live is the rule. We must arrive at a concept of history which reflects this. Then it will become clear that our mission is the introduction of a genuine state of exception; and our position in the struggle against Fascism will benefit from it. (Walter Benjamin)

Introduction

This article deals with the ongoing crisis in the southern periphery of the European Union from the perspective of the state of exception as a mechanism of sovereign power (Agamben 2004). This governmental mechanism has become increasingly important in the present situation in the handling of complex situations when power and sovereignty are in dispute in the midst of a crisis both unexpected and imposed. An unexpected crisis which interrupts the rhythms of capital accumulation and one which is imposed on the working classes in the countries in the south of the EU. From this approach we will analyse three dimensions of this permanent crisis (Agamben 2014) which has demolished the old certainties and consensuses and led to the establishment of a new political period consolidating the structure of economic and political power in the EU. If sovereign power retains for itself the capacity to decide about the exception, we will have to analyse the management of moments of crisis in order to understand its mode of operation. Thus, it will be seen how sovereign debt, corporate impunity and the deaths at the southern border are managed so as to re-establish that which the crisis brought into question. A study of these three phenomena makes evident the limits of

democracy within the EU, where the financialization of the economy has hollowed out previously established social rights while taking control of regulation and law. Suddenly, parliamentary sovereignty has become an illusion guaranteeing the corporate rhythm of accumulation (Tombs and Whyte 2015) and the relationship between the centre and periphery (Lapavitsas 2013), while migrants meet their deaths trying to reach fortress Europe (Mbembe 2011). Nevertheless, the sovereign decision is taken outside the countries on the southern periphery of EU (Portugal, Italy, Greece and Spain), given their subordinate position in the European power structure. The subordinate position of these countries within this regime creates an area of legal and political uncertainty which takes us back to the three dimensions of the permanent state of exception: sovereign debt, corporate impunity and the negation of rights to migrants. In order to understand the management of this permanent crisis critically it will be necessary to displace the history of the European Union from the success of its geoeconomic centre (Karmy 2016) and account for history of the continuing peripheralization of the south in the EU. It involves denaturalising the supremacy of the centre of EU so as to historicise the different forms of oppression, situating them in their historical context and examining their construction and consolidation. In order to do so this paper will discuss the paradigm of the state of exception before interrogating the three dimensions of exceptionality: financial, corporate and migration. To conclude the paper will discuss whether we should *abandon* democracy and whether democracy has been *abandoned*. The next section of the paper will show the commonalities between these four countries to justify the collective analysis that it being proposed.

Common trajectories in Southern Europe

Although the acronym PIGS is probably used most often to refer to Ireland rather than to Italy, for analytical purposes of this article, I shall try to explain here why Italy can be included within the Southern European periphery along with Portugal, Greece and Spain. Even when today Portugal has a leftist government trying to defy the most tough austerity policies it is still far from challenging the European regime of power (Taibo 2018). Indeed, these four countries make up EU's southern corridor. Moreover, they are historically bound as the north of the Mediterranean, with a long shared history.

Although it is recognised that there is also another European periphery, the Central and East periphery of the EU (Krugman 2012, Panayotov 2017) the focus of this paper is on the southern periphery. This short contemporary historical summary seeks to establish a joint genealogy ranging from the 1930s to the present day. In the 1930s the four countries fell to fascism. “The Cold War was an instrument of social control” (Fontana 2011). Anti-communism marked an era in which international relations played a key role in setting the political direction in these four countries. At the same time, from the end of the 1950s onwards the four countries became cheap labour for the western north of the second post-war European miracle. Greece, Portugal and Spain barely enjoyed ten years of welfare when they came out of their various fascist regimes, as this model was coming to an end in the 1980s. On the other hand, Italy was able to benefit more from this model both in terms of time and quality. It was a model based on strong macroeconomic growth. In this growth environment, the EU’s market expansion was a positive development, together with a number of public and social policies aimed at redistributing this wealth (Amin 1997). European aid and subsidies to the most disadvantaged regions had a supporting but not decisive effect. Once economic growth slowed this integration of peripheral regions proved to have devastating effects (Amin 1997). It is clear that the south of the continent is immersed in uneven development (Amin 1986) within a “German Europe” (Amin 1997, Krugman 2012, Lapavitsas 2013). Since the nineties, all four countries have been ruled through neoliberalism and accumulation by dispossession, while corruption has been a constant throughout this period. Every effort for a profound social transformation has been violently thwarted with coups d'état and with the extreme right-wing *abandoning* democracy to privilege capitalism, ensuring impunity for corporations. Today they are the gendarme of the Southern European border, with a politics of death, termed “necropolitics”, which causes thousands of casualties.

After the Second World War, Greece fell under the control of the British, who had in this country their command of Mediterranean operations and from there over the Middle East. King George II was exiled in London due to his collaboration with Metaxas' reactionary and fascistic dictatorship (1936-1941). While Papandreou’s exile government in Cairo decided to demobilize the communist and national liberation

guerrillas, the British took control of the country. Under Churchill's orders, "white terror" was imposed to wipe out communists and leftists by British soldiers and extreme right-wing groups who had collaborated with the Nazis. In 1946 elections were held but without the participation of the left as 40,000-50,000 leftists were being held in prison and in concentration camps (Fontana 2011). Nazi collaborators went unpunished while the left was persecuted. The civil war lasted until 1949, and with the help of British and Americans the right wing controlled the country, which joined NATO in 1952. The monarchy was restored while a series of inefficient and corrupt governments left the country mired in poverty and hunger. Instability lasted until the mid-1960s, the left was still persecuted, and, on the pretext of a left-wing coup attempt, the military staged a new coup in 1967. The country came under the dictatorship of a military junta. The dictatorship of the colonels ended in 1974, months after the demise of the Portuguese dictatorship.

From 1933 to 1970 Portugal was ruled by Oliveira Salazar and later by Caetano until April 25, 1974. The Portuguese regime was a proto-fascist autarchy with few political and civil rights in which the left-wing opposition was systematically persecuted. The country did not enter the Second World War as it struck a balance with the allies offering the establishment of military bases to the USA, but by allowing the Nazis to move freely around the country. This led to some economic growth and stability during the 1940s, which was also due to the Marshall Plan. This also allowed the country to gain some international recognition in the 1950s, especially from the United States as a founding member of NATO, when anti-communism outweighed democracy. The Carnation Revolution (1974) put an end to the dictatorship, the longest in Europe and one which refused to lose its African colonies of Angola and Mozambique. It was precisely the colonial war that caused a great deal of discontent among the military who brought down the dictatorship with the economic problems of the oil crisis (Taibo 2018). At that time Ford and Kissinger tried to convince an already decrepit Franco to intervene in Portugal in order to prevent the communists from rising to power. The United States feared the arrival of a communist party to a NATO government (Fontana 2011).

In Spain the coup d'état and the subsequent civil war resulted in a fascist dictatorship as a legacy along with a large number of dead, disappeared and exiles. The fascist regime did not enter the Second World War due to its precarious economic and human situation, thus sparing the intervention of allied forces in the country. The country was left in a dreadful situation with an autarchic economy and with a heinous persecution of the left. It allowed the old oligarchy and a modest bourgeoisie to preserve their privileges and received the explicit support throughout the regime from the Catholic Church. In the 1950s, the regime signed a concordat with the Vatican and reached an agreement with Eisenhower for international recognition thanks to the establishment of American bases in Spain at the height of the Cold War (Vilar 1984). It was not until Franco's death in 1975 that a period of political transition began, marked by social and trade union mobilization, but also by extreme right-wing violence that ended with the approval of a liberal and pluralist constitution. Thus ended a fierce dictatorship that ruled with an iron fist an impoverished country, with low levels of growth, high political repression and much corruption.

After the defeat of fascism and the death of Mussolini (1922-45) and with a new social pact between capital and labour Italy was able to board the train of the welfare state albeit always with a much more rural and less industrialized south that continued to be an exporter of cheap labour to the rest of north-western Europe. Certainly, the post-war Italian situation was not the same, as Mussolini had died in a public square, but there were some political elements that paralleled the rest of Southern Europe. In fact, the CIA already played an important role in the 1948 election. The CIA created various organizations to launder 10 million dollars and fund Christian democracy and other likeminded organizations in order to fight the Communist Party (Fontana 2011). The Vatican spurred the turn to the right of Christian democracy and set out to finish with the work of antifascism. With the help of the Marshall Plan, economic blackmail and anti-communist propaganda, the advance of the 'red threat' was successfully halted. In fact, the Vatican defended the excommunication of those defending communism, whilst the CIA created the Gladio, a secret organisation to control Italian politics, resorting as well to political violence and terrorism. In the 70's we will witness the turn towards Eurocommunism, which will imply a progressive distancing from the USSR and a

“historic compromise” of collaboration with the rest of the democratic parties in an era marked by the strength of the extreme left as well as by the violence and impunity of the extreme right (Balestrini and Moroni 2006), which had as its objective to stop the advance of the communist party. The US continued to finance both political corruption and the extreme right. The state responded to the extreme left with emergency criminal laws that would end up dismantling a great number of civil liberties, as well as the radical left, and thwarting the coming to power of the historic compromise. From there followed the flood of corruption and cynicism of Christian democracy and Socialist Party with Andreotti and Craxi as the icons of an era that ended up promoting Berlusconi’s arrival in power.

The paradigm of the State of Exception

We currently find different meanings in the everyday, legal and academic use of the concept of “state of exception”. In fact, this concept is present in many of the legal constitutions of modern states. In this definition, the state of exception would be the legal institute that would allow the state to temporarily suspend the legal order in order to ensure its continuity or to seek its re-establishment in a time of emergency. The academic notion of a state of exception is on the rise thanks to the political philosophy of the Italian philosopher Giorgio Agamben, who has placed it at the centre of the current debate on the exercise of power and sovereignty even there are also some criticisms to it. However, the origins of the concept go back to the work of Carl Schmitt (1991) and his definition of politics as art of telling friends from enemies.

Schmitt's work developed mainly in the interwar period in Europe, a most propitious time to comprehend the crises that the liberal constitutional governments were undergoing, in the face of the rise of fascism and communism, particularly in the Weimar Republic (Guareschi and Rahola 2011). Schmitt's works are influenced by and are in dialogue with Walter Benjamin’s work and in particular with his notion of “pure violence” (Benjamin 2010), a type of violence that is not capable of preserving the law but of deposing and suppressing it (Guareschi and Rahola 2011). Schmitt became the great thinker of the state of exception and sovereign power as mechanisms of power,

but also as limits to liberal democracy. The link between law and power in sovereign decision-making was a central element in his analysis. According to Schmitt, sovereignty and state of exception intertwine, as sovereignty is determined by the capacity to decide on the exception. “The sovereign is he who decides on the state of exception” (Schmitt 2009), the one who is capable of bringing about a total suspension of the law. The sovereign’s decision on the state of exception seals off the realm of political action by framing an antagonistic space that constitutes the “us” and, above all, who the others are. Or to put it in Schmitt’s words, between friends and enemies (Schmitt 1991). Sovereignty sanctions the use of legitimate violence. In Schmitt, the state of exception is the legitimate use of force to contain a state of necessity, a situation that threatens to overwhelm the regime of the constituted power. This state of necessity cannot be known *a priori* and places the state of exception in a situation of exteriority to the law, a state of indetermination that is always in a legally blurred area. Thus, the sovereign decision on the state of exception is constituted as a genuine exercise of political power. The sovereign will transcend legality itself. The liberal rule of law is suspended by the state of exception (Dussel 2016). The sovereign decision is the act that marks the closure of the political framework, putting an end to the democratic game. It introduces the limit of what liberal democracy can withstand and it shows its unsolvable contradictions. Ultimately, the law serves to contain social relations. We find a close relationship between power, violence and law. It is the sovereign who decides what poses a threat to the social order that must not be tolerated. In this sense, it establishes an enemy to be fought while introducing the state of war into the civil body. With this act of force of law and political force, the decision on the state of exception lets us map the democratic limits and reveal the political geography of (sovereign) power. In Schmitt, then, the sovereign decision, starting from the state of necessity, allows us to observe how the law is a source of legitimization of political violence, which, despite not having a direct reference in the law, is legitimized through that very same law. In other words, the sovereign is external to the legal system, but his decision has the power to legally suspend the rule (Agamben 2004). It is this ambiguous relationship of inclusion and exclusion of violence that makes the state of exception such an efficient power device. In this ambiguous terrain between law and politics, it is more necessary than ever for discourses and practices to have a legitimacy that allows the extra-legal practices of the

state of exception. The political violence of the sovereign requires discursive practices that legitimize his actions. This is an obvious contradiction as the force used to guarantee the survival of the law is always implemented resorting to forms that are not legal. This conservative violence of the law and of constituted power is invariably constitutive of a less democratic regime as the sovereign hoards and legitimizes his power while he constrains the realm of political action. The state of exception is an expression of the conservative violence of law (Schmitt 1991). It is a violence that perpetuates the law but destroys the rights.

Agamben has taken on the task of updating the paradigm of the state of exception in recent years, starting from the work of Schmitt and also that of Benjamin, showing how sovereign power operates at present times. His analysis of our contemporary era starts off from the assumption of the depoliticization of political life and the continued recourse to the state of exception as a mechanism of power which pervades contemporary political rationality. That is to say, in Agamben we see how the device of power represented by the state of exception has become increasingly detached from its referential state of necessity linked to public disorder, civil wars or external threats and has become a keystone of the current logic of government. This shift in the use of the state of exception has been accompanied by a growing force on the part of the executive branch which has shifted the legislative branch from its central role. This conservative logic presupposes that the law-maker's role is impractical or sometimes counterproductive in solving the complex problems of the contemporary world. In Agamben (2004) we can see that the state of exception is less and less a temporary suspension of the current legal order; it is no longer that legally blurred temporary response to re-establish the threatened law. On the contrary, the author warns us that we are moving towards a new paradigm where the state of exception has lost its temporary nature and is now a permanent state of exception. We are witnessing its "generalization and radicalization" (Lemke 2011). The exception becomes the norm. The state of exception is a power mechanism, a sovereign power's government technique in itself. In effect, the state of exception understood as the sovereign's response in times of war, public disorder or political violence where constitutional rights were temporarily suspended is losing centre stage. We are moving, says Agamben, towards a scenario

where the executive power is taking on more and more powers to respond to "situations of emergency or crisis". Thus, the state of exception is gradually being defined as a means of responding to a wide range of new situations, such as natural disasters, but above all economic crises. The sovereign uses the state of exception as a more efficient way of responding to certain situations than the rule of law itself. The state of exception represents an intensification of normality, a power dispositive that secures the survival of the very power regime that might be challenged in times of crisis. In Agamben's opinion, we are witnessing a schism in the state of necessity addressed to enforcing the state of exception, which has now become another way of fulfilling the government's policing role. A policing role always linked to the maintenance of order and the discretionary use of violence, but with law as a presumed point of reference. According to Agamben, we are in the process of moving towards a new paradigm of political action where the expression of sovereign power is diluting the separation between law, justice and politics. The path towards the technification of political life under efficiency criteria is the central element of depoliticization. The state of exception as a governmental technique seems to be capturing politics.

The crystallization of the state of exception entails confusion between law and fact, between inside and outside, where law and exception become blurred (Campesi 2011). The state of exception comes central to contemporary political strategies, the difference between inside and outside, between law and fact enter an indistinguishable zone. As a result, the system of liberal democratic law does not provide any substantial alternative to dictatorships. These political regimes exacerbate the political trends already present in liberal democracies. The difference is one of intensity, but when the sovereign power becomes threatened by the popular power it reveals itself again in all its splendour and brutality. In this sense, inclusion in the political community is achieved through the exclusion and denial of certain civil and political rights. This means that a distinction is made between the person and the granted rights; it is not direct but mediated by the sovereign power. What is interesting is that Agamben places biopolitical mechanisms at the centre of contemporary political rationality, in connection with sovereign power. In this way, biopolitics is placed at the centre of sovereign power (Lemke 2011). Agamben shifts Schmitt's distinction between friend and enemy to the split between mere bare

life and political existence. The distinction between bare life (zoé) and political existence (bios) represents the difference between natural human beings and the legal existence of the person. This differentiation is what allows for the possibility of denying rights to people who are denied personal rights. Law and life unite in the exception as a sovereign power device (Fleisner 2015). That portrays the continuity between totalitarianism and democracy, "a disturbing affinity". At the origin of all politics we do not find a distinction between friend and enemy but a line that separates and establishes a space that is not protected by law. The sovereign can deny rights within the field of his domain those who he wants to. Therefore, once excluded from the protection of the law these people are *abandoned*, reduced to mere living bodies without rights (Agamben 1998). The state of exception becomes the way to introduce violence into the legal system, a form of violence that can take different shapes. Thus, the state of exception allows for the introduction of political measures that guarantee the survival of the dominating reason (Brown 2015). In other words, it facilitates the introduction of practices and strategies, plans and laws that are aimed at ensuring the continuity of the status quo.

As noted above, the notion of state of exception is not free of criticism (see also the introduction to this special issue). The main critique set out here is in relation to the sovereign. The assumption of the sovereign requires someone or something that takes the decision in a particular time and place, but this seems complicated in a globalised period when we have witnessed the lost of power of the nation-state and its rescaling in a plethora of public and private institutions (Guareschi and Rahola 2011). That is, how it is possible to locate power in a multilevel distribution of power encompassing local, national and transnational administrations and organisations. In this context, it seems more appropriate to analize power in a networked manner, whereby power arises from a number of different places that secure the reproduction of order in a more efficient and productive way (Dean 2010). Governmentality is the notion used by Foucault to express this alternative understanding of power which cannot be reduced to a single source (Guareschi and Rahola 2011). Yet as this paper will show, even after recognising this critique, the notion of the state of exception continues to be useful for understanding how in the context of the last European crisis we have witnessed the introduction of political *decisions* in each of these countries to save the European regime

of power. Indeed, these decisions privileged the European economic and spatial arrangement against the will of the people or the legitimacy of those four nation-states (Aglietta and Brandt 2015).

The genealogy of the different measures taken will allow us to understand how legal practices are not committed to democracy, but to a regime of power. These measures that guarantee political decisions are disguised as law and legitimacy, so that the economic, political and social crisis do not overwhelm the regime of power. The state of exception makes it possible to depoliticize the crisis and disguise it as a technical or legal problem. Discursive practices are always necessary to ensure the legitimacy and hegemony of these options (permanent crisis).

The permanent crisis as a discourse

In the economic crisis and the ensuing social protests in Southern Europe we find different moments or phases. At first, we have a level of social protest that did not reach the depth it would later achieve when the revolts in the Southern Mediterranean spread to its northern neighbours. From 2011 and the second recession, the revolts against the measures adopted by the different governments, the EU and the financial institutions were widely seconded, generating a crisis of governability. Perhaps the spread of social protest is due to the fact that social protection measures no longer succeeded in alleviating the effects of the crisis, or perhaps due to the example of Arab springs or the reconstruction of the grass-roots movement. These two moments correspond to the transition from the economic crisis that began in 2008 to the sovereign debt crisis that erupted in 2011 and the corresponding measures that were taken to consolidate the different financial systems that swept away many social rights.

As a result of the serious crisis of legitimacy and hegemony of the different governments, a discursive element emerged in this battle. The discourse, as always, is important for establishing the framework of the dispute (Mignolo and Walsh 2018). It turns out that in times of instability whoever imposes the interpretative framework and the account of events has a great chance of obtaining political victory. In this battle to

establish the narrative that would explain the situation, the notion of crisis appeared in the public sphere ad nauseam. Economic crisis, sovereign debt crisis, refugee crisis... The notion of crisis implies a rupture or a cessation of normality, it is a moment of change but always with an urgency that leaves little room for slow reflection (Campesi 2018). In this sense, crises always give rise to alarm or anxiety as they usually require exceptional measures to deal with them. Thus, out of the multiple crises, an idea emerged that we were in a permanent crisis. The idea of the permanent crisis took shape as an argument for closing certain debates and certain political possibilities and options. The discourse of the permanent crisis has revealed itself as a power mechanism in three very clear ways. In the first place, the discourse of permanent crisis serves to squash the criticisms, attempts to bring about a bond through fear that the loss of legitimacy can no longer achieve. If the crisis is not over, it is not the time to make demands that go in the direction of recovering previous welfare standards. We are not in a situation of growth or prosperity and, therefore, new measures can still be taken, or we will have to tighten our belts. All these expressions have been very common over the past few years. In this sense, it disempowers people with regard to their problems and situation, introducing a sense of submissiveness among the population.

Secondly, the discourse of the permanent crisis carries with it an implicit demand to continue taking measures to deal with the crisis. This discourse is used to legitimize the implementation of different policies, measures, plans and laws. If the crisis is not over, then measures must continue to be taken for it to subside. This is a discourse that encourages or facilitates the continued adoption of political measures to alleviate the effects of the crisis. Thus, this discourse facilitates the taking of certain measures, but also makes it difficult to take other measures that may go in the direction of recovering or expanding rights.

Thirdly, the discourse of the permanent crisis has turned out to be a power mechanism precisely because of the type of measures that have eventually been taken. The initiatives and laws adopted by the different governments of Southern Europe have gone precisely in the direction of attacking the most vulnerable sectors of their population. The vast majority of decisions taken by these governments have not been

aimed at putting an end to tax havens, social dumping, free trade zones or opacity zones from which capital benefits. Nor have they gone in the direction of taxing capital transactions or profits, large fortunes or top earners. On the contrary, the vast majority of the measures adopted have involved cuts and austerity policies with regard to different social rights such as education, health, pensions or welfare benefits in a broad sense. The other flagship measure has been to raise indirect taxes such as VAT, which are known to be regressive. In the Spanish case, for instance, we find the legalisation of criminal practices such as tax fraud through a fiscal amnesty passed by the government. Indeed, we can argue that most of these measures have had a regressive outcome socially. These measures have been taken assuming that they were promoting the fostering of the economy through the recovery of profits for business and for entrepreneurs. Here it is obvious that the state function that provides legitimacy is the accumulation of capital. This shift in the way to achieve legitimacy and its overlapping with capital's interests appears as the great triumph of neoliberal reason (Brown 2015). Economic progress thus confronts and eradicates social rights. The "permanent crisis" discourse has become a central technique of governance, mechanism of power that allows an intensification of normality through the consolidation of neoliberal reason. Thus, there is nothing that can exist outside the crisis (Agamben 1998).

The permanent crisis discourse comes with a series of adjacent discourses in the public sphere. These common sense discourses are strategies to responsibilise the victims of austerity (Cooper and Whyte 2017) with the aim to silencing criticisms of austerity policies. Those discourses are based upon, in turn, an overtly classist discourse that attacks the "lifestyles" and "choices" of working class people (they are living above their means, have failed to save or live frugally enough, etc.). This classist discourse forgets to mention all the measures taken to ensure that working class people are *forced* to spend more than they earn. Thus, the need to buy many social rights in the market because of the lack of social protection (housing as its paradigmatic example) and the reduction of the purchasing power is framed by an intensification of consumerism ideology, and an aggressive consumer credit expansion that is fueled by financial institutions. Moreover, this common sense is also based upon a racist discourse that represents the peripheral countries (PIGS) as lazy and inefficient. It is for that reason

that the PIGS suffered the crisis. This common sense of course ignores the real underlying power relations within the EU. Merkel's statements on the "week Greeks" were an obvious example of this racializing discourse and of the legitimising of inequalities within the EU. A modified version of this discourse locates the causes of the crisis in economic inefficiency resulting from the corruption of the political and economic elites of those countries. Without denying the corruption of these political and economic elites, it is clear that this discourse ignores the power relations within the EU and the corrupt practices in the countries of the European core (Whyte 2015). This orientalist and racist discourse *within* the EU works in a complex network of power/knowledge that promotes such discourses. Without that thick net of power/knowledge the sovereignty of the core over the periphery would not be sustainable (Sayyid 2017). The racism and orientalism of the centre can speak because it is assumed a rationality in its discourse which is sustained by the hierarchical violence that divides the centre and the periphery. The periphery needs the expert intervention of the centre because it cannot govern itself (Said 2002).

Financial exceptionality

This permanent crisis that is dealt with through the sovereign exception has a first example in the use of public debt as a means of managing the crisis itself. Once the public debt was created, its payment was imposed ahead of social expenditure items in different ways in the four countries we are dealing with. The repayment of credits from international creditors took precedence over the human consequences of such policies in what are known as globalization crimes (Friedrichs and Friedrichs 2002, Friedrichs 2018). The European spatial arrangement constrains state sovereignty so as to safeguard the rights of capital, to protect those who have already invested or those who might do so at a later stage (Aglietta and Brandt 2015), in order to encourage investment and accumulation (Bernat 2018).

The global recession that followed the Lehman Brothers collapse resulted in a drastic drop in revenue for eurozone countries leading to increased budget deficits. The fiscal imbalance in the budgets of peripheral countries was the result of the crisis and not its

cause (Lapavitsas 2013). As the sovereign debt of peripheral EU countries rose, the bond market reacted by driving those countries out of the international bond market. Greece, Portugal, Spain and eventually Italy were dragged into a fragile situation (Lapavitsas 2012). The accumulation of sovereign debt by peripheral countries posed a great risk to the central countries, since most of that debt was intra-European and interbank (Lapavitsas 2013). In other words, a large part of the debt of the peripheral countries was owed to central European banks. This situation was the one that forced an early intervention that made the European power regime evident. The rescue intervention in the peripheral countries was intended to prevent the contagion of the banks of those countries to those of the centre of the EU, particularly Germany and France, as they faced heavy losses and funding problems (Lapavitsas 2012).

The situation in Greece is by far the most extreme in terms of debt, but nevertheless it must be noted that its sovereign debt derives mainly from private debt. Although it was dragging a significant volume of sovereign debt since the 1980s, the core of its debt came from the private debt of banks and households from the 1990s (Lapavitsas 2013). In the 2000s, two thirds of its sovereign debt were owed by foreigners, with a similar share in the case of Portugal. This is due to the collapse of domestic savings and the need for international financing. This appeared to be an advantage of joining the euro, which later proved to be a problem (Lapavitsas 2012). The three financial bailouts in eight years contributed 288 billion euros to the Greek economy, but under draconian conditions. Among them, to force the Greek state to have a fiscal surplus until 2060. But in addition to that, the lending terms are usurious since there is a differential of more than four points between IMF loans to Greece and the European Central Bank rate. The EU's central countries are thus pillaging their own periphery. At the same time, these bailouts make peripheral bonds unattractive and therefore, those of the centre become more attractive causing the financing cost of the regional centre to fall. But should these draconian terms not be accepted, the threat of inflicting greater pain on the populations of those countries is very present as it was when people voted oxi in the Greek referendum. In order to accept the loan money Greece had to sign a Memorandum of Understanding that imposed severe conditions of structural adjustment: labour market reforms, cuts in health care, education, pensions and many other public provisions

(Georgoulas 2018). Supervision of such measures was left to the European Commission. The European institutions and the law play a fundamental role in implementing austerity measures as they intervene to leave the economy out of democratic control, introducing the legal obligation into the political measures of governments. Law and the EU are the conservative expression of the policy that we will have to abandon if we want to protect ourselves from the violence of austerity (Knox 2017). Sovereign power intervenes by introducing legal measures that shut off the political decision-making field by imposing certain economic measures (Georgoulas 2018).

Spain's public debt in 2007 was lower than that of most of its European partners, at around 40%, while France or Germany were over 65% of gross domestic product (GDP) [Cutillas and Wessling 2013]. In addition, in 2006 Spain had a budget surplus (Krugman 2012). Public debt has skyrocketed due to the annual deficit, which averaged 9% between 2008 and 2012 (Cutillas and Wessling 2013). The debt interest payment went from 18,600 million euros in 2008 to 40,000 million euros in 2013, which naturally has increased the economic problems and is complicating the way out of the crisis. This deficit is mainly caused by two factors: the first is the result of the collapse of the real estate bubble that caused tax revenues to fall when economic activity came abruptly to a halt and, on the other hand, when the State assumed the private debt, and more specifically that linked to the banks and due to the decision to rescue them through capital injections, warrants and guarantees (FROB) and the purchase of toxic assets above their price (SAREB). The market coup in Spain (Bernal 2014) took place on September 2, 2011 when Article 135 of the Spanish Constitution was amended. Just ten days earlier, on 23 August, the president of the government, José Luis Rodríguez Zapatero, announced in parliament that he had reached an agreement with the leader of the opposition, Mariano Rajoy, to make such a change (El Mundo 2011).

Italy had the highest public debt after Greece in the whole of the EU, 120% of GDP in the years prior to the crisis (Lapavitsas 2012). Berlusconi's government and his finance minister Tremonti planned a $68 trillion cut but did not manage to calm the markets. This forced his resignation and the fall of his government. Then the president of the republic, Giorgio Napolitano, with the bonuses fired instructed Monti to form a

government. Monti proposes a technical cabinet as a solution to the political and economic crisis. The alleged success is a cabinet without politicians, just technicians that is accepted by the whole parliament minus the Lega Norte. Mario Monti becomes Italian Prime Minister until the end of the legislature (2011-13). The recipes of the technocratic cabinet are the ones already known and applied in all cases of austericide: labour reforms, social cuts, reduced public investment, a freeze on public employee hiring until 2014, an increase in the retirement age... all in order to reduce the fiscal deficit while applying for a 30,000-million-euro loan. The IMF praises the efforts and thus contains the risk premium.

At the beginning of 2011 Portuguese Prime Minister José Sócrates of the socialist party was forced to admit that Portugal would be unable to repay Portugal's high public debt. The three rating agencies Standard's and Poor, Fitch and Moody's lowered the quality of the Portuguese debt that paid up to 10% interest on its five-year bonds. The government resigned in March as it was unable to execute its economic adjustment plans, but financial pressure continued to mount. Market pressure represented in the refusal to buy treasury bonds and the rising risk premium led to a request for a financial bailout. The government was already in office and had to request the financial bailout against its original wishes. Finally, it acknowledged that it could not contain market pressure and in April 2011 requested a 75 billion grant to be paid between the EU (50 billion euros) and the IMF (25 billion). Again, massive austerity measures and social cuts were imposed following the bailout (Taibo 2018).

Arguing that the economic problems are caused by the increase in public debt as if states were to suspend payments is in fact the result of a disinformation campaign (Toussaint 2014). This discourse has been used to legitimise a set of social measures and policies aimed at redistributing wealth from the bottom up, causing an increase in inequalities and enabling the privatisation and mercantilisation of public services, as this has little to do with the economic problem that produced the debt (Stravrakakis 2013). In other words, the increase in public debt is mainly due to the crisis triggered mainly triggered by the excesses of private banks, construction companies and property developers, and by the bailout of those very banks (Toussaint 2014). As a consequence, the deficit and

rising public debt have generated a new problem: the debt interest. Moreover, this situation may lead to a downward spiral like the one that many South American countries experienced in the 1990s (Piñero and Fresnillo 2013).

The management of the financial crisis shows, first of all, that sovereign power can enforce its demands on governments by pushing them to readjust their public budgets in order to bail out private banks, but also by imposing and constitutional as well as bank bailouts that grant "rights" and guarantee the repayment to creditors (Vasapollo *et al.* 2014) in a clear example of imperialism through debt (Graeber 2012). Debt is a key mechanism for creating a political relationship of dependence (Mbembe 2011). The burden of adjustment to get out of the crisis falls precisely on those countries on the periphery of the Mediterranean that are the main losers with the Eurozone's Economic and Monetary Union, despite the fact that these countries also produce more and more inequalities and that an emerging financial and rentier class is amassing greater economic and political power (Vasapollo *et al*. 2014). The adjustment policies imposed by the sovereign, although accepted by southern governments, are based on three main factors: a reduction in public spending (structural adjustment), a reduction in direct, indirect and deferred wages (structural reforms) and the provision of the necessary liquidity to banks (Vasapollo *et al.* 2014). The international financial institutions' reform rhetoric has been very similar since the Washington consensus: A State that intervenes less and less in the productive sphere so as to increase productivity and return on capital, reduce subsidies, open internal markets to foreign capital (Aglietta and Moatti 2002), under the false mantra of market efficiency. However, to claim that there is less intervention in the economy is just a fallacy; what has been done is to lay the foundations for a new cycle of accumulation (Tombs and Whyte 2015). Financial rescue programmes have been accompanied by severe austerity measures in the periphery, cuts in public investment and spending, market liberalisation and deregulation, privatisation of public companies and assets and wage reductions have been common recipes in these four countries (Lapavitsas 2013, Taibo 2018). These measures have aimed to underpin the EU's internal power regime, whilst protecting the stability of the banks and finances of the EU centre. At the same time, the EU's rationale of maintaining a strong centre with high competitiveness, a strong market and a current account

surplus, as well as the potential for expansion of European financial capital, has been safeguarded (Lapavitsas 2012).

Corporate exceptionality

In this context of permanent exceptionality in Southern Europe the next case to be analysed is that of the corporations. Corporate power has reached such a degree that it has become a key player in politics, influencing and lobbying in the majority of political and legislative decisions (Ruggiero 2013). Without any doubt, today its power of influence is one of the greatest negations of democracy and popular sovereignty. Corporate criminality and its development cannot be disentangled from that of capitalist globalisation, being reflections of economic and political power and the contradictions of capitalism (Pearce 1976, Barak 2018). In this sense, the situation of permanent crisis in the south of Europe has been a laboratory for corporate power in implementing political measures and challenging the legislation operative before the crisis (Tombs and Whyte 2015). Certainly, the political influence of non-state agents has been enormous in recent decades as a result of their worldwide activities and growing wealth and power. Here we are not only referring to financial corporations (although they represent a prime example), but also to mineral, gas, petrol, agri-food or industrial companies. Many of these, once they have exhausted the possibilities of lobbying also resort to criminal activities as another way to obtain profits (Pearce 1976). When the contradiction between the accumulation of capital and obeying the law collide sometimes the latter wins as social legitimacy is crucial for governability. However, from a historical point of view the accumulation of capital triumphs in periods of crisis. Here we examine some of these quandaries in the context of the countries in the Southern European periphery.

In the preference share fraud, it can be seen how the Spanish state made it possible for financial institutions, in a context of global liquidity shortage, to sell a financial product which was unsuitable for small investors (Missé 2013) on a huge scale. This financial product was designed to increase the banks' capital ratio. The Spanish state delegated to the regulatory agencies, the Bank of Spain and National Securities and Exchange

Commission, the protection of these investors, but they failed to protect them. When the banks used this product to resolve their liquidity problems, the regulatory agencies raised no objections, and thousands of people were affected by the fraud and regulatory failure (EFE 2014), but the breakdown in regulation did not entail any state intervention to remedy the situation.

Only after a significant social mobilisation did the state agree to establish arbitration between the banks and the defrauded consumers, however, it did not undertake any legal action against the banks or the regulatory agencies which had failed to carry out their legal obligations. This impunity guaranteed by the Spanish state worsened with the intervention of the European institutions and the European Memorandum (the Spanish bank bailout) signed by the European Commission and the Spanish state, which bolstered the impunity with acquittances of up to 60% (Inurrieta 2013). This reveals that the European institutions are also responsible for the consolidation of corporate power in Europe, concealing the unequal relationship between corporations and citizens.

In Portugal the number of financial scandals has reached its full glory. All the financial organisations are affected by various cases of criminal activities: corruption, bribery, influence peddling and fraud. What would perhaps be more interesting is to analyse how the financial institutions when bankrupted and bailed out with public money have tried to escape from their civil and criminal responsibilities. For example, let us take the case of the Banco de Espirito Santo, perhaps that which, among the various Portuguese banks, stands out for its political and economic importance. In the times of debt crisis and liquidity shortage, it employed various fraudulent practices in order to increase its financial solvency. Thus, in Venezuela it used its clout from its business dealings with the Petróleos de Venezuela company to sell bonds worth 375 million dollars to the Banco de Desarrollo Económico y Social and to the Fondo de Desarrollo Nacional using falsified balance sheets. The fraudulent sale of junk bonds of which the bank was fully aware was made worse when the bank attempted to avoid any responsibility. Thus, once the financial situation of the bank caused its bankrupcy, in order to avoid payment of many of its liabilities the bank was divided into two parts: on the one hand, a “bad” bank (Banco Espirito Santo, BES) kept the toxic assets and the other, Nova Banco, kept the

healthy assets (Martín del Barrio 2018). Retaining the toxic assets in the BES sought to make it insolvent and so leave the people and institutions that have claims against the bank without any chance of getting back their money and so consolidating a huge fraud.

In Italy we have seen how criminal networks along with big corporations ignored all the environmental regulations and controls leading to the rubbish crisis, which was particularly serious in Naples. The employers, with the help of criminal networks, employed various means to dump waste illegally, burying it in unauthorised areas, burning it or exporting it via ecological colonialism to countries with less environmental inspection. These networks also facilitated transport, invoices and fraudulent certificates. Sometimes this waste was highly toxic, something which has caused grave environmental and health problems. All this occurred with the connivance, in varying degrees, of politicians who benefited financially and politically. In this case, it can be seen that the need to maintain the rhythms of production trumps environmental protection, health and intergenerational justice (Ruggiero 2013). Environmental law and regulatory and sanctioning mechanisms are incapable of responding when faced with the necessity to accumulate profits, so leaving the majority of damage unpunished (Ruggiero and South 2010). At the same time, this impunity regarding legal compliance is exactly what incentivises circumventing it.

The case of the extractive companies is another good example of how the right to private gain reflects the enormous power of corporations. The situation regarding the Skouries mine demonstrates another of the multiple aspects of corporate impunity and bespoke legislation to facilitate business profits. Eldorado Gold is a Canadian company owning a mine in the north east of Greece and in which there are reserves of gold and copper. Initially, the permits for extraction were conceded in 2011, but the Syriza government rejected the permit in 2015 because environmental protection was not guaranteed in the company's plans with an open cast mine. The mine has caused a great deal of social opposition from the beginning of the project because of the ecological damage it occasions, but there is also severe repression against those who protest (Kouvelakis and Lapavitsas 2018). The company appealed against the decision in courts which finally decided in its favour. While the government demands environmental

measures, the company is pressing the government to reach a better agreement for both so that the latter will obtain greater income so as to pay the high interests on the debt. Failing this, the mining company is threatening to take legal action against the Greek government because of the unnecessary permit delays and a loss of earnings of 750 million dollars. In this way, the corporation employs political pressure and commercial regulation to overturn environmental demands. Thus, regulation and legislation are factors that fail to prevent business activities which are harmful both socially and environmentally.

In these cases of corporate impunity, we can seem that there is no clear division between the state and big business. In fact, there is not a clash between public and private institutions, rather a symbiotic cooperation (Tombs 2012). The relationship between public and private agents, in the course of financialization, is better understand as the result of a political process which entails the concentration of class power producing a joining together of crime and corporate state damage (Bernat and Whyte 2017). Thus, in the struggle to finish with corporate victimisation it is just as important to demand compliance with the law as reversing the huge power of corporations, which is where laws are changed or breached (Barak 2018). As a result of this corporate power we can see that the impunity and favourable regulation are leading to the disappearance of big business crimes (Snider 2000) because there is no law enforcement or they are effectively decriminalized.

Exceptionality in the southern border

These Southern European countries, Portugal to a lesser extent logically, also play a fundamental role as gendarmes of the external border of the European Union. Their role is to make access difficult for migrants or refugees trying to enter the EU. The Southern European sea route is the most used by those seeking to enter the EU (Carr 2012). Racism is an institutional and institutionalised EU policy. The EU's policy towards migrants is a policy of death. The EU has power over the death of migrants. Migrants can be made to die without anyone having to justify themselves for it (Foucault 2012). The Mediterranean has become a large concentration camp where the right to asylum

and life is abandoned. For migrants trying to cross the Mediterranean, death is the norm. For these migrants, life is the exception. Migrants are subjects of no rights, they are not entirely human, or perhaps the mere representation of the zoé, of the bare life, of those people who can be sacrificed without anyone having to answer for their deaths, they are killable (Agamben 1998). The refugee is today the representation of biopolitical power (Bazzicalupo 2010), the dark reverse of human rights, or perhaps simply the necropolitical face of the present moment. Biopolitics, understood as the political administration of life (Dean 2010), has the capacity to create subdivisions among humans. Foucault (2012) called this biopolitical capacity "racism", a technology that regulates the unequal distribution of death (Mbembe 2011), "the conditions of acceptability of giving death" (Foucault 2012). Racism is a form of politics that seeks to organize human coexistence in a context of antagonistic relations; it is an attempt to domesticate that relationship of opposition derived from colonialism (Sayyid 2017). The racist function of the state of giving death can be completed through exposure to death or by increasing the risk of death. Not only are they made to die in the Mediterranean, but they can also be shot with rubber bullets causing them to drown and no one is responsible for those deaths as happened in Tarajal. They can also be arbitrarily detained, in a ship for example, even putting their health at risk. They may be denied aid or even prevented from docking at a port in a process in which these states compete to be the cruelest. The police protect the border, particularly in Spain's colonial enclaves in Africa, which have become no-right spaces for migrants and where colonial police violence, be it European or the gendarmes of African countries, not only goes unpunished, but reminds us that we are still in a world where the violent hierarchy of the division between Western Europe and Africa still structures the world. Racism, like colonialism, is linked to the consolidation of an international order, to a world system (Sayyid 2017). The colonial order still distributes the right to live and die unequally. In the colony and for the colonized subjects, power still operates outside the law, it is a force of no-right, of indistinction between norm and exception, between peace and war (Mbembe 2011). The refugee crisis has served to strengthen the European Union's area of influence in third countries by signing agreements that externalize the control of migration to third countries outside the EU (Carr 2012). It has served to redefine the peripheral centre dynamics for implementing the EU agenda for migration. The control

of space is the first matter of sovereignty. The refugee crisis has been the discourse that has allowed for the intensification of the control over the countries that supposedly are part of the refugees' route. Not in vain, the refugee crisis is the distillation of centuries of colonial enterprises (Karmy 2016). EU sovereignty over these countries means control of space, with indirect control exercised by these countries themselves in the interests of the EU. These territorialised power relations at the service of the EU reproduce all migration control devices outside the EU in an aggravated way: police, detention centres, expulsion, abandonment. Control over colonised subjects is also exercised indirectly by the EU, extending beyond its borders. The control of people over rights is once again being prioritised, the violation of rights for migrants being the norm in many countries outside the EU as well. Again, the ability to create population subdivisions is reproduced outside the EU and by EU mandate. In this way, racialised social relations are reconfigured (Bonilla-Silva 1999), racialization is intensified. Again, we are faced with different rights for legally constructed categories of people (Mbembe 2011). If the sovereign right to kill in the colonies is not subject to rules, by outsourcing the border the EU is liberating the right to kill. It is a power that is not concerned with the administration of life (Dean 2010), but one that subordinates life to a policy of death (Mbembe 2001). It is a necropolitical power exercised indirectly. "The colonies are the place par excellence where the controls and guarantees of the judicial order can be suspended, where the violence of the state of exception supposedly operates in the service of 'civilization'" (Mbembe 2011).

This regime of European *necropower* that takes place outside its borders is also projected towards the interior. That is to say, necropolitics occurs both in an interregional and intraregional way. In this intra-European expression, a good example to understand the close relationship between the EU and racism as a state policy is the one between the EU and the foreign policy of the member states. Thus, in the very same month that Spain joined the EU, it also passed its first Aliens Act in 1985. The approval of this law was part of Spain's negotiations to join the EU (Calavita and Suárez-Navas 2003). In other words, the evolution of immigration laws goes hand in hand with the European integration process and project. The EU has been increasing its efforts to coordinate in matters of immigration with various programs like Eurosur, Eurodac, VIS

or SIS I and II, common agencies such as Frontex or financing devices such as SIVE (Carr 2012, Jansen 2017). The law on foreigners meets two explicit objectives: to guarantee the rights of those in a regular administrative situation (particularly those immigrants from the rest of the EU) and to control illegal immigration by establishing the possibility of creating a series of measures to manage the migrant population (sanctions, detention centres, deportations). The consequence of the law, however, is to generate irregularity for the majority of the immigrant population residing in Spain. LOEX (Ley Orgánica de Extranjería) created the legal category of "immigrant" but also produced the category of "illegal" by default. A large number of migrants became irregular overnight. But, in addition, the construction of legal irregularity for the population of the countries of the global south is very difficult to escape because the regularity is always temporary and contingent, linked to the fulfilment of diverse requirements simultaneously. These requirements linked to the labour market make regularization difficult. The resulting irregularity is very difficult to avoid in a labour market as unstable and precarious as that of Southern Europe for its lower strata (Calavita 2005). Thus, it seems that along with institutional racism there is also an economic rationale in the construction of irregularity (Brandariz 2014). These migrants play an important role in low-productivity economies that require piecework and, therefore, the lesser the rights of the workers, the greater the benefit for the employers. The deportability of migrants is performative, it impels them to work (De Giorgi 2010). Deportability means exploitability. In other words, LOEX, excluding a large part of migrants from their rights, builds a flexible and vulnerable workforce ready to be exploited and without rights, maximizing business profits. In other words, the exclusion and vulnerability of migrants are the direct effect of the law, not an unpredictable reversal (Calavita 2005). This is one of the racist achievements as it divides the working classes of the southern countries into two groups, that of citizens and that of foreigners. The former have rights, access to welfare programs, union representation, dialogue with the state and its administrations. The latter suffer police persecution, stigmatisation, racialisation, abuse, stark exploitation and death at the border (Melossi 2015). The law on foreigners thus produces a division within the working classes that reinforces social relations of domination and fractures horizontal solidarity. For the former there is a liberal relationship of individual demands with respect to the state; for the latter there is clandestinity (Calavita and Suárez-Navas

2003). The reproduction of docile migrant diasporas through law and repression in Europe facilitates the ongoing colonization of the South.

Discussion: Abandoning Democracy

Criticism of formal democracy has always stressed that it is a form without content, a technique of government (Agamben 2010) that can be filled with just anything. Racism, fascism, nationalism, patriarchy, capitalism can fill this void. Even though there has always been a struggle to fill it with emancipatory content (Rancière 2010). On the other hand, the transit towards the state of exception as a dispositive of government marks the turn towards a formless content. The sovereign decides through the exception that whatever questions the regime of power is to be abandoned (Atiles 2016). It no longer matters that we vote in referendums against paying the debt (oxi in Greece), the constitution can be changed to ensure its payment (art. 135 EC), a non-elected technical cabinet can be imposed to appease the markets or budgets can be knocked down if they do not conform to the priorities of the European Union. Corporations must keep up the pace of profits (Tombs and Whyte 2015) even if social rights are continuously violated, while other dehumanized people are made to die at the border (Karmy 2016). In reality, under the guise of technical solutions, there are political solutions. These bogus solutions represent a deepening of a regime of capitalist and colonial power. This is where democracy becomes despotism, where democracy and totalitarianism overlap, where the state of permanent exception guarantees the triumph of corporate capitalism (Agamben 2004) in unequal intra-EU development (Amin 1986). The treatment given to the EU south shows how racist thinking is constructed within the EU. In the EU we see race wars (Foucault 2012).

If democracy is the opposite of despotism, a set of practices and institutions against the arbitrary exercise of power (Sayyid 2014), it is worth asking whether the EU and democracy in Southern Europe do not work or whether, on the contrary, they work perfectly but their objective is not to ensure human rights, popular will or the rule of law... If our objective is a government that gives priority to respect for the will of the people and the lives of all people, democracy and the EU will have to be abandoned. A

decolonial interpretation (Mignolo and Walsh 2018) of democracy must provoke a shift in the hegemonic way of understanding democracy. A displacement in the definition of democracy, a displacement regarding who the democrats are, a displacement in the place where democracy is practiced. A challenge to the European power regime, which is what secures democracy and the EU. European democracy today requires the systematic violation of social rights, impunity for corporations and the death of migrants at the border.

In this sense, the category "pigs" has served to legitimise the subaltern position and unequal distribution of power within the EU, to build a racializing ontology. It allows us to be left out of history, like an empty and flat land that has to be put at the service of certain economic and political interests. At the same time, it makes it possible to introduce a caesura among European citizens. There are no longer just Europeans, there are good Europeans and there are Southern Europeans. Within the European Union, we note that this colonialism is based on three intertwined issues. There is a racist ontological view of the south (PIGS), there is an economic project (corporate financialisation), and there is also a colonial power relationship with its non-EU neighbours (necropolitics). The "pigs" is the category that allows us to question the Europeanness of the countries of the south and, therefore, allows them to punish ourselves with economic measures for our vagrancy and corruption. The punishment of Southern Europe stems from an orientalist outlook and a civilizing mission. Pigs give coherence and expel broken pieces from the EU. It is not the EU that is wrong, nor is capitalism in its neoliberal form. No, it is backward southerners that are wrong. What we really have is a geopolitical and economic victory translated into cultural terms that legitimize and justify that victory. Austerity measures are also part of a political project that makes it possible to discipline ourselves in order to transform our subjectivity. We need to be neoliberalised in three different dimensions. Temporarily, we are not Europeans because we are lagging behind, underdeveloped. Spatially, we are not fully European, we are the southern periphery of the EU. Subjectively, we do not share the right values of hard work and honesty. Within the EU, not all territories, not all bodies are equal. The southern periphery is backward, outward and inferiorised (Sayyid 2014).

At the same time as forging an image of the southern periphery as backward, an image of progress and efficiency of the centre of the EU is being forged by opposition. The geo-economic centre of the EU is a universal standard to be resembled or imitated. The level of backwardness is measured by this distance to the centre. Again, as in the Hegelian philosophy of history, German political and economic power continues to be the core that shapes the time and history of the EU. Political and economic power radiates from this core. The North-European identity is also constructed in opposition to that of the south (weak, lazy, corrupt), the success of the North is verified through the defeat of the south. A tragic south that does not escape its destiny. We are a problem for the Europeans of the geo-economic centre, we make public deficit, sovereign debt, corruption soar. We have to change culturally if we really want to be Europeans. The European identity is relational and contingent. Democratic identity is opposed to despotism. This sudden hatred for the inhabitants of Southern Europe, with various aggressions in the countries of the centre, has to be connected with the economic collapse and the fallacy of EU success. These racist practices are the result of the violent hierarchy within the EU. Southern pigs suddenly become people who do not learn from their history, who do not know what suits them politically, who vote wrong. The European centre does know what is good for them. The political is a heritage of the north while it essentialises the backward south and naturalises it as a different, inferior, racialised people. This colonialism within the EU dehistorizes conflicts turning them into a cultural, essential, natural issue (Sayyid 2017). Conflict is transformed into something natural, ethnic formations are reified and southerners who have no history have no politics either. The monopoly of those who write history is also the monopoly of those who make politics. There is no rule for those who make the rules, others have no choice but to obey those rules. Permanent exceptionality of the sovereign power that decides what happens in the south, when its legality is modified, when its rights are denied and when its governments are humiliated. The antagonism is evident between friends and enemies, introducing the political event. The EU is a capitalist and colonial matrix. Decolonising the EU means rewriting the history of the EU where the starting point is not the violent hierarchy between the centre and the periphery. Coloniality understood as a governmental rationale that is behind certain forms of colonialism and continues to structure a planetary hierarchy (Sayyid 2014), but also a European one. However, the

history of south and migrants resistance shows us that the history of the north is only one of the possible stories. That of the winners, but we can decentralise the EU and centre the Mediterranean in order to construct a non-neoliberal and anti-racist subjectivity. It is necessary to desubjectivise ourselves and to abandon European democracy in order to reconstruct a Mediterranean political space (Atiles 2016). An alliance of the north and south of the Mediterranean to build a Mediterranean political identity that dismantles the neoliberal Europeanisation of our subjectivity.

Conclusions: Democracy *abandoned*

In this paper we have argued that the cases under scrutiny represent three examples (public debt, corporations and southern border) of a permanent state of exception that are a part of a strategy of political and geo-economic domination. This is a class and colonial project that defines the power regime born out of the integration of these countries into the spatial arrangement of the European Union (Aglietta and Brandt 2015), even though this power regime has an endogenous transposition within each of these countries. The formative conditions of this permanent exceptionality have been reached precisely by the set of measures taken by the European Union and the different states of the peripheral south. Each and every one of the different administrative bodies has played a role that has led to this situation. That is why, without the slightest doubt, we can say that directive by directive, program by program, measure by measure, regulation by regulation, law by law, this power regime has been forged. In this regime it is clear that the nation-state is an integral part of the governing mechanism which constitutes the state of exception. However, this dispositive has become more and more pervasive in the process of financialization of the economy, where corporations have been gaining institutional weight in the provision of services and rights, continuously fencing the old and new commons. This process of corporate empowerment makes it easier for the formal constitution to be materially bent by corporate power (Bernat and Whyte 2015).

Exceptionality in the European power regime has occurred in three distinct spheres. First, in the public debt, which is the result in great part of the private debt,

constitutionalised to assure its payment even if the population shouts out "OXI". Second, impunity for corporations, whether for financial institutions and other extractive, service, agri-food or industrial companies with custom-made regulations, legislation and impunity. Third, death on the southern border, and the spread of state racism and legal othering that denies human rights, causing direct return of migrants, lock-ups in boats, police brutality or saturated refugee camps. These are three forms of despotism in the EU, of denial of rights, of the popular will and of an enforced sovereign power so as to guarantee a regime of capitalist and colonial power. In situations of crisis when the discreet charm of ideology and the media fails, then the devices of sovereign power appear. The Troika, the International Monetary Fund, the European Commission or the European Central Bank appear to force the southern barbarians to modernize by means of adjustments and cuts, by cutting pensions, social benefits and the most basic rights and by privatising all public goods and assets.

In our analysis of the creation of public debt and the sovereign debt crisis, we have noted how international capital rights are safeguarded. This case of reconversion of private debt into public debt allows us to guarantee corporate impunity, in other words, to close the circle of the regime of permissiveness. In this sense, the constitutionalisation of the debt and the rights of international capital are a key element to guarantee one more time the European power regime and establish a new post-crisis spatial arrangement that allows for a new cycle of accumulation through austerity measures and of rights re-marketing, through the loss of social rights and through indirect wages regardless of the collective suffering these measures entail. The case of the public debt shows us that the relationship between State and corporation is constantly evolving, making the social arrangement to be in a process of constant updating, where social forces struggle to impose a settlement favourable to their interests, but in this case one that favours the consolidation of the unequal relationship between centre and periphery. So, the European institutions and the southern states are a fundamental part of the financialization of the economy, safeguarding the continued subordination of the south of the EU and the German-centred power regime (Krugman 2012). At the same time, the conditions of possibility for a new cycle of capital accumulation are established (Aglietta 1979, Whyte 2014).

In addition, we have seen how corporate exceptionality and the crimes of the powerful are an unequivocal demonstration of the fallacy of market efficiency and the corporations' effectiveness in their management. This discourse claims that these are necessary for the economic success of society and tries to hide the deep connections of corporations with the State, the intrinsic dependence between both institutions that are continuously reinforced (Tombs and Whyte 2015). Precisely, this symbiotic relationship masks the social relations underlying the state and the corporation. This new post-crisis arrangement produces law: modifying laws, changing the constitution, creating a new regime of capital accumulation, that is, permission for corporations and their crimes, which increases corporate power (Whyte 2014). This new arrangement is the result of the abuse of corporate power, but it continues to increase and concentrate greater power, thus ensuring that new corporate abuses are perpetuated and reactualized. But the abuse of corporate power not only refers to criminal practices aimed at increasing profit, but also extends to corporate impunity, so that it does not even matter if the practices employed are within the law. In the case of the preferred shares scam and waste of management we see that these are corporations that are too powerful to be punished (Pontell et al. 2014). No one is surprised since there have hardly been legal cases against the banks for their wrongdoing as the rebalancing that took place with the financialization turned them into too powerful actors. Thus, the seizure of law by corporate Europe gives total impunity of corporations. Therefore, we can affirm that the political economy of the crimes of the powerful is the reverse of the political economy of the non-punishment for the crimes of the powerful. This form of capital accumulation is devastating the communities of Southern Europe with the disappearance of productive work, which severely impacts the lives of the working classes of these countries (Taylor 1997), as the economic geography points out (Krugman 1992). It is the populations of these disadvantaged countries in the new European space arrangement – from the entry into force of the Economic and Monetary Union to the new post-crisis settlement – who are the most harshly hit by these attacks of corporate power in the EU (Lapavitsas 2013, Aglietta and Brandt 2015).

Finally, the situation of the migrant people and the exceptionality on the southern border show us how EU racism has turned the Mediterranean into a death camp. Racism is a state policy in the south of the EU, but also in the whole of the EU. Policies, agencies, laws, police, prisons, camps and a host of other power devices bear witness to it. The securisation of the border has become a European priority (Jansen 2017), aware of its privilege and of the violence necessary to guarantee that way of life that does not seem to be available to everyone. Thus, by imposing restrictions on entry and making access more difficult, conditions of death are being created for people trying to reach Europe. The countries of the south have become mere guardians of a vital space that is denied to others, to the aliens, which can be made to die in order to protect this space (Foucault 2012). State racism is a policy of death, of direct death of migrants or one that can be caused by hindering them access, which increases the risk of death. This necropolitics is a government technology used to install the power of death mostly in the constituent exterior of the EU: its southern neighbours. Racism allows for an unequal distribution of the possibility of death (Mbembe 2011). This racism cannot be separated from the violent global hierarchy that divides the different countries (Sayyid 2017), nor from the centuries of European colonialism (Karmy 2016). But racism does not remain on the external border of the EU but permeates all social relations within countries with the legal construction of irregularity and otherness, causing a division within the popular classes and hindering horizontal solidarity (Calavita 2005).

In this way, we have analysed how the permanent state of exception is the device that guarantees a regime of power within the EU to maintain relations of domination and subordination between centre and periphery in the present time. The state of exception allows the introduction of the political dimension into the legal order and thus imposes the sovereign decision (Atiles 2016). The state of exception is the device that allows the domination and reproduction of the power regime. However, the effects of this European power regime are also projected on the outside of the EU as could not be otherwise with a colonial power that violates its constitutive outside. The state of emergency enshrines capitalist, corporate and colonial domination while legalizing the violence necessary to maintain power relations. These relations are in a continuous process of reactualisation, never fully solidified, always partially disputed. In order to

subvert them it is a central task to understand the sovereign power and its governing devices in order to insert the political fact and decide on the exception.

References

Agamben, G., 1998. *Homo Sacer. El poder soberano y la nuda vida*. Valencia: Pre-Textos.

Agamben, G., 2004. *Estado de excepción*. Valencia: Pre-Textos.

Agamben, G., 2010. Notas preliminares sobre el concepto de democracia. In: J. Bassas Vila, dir., *Democracia en suspenso*. Madrid: Casus Belli.

Agamben, G., 2014. *Archeologia della Politica*. Seminar at University of Girona, May.

Aglietta, M., 1979. *Regulación y crisis del capitalismo*. Madrid: Siglo XXI.

Aglietta, M., and Brandt, T., 2015. *Un New Deal para Europa. Crecimiento, euro, competitividad*. Madrid: Traficantes de Sueños.

Aglietta, M., and Moatti, S., 2002. *El FMI: del orden monetario a los desórdenes financieros.* Madrid: Akal.

Amin, S., 1986. *El desarrollo desigual*. Barcelona: Planeta.

Amin, S., 1997. *El capitalismo en la era de la globalización*. Barcelona: Paidós.

Atiles, J., 2016. Apuntes para aba*ndonar el derecho: estado de excepción colonial en Puerto Rico.* Cabo Rojo: Educación Emergente.

Balestrini, N., and Moroni, P., 2006. *La horda de oro. La gran ola revolucionaria y creativa, política y existencial (1968-77).* Madrid: Traficantes de Sueños.

Barak, G., 2018. *Unchecked Corporate Power: Why the Crimes of Multinational Corporations Are Routinized Away and What We Can Do About It.* London: Routledge.

Bazzicalupo, L., 2010. *Biopolítica: un mapa conceptual*. Santa Cruz de Tenerife: Melusina.

Benjamin, W., 2010. *Crítica de la violencia*. Madrid: Biblioteca Nueva.

Bernal, C., 2014. Daños sociales y delitos estatal-corporativos en la crisis europea. In: I. Rivera, ed., *Delitos de los estados, mercados y daño social*. Barcelona: Anthropos, 113-129.

Bernat, I., 2018. The crimes of the powerful and the Spanish crisis. In: S. Bittle et al., eds., *Revisiting the Crimes of the Powerful: Marxism, Crime and Deviance.* London: Routledge.

Bernat, I., and Whyte, D., 2015. Entendiendo los orígenes del crimen estatal-corporativo: un análisis de los desastres del Prestige y Morecambe Bay. *Revista Crítica Penal y Poder*, 9 (1), 255-278.

Bernat, I., and Whyte, D., 2017. State-corporate crime and the process of global accumulation: mapping a global regime of permission from Galicia to Morecame Bay. *Critical Criminology*, 25 (1), 71-86.

Bonilla-Silva, E., 1999. The essential social fact of race. *American Sociological Review*, 64 (6), 899-906.

Brandariz, J.A., 2014. *El gobierno de la penalidad La complejidad de la política criminal contemporánea.* Madrid: Dykinson.

Brown, W., 2015. *El pueblo sin atributos: la secreta revolución del neoliberalismo*. Barcelona: Malpaso.

Calavita, K., 2005. *Immigrants at the Margins: Law, Race and Exclusion in Southern Europe*. Cambridge University Press.

Calavita, K., and Suárez-Navas, L., 2003. Spanish immigration law and the construction of difference: citizens and "illegals" on Europe's Southern border. In: R. Warren Perry and B. Maurer, eds., *Globalization Under Construction. Governmentality, Law, and Identity.* Minneapolis: University of Minnesota Press.

Campesi, G., 2011. *Soggetto, disciplina, governo: Michel Foucault e le tecnologie politiche moderne.* Milan: Mimesis.

Campesi, G., 2018. Crisis, Migration and the Consolidation of the EU Border Control Regime. *International Journal of Migration and Border Studies*, 4 (3), 196-221.

Carr, M., 2012. *Fortress Europe: Inside the war against immigration*. London: Hurst.

Cooper, V., and Whyte, D., 2017. Introduction: the Violence of Austerity. In: *The Violence of Austerity*. London: Pluto.

Cutillas, S., and Wessling, U., 2013. La deuda en España. In: *Plataforma Auditoría Ciudadana de la Deuda (¡No debemos!, ¡no pagamos!, coord.), ¿Por qué no debemos pagar la deuda? Razones y alternativas.* Barcelona: Icaria.

De Giorgi, A., 2010. Immigration control, post-fordism and less eligibility. A materialist critique of the criminalization of immigration across Europe. *Punishment and Society*, 12 (2), 147-167.

Dean, M., 2010. *Governmentality: Power and Rule in Modern Society*. London: Sage.

Dussel, E., 2016. *Filosofías del sur: descolonización y transmodernidad*. Madrid: Akal.

EFE, 2014. Un jurista advierte de que la venta de preferentes fue una estafa a "gran escala". *El País* [online], 10 February. Available from: https://elpais.com/economia/2014/02/10/actualidad/1392049289_426430.html [Accessed 15 August 2018].

El Mundo, 2011. Zapatero y Rajoy pactan reformar la Constitución para limitar el déficit. *El Mundo* [online], 23 August. Available from: https://www.elmundo.es/elmundo/2011/08/23/espana/1314089107.html [Accessed 10 June 2018].

Fleisner, P., 2015. *La vida que viene: estética y filosofía en el pensamiento de Giorgio Agamben.* Buenos Aires: Eudeba.

Fontana, J., 2011. *Por el bien del imperio: una historia del mundo desde 1945*. Barcelona: Pasado y presente.

Foucault, M., 2012. *Cal defensar la societat*. Barcelona: Proteus.

Friedrichs, D., 2018. Crimes of globalization and Asian dam projects: powerful institutions and slow violence. In: S. Bittle et al., eds., *Revisiting the Crimes of the Powerful: Marxism, Crime and Deviance*. London: Routledge.

Friedrichs, D., and Friedrichs, J., 2002. The World Bank and the Crimes of the Globalization: a Case Study. *Social Justice*, 29 (1-2), 13-36.

Georgoulas, S., 2018. Grecia: crimen-estatal corporativo en la época de los memorandos. *Revista crítica penal y poder*, no 14, 5-21.

Graeber, D., 2012. *En deuda: una historia alternativa de la economía*. Barcelona: Ariel.

Guareschi, M., and Rahola, F., 2011. *Chi decide? Critica della ragione eccezionalista*. Verona: Ombre Corte.

Inurrieta, A., 2013. Una estafa piramidal y consentida. *Alternativas económicas*, 1, March, 13-14.

Jansen, F., 2017. Smarters borders. Challenges and limitations of data-driven borders. In: M. Gržinić, ed., *Border Thinking: Disassembling Histories of Racialized Violence*. Publication Series of the Academy of Fine Arts Vienna, vol. 21. Sternberg Press.

Karmy, R., 2016. *Escritos bárbaros: ensayos sobre razón imperial y mundo árabe contemporáneo*. Santiago de Chile: LOM.

Knox, R., 2017. Legalising the violence of austerity. In: V. Cooper and D. Whyte, eds., *The Violence of Austerity*. London: Pluto.

Kouvelakis, S., and Lapavitsas, C., 2018. Grècia: el gir repressiu de Syriza. *Jornada*, 13 October.

Krugman, P., 1992. *Geografía y comercio*. Barcelona: Bosch.

Krugman, P., 2012. *¡Acabad ya con esta crisis!* Barcelona: Crítica.

Lapavitsas, C., 2012. *Crisis en la eurozona*. Madrid: Capitán Swing.

Lapavitsas, C., 2013. *Profiting Without Producing: How Finance Exploits Us All*. London: Verso.

Lemke, T., 2011. *Biopolitics: an advanced introduction*. New York / London: New York University Press.

Martín del Barrio, J., 2018. Novo Banco, el "banco bueno" del Espirito Santo, pierde 1.400 millones. *El País* [online], 28 March. Available from: https://elpais.com/economia/2018/03/28/actualidad/1522255785_475704.html [Accessed 3 August 2018]

Mbembe, A., 2001. *On the Postcolony*. Oakland, CA: University of California Press.

Mbembe, A., 2011. *Necropolítica*. Santa Cruz de Tenerife: Melusina.

Melossi, D., 2015. *Crime, Punishment and Migration.* London: Sage.

Mignolo. W., and Walsh, C., 2018. *On Decoloniality: Concepts, Analytics, Praxis*. Durham, NC / London: Duke University Press.

Missé, A., 2013. Atrapados en la gran ratonera de las preferentes. *Alternativas económicas*, 1, March, 9-11.

Panayotov, S., 2017. Necropolitics in the East. In: M. Gržinić, ed., *Border Thinking: Disassembling Histories of Racialized Violence.* Publication Series of the Academy of Fine Arts Vienna, vol. 21. Sternberg Press.

Pearce, F., 1976. *Crimes of the Powerful: Marxism, Crime and Deviance*. London: Pluto.

Piñero, G., and Fresnillo, I., 2013. La deuda en el mundo. In: *Plataforma Auditoría Ciudadana de la Deuda (¡No debemos!, ¡no pagamos!, coord.), ¿Por qué no debemos pagar la deuda? Razones y alternativas.* Barcelona: Icaria.

Pontell, H., *et al*., 2014. Too big to fail, too powerful to jail? On the absence of criminal prosecutions after the 2008 financial meltdown. *Crime, Law and Social Change*, 61 (1), 1-13.

Rancière, J., 2010. Las democracias contra la democracia. In: *Democracia en suspenso*. Madrid: Casus Belli.

Ruggiero, V., 2013. *I crimini dell'economia. Una lettura criminologica del pensiero economico.* Milan: Feltrinelli.

Ruggiero, V., and South, N., 2010. Green criminology and dirty collar crime. *Critical Criminology,* 18, 251-262.

Said, E., 2002. *Orientalismo*. Barcelona: Mondadori.

Sayyid, S., 2014. *Recalling the Caliphate: Descolonization and World Order*. London: Hurst.

Sayyid, S., 2017. Post-racial paradoxes: rethinking European racism and anti-racism. *Patterns of Prejudice*, 51 (1), 9-25.

Schmitt, C., 1991. *El concepto de lo político*. Madrid: Alianza.

Schmitt, C., 2009. *Teología política*. Madrid: Trotta.

Snider, L., 2000. The Sociology of Corporate Crime: an Obituary (Or: Whose Knowledge Claims have Legs?). *Theoretical Criminology*, 4 (2), 169-206.

Stravrakakis, Y., 2013. La sociedad de la deuda. Grecia y el futuro de la postdemocracia. In: A. Badiou et al., *El síntoma griego*. Madrid: Errata naturae.

Taibo, C., 2018. *Comprender Portugal*. Madrid: Los libros de la Catarata.

Taylor, I., 1997. The political economy of crime. In: M. Maguire, R. Morgan and R. Reiner, eds., T*he Oxford Handbook of Criminology*. 2nd edition. Oxford University Press, 265-303.

Tombs, S., 2012. State-Corporate Symbiosis in the Production of Crime and Harm. *State Crime*, 1 (2), 170-195.

Tombs, S., and Whyte, D., 2015. *The Corporate Criminal: Why Corporations Must Be Abolished*. London: Routledge.

Toussaint, E., 2014. *Bancocracia*. Barcelona: Icaria.

Vasapollo, L., Martufi, R., and Arriola, J., 2014. *El despertar de los cerdos: PIIGS, Portugal, Irlanda, Italia, Grecia, España.* Madrid: Maia.

Vilar, P., 1984. *Història d'Espanya*. Barcelona: Crítica.

Whyte, D., 2014. Regimes of permission and State-corporate crime. *State Crime*, 3 (2), 237-246.

Whyte, D., 2015. *How Corrupt is Britain?* London: Pluto.

FOURTH PAPER

POSTFASCISM IN SPAIN: THE STRUGGLE FOR CATALONIA

Ignasi Bernat and David Whyte

Abstract

The thousands of Spanish National Police and Guardia Civil sent to Barcelona in order to prevent the referendum legislated by the Catalonian Parliament on the 6th and 7th September raised major questions about the fragility of Spanish democracy. The subsequent display of police violence on 1st October 2017, and the imprisonment and criminalization of political opponents for the archaic offences of 'rebellion' and 'sedition' looked even less 'democratic'. Indeed, those events in Catalonia constitute a remarkable moment in recent European history. This paper uses the literature on 'post-fascism' (developed in this journal and elsewhere) to analyse this remarkable moment and develop its social connections to the parallel re-emergence of fascist violence on the streets and the appearance of fascist symbolism in mainstream politics in Spain. The literature on post-fascism identifies contemporary fascism as a specifically *cultural* phenomenon, but generally fails to identify how the conditions which sustain the far-right originate *inside* the state. In order to capture this historical turn more concretely as a process in which state institutions and processes of state craft are intimately involved, we argue that the Spanish *state* is postfascist. The paper offers a brief critique of the way the concept of post-fascism has been deployed, and, through an empirical reading of the historical development of Spanish state institutions, it proposes a modified frame that can be used to understand the situation in Catalonia.

Keywords: Postfascism, political repression, far-right, democracy, state power

Introduction: A Scene from Spain's Dark Past?

In the weeks running up to the independence referendum on the 1st of October 2017, spontaneous demonstrations broke out across Catalonia. The people on those demonstrations chanted anti-fascist slogans "No Pasaran" and "We are not afraid",

alongside well known anti-Francoist resistance songs. It seemed to outsiders as if the crowds were using a misplaced nostalgia: surely they weren't comparing the struggle for Catalan independence with the struggle against fascism in the Spanish civil war? Yet in the aftermath of the referendum, a number of visible instances of state violence and clear manifestations of far-right violence made it seem as if there might be a material connection to be made between the darkest days of Franco and the present moment in Spanish politics.

Garrisons of Spanish National Police and Guardia Civil (estimated at a total of 10-12,000) were sent to Barcelona after the Catalonian Parliament had passed two laws on the 6th and 7th September (one to confirm the referendum and the other to make the result binding). The subsequent violent scenes of the Guardia Civil and the Spanish Police beating, dragging and shooting plastic bullets at voters on the 1st October provoked many to ask if this was a return of the darkest days of Franco's Spain. In this context the words of Pablo Casado (who is now President of the conservative Partido Popular (PP) but was then Deputy) in the days following the referendum contained a remarkable threat: "if Puigdemont declares independence from Spain, he may end up like Companys." Casado backtracked quickly, saying he was 'only' threatening to jail the President. But the symbolism of this statement is powerful. Companys was the Catalan President who was executed by Franco in 1940.

The referendum and its aftermath has brought to the surface some apparent examples of the residual Francoism and fascism in the police and the military. There have been a number of publicised cases of police officers displaying Francoist symbols, and even giving the fascist salute in public. At the end of July 2018, a group of 180 retired Spanish army personnel signed a Manifesto demanding an end to attacks on "Franco and its legacy" in the midst of the debate about whether it was appropriate that he was still lying in state at the monument of Valle de los Caídos. Although such cases are anecdotal and do not tell us anything definitive about the general character of the Spanish army, the national police or the Guardia Civil, the frequency and intensity of such incidents does raise questions about the presence of fascist sentiments and allegiances deep inside in the military and the police.

On the streets, there has been an ongoing series of cases in which fascists have attacked pro-independence supporters, or even simply people that are assumed to be Catalan. Thugs claiming the mantle of Franco's Falange party – the heirs of Franco's one-party state who have barely been seen in public for 40 years – marched in Zaragoza on the day of the Catalan referendum. In Barcelona, Spanish unionist marches have been followed by violent attacks against journalists, migrants, and left political activists. It has been reported that between 8th September and 11th December there were 86 recorded incidents of physical violence by Spanish nationalists in Catalonia (Borràs, 2018).

The struggle of independence in Catalonia and the repression unleashed in the wake of the referendum has apparently given some momentum to the far right, and even to the resurgence of a residual pro-Franco sentiment. This residual sentiment is beginning to emerge in mainstream politics, most clearly in the success of the fascist VOX party in Andalusia. VOX is an explicitly Francoist political party, indeed, the first to emerge since Franco's Falange Party. The regional elections in Andalusia in 2018 left VOX in a strong enough position to enter a power sharing deal with the PP and populist right wing party Ciudadanos. The most prominent of the manifesto promises made by VOX was the abolition of Catalan autonomy (the party has regularly held demonstrations 'against Catalonia'). VOX also promised the repeal of laws tackling gender violence and laws that recognise the status of the victims of Franco, along with the mass deportation of all non-regularised migrants.

How do we explain such a rapid re-emergence of open acts of fascist violence and the apparent mainstreaming of Francoism in politics? The next section of the paper refers to a growing literature which tries to explain the rise of the far right, particularly in Europe, but also in North America, as a 'post-fascist' phenomenon. This paper will argue that those analyses that generally seek to distinguish the European fascism of the 1930s and 40s from the contemporary far right are missing one crucial focus of analysis: the state. Recent work on 'post-fascism' identifies contemporary fascism as a specifically cultural and political phenomenon, but fails to identify that the conditions which sustain the far-right originate *inside* the state. In order to capture this historical turn more

subtlely, we argue that the Spanish *state* is postfascist. It is our understanding of how this concept can be applied that the next section of the paper develops. In the following section of the paper we offer a brief critique of the way the concept of post-fascism has been deployed, and propose a modified frame that can be used to understand the situation in Catalonia.

Postfascism

We place the Francoist legacy of the contemporary regime of power in Spain and its practices of government at the centre of our analysis. We are well-aware of the tendency of the left to overuse the term fascism to refer and to condemn the authoritarian practices of Western governments. However, from the Second World War until now, of the countries that were ruled by fascist forces including Germany, Italy, Greece and Portugal or Spain, it is only Spain that we can apply this term to. As we argue in this section of the paper, the term postfascist applies to Spain because of its particularities. On the one hand, Italy and Germany passed through different processes of expelling fascism from institutions and practice of governmnt as a direct result of military defeat. Greece and Portugal because of their political economy and longstanding fascist regimes are more comparable to the situation in Spain. Yet in the end, for very different reasons, those two dictatorships were exposed to processes of reparation, memory and indeed criminal trials that helped expel fascism from the system of government. Even these attempts in these four countries were not fully successful were legally and institutionally lead. This is not the case at all in Spain. In Spain the regime of power was never challenged intrinsically. That is, the state process which started after the fascist military victory in 1939 was never ruptured by the constitutional settlement after Franco's demise, and continues to reproduce similar forms of state power.

There is some debate in the research literature on the precise nature of Francoism. Some argue that we cannot understand Spain as a typically Fascist state (Saz, 2004; Griffin, 1993; and Tusell, 1988). According to Payne (1985) for example, in both Italy and Spain the basic structures of an authoritarian government didn't emerge from a radical fascism on the streets but from an authoritarianism that was more institutional

in nature. But it is important to highlight that both Franco and Mussolini used state Fascist parties to organise the social power they needed to rule. Those Dictatorships combined fascist ideology fascist with non-fascist elements to enable power to be concentrated in the figures of el Caudillo and el Duce. At times, both subordinated the national sindicalist priorities of fascist militants to the wider regime interests (Payne 1992). In 1937 Franco adopted the 27 points of the Spanish Falange and created a unique new Traditionalist Spanish Falange Party that aimed at bringing all of the right-wing forces in Spain closer to the centre of power, including the Catholic Church and the Monarchy (Payne 1985). The Spanish model of dictatorship certainly had more in common with the Italian Fascist state than Italy had with the German Third Reich. One effect of the outcome of the Second World War on the European alliances meant the Spanish regime masked some of its fascist features, and needed to create more broad-based support for the regime across civil society, to gain international respectability.

It is this process that has led some to argue that Spain was not a purely fascist state. Payne (1992) characterise Franco as a "semi-Fascist" because of his ability to consolidate and bring into the centre of power social forces that may have been right wing but did not explicitly articulate fascist ideology. However, as we have noted, the incorporation of non-fascist elements in Franco's regime was always done to strengthen the rigid authoritarianism of the regime, to strengthen the one-party state, and to keep power concentrated in the military and the coercive apparatuses of the state. For this reason we argue that although Franco tried to portray his regime differently, his regime always bore the key hallmarks and characteristics of a fascist state.

There is a growing literature that deploys a concept of post-fascism to understand the resurgence of the far-right across a number of disparate political contexts. Some of this literature seeks to develop an understanding of a new populism that has seemingly common features across a range of different national contexts: the rise of Trump, the racialised and racist political debates around 'Brexit' in the UK, the resurgence of the far right in European states such as Italy, Hungary and Poland, as well as in the complex politics of Catalonia's bid for independence. Some authors use post-fascism as a way of identifying a resurgence in right-wing populism. This type of analysis is that post-fascism

is taken to describe the rise of a particular form of popular sentiment: one that is nationalist, nostalgic, xenophobic and racist. Rasmussen (2018: 2) for example, locates the problem of the rise of right wing, populist movements in "post-fascism." For him, post-fascism operates at the level of cultural superstructures; it is "a broader culturalisation of economic struggle and society."

In this literature, the origin of the problem of post-fascism, by and large, is located at a cultural level, in popular sentiment. Post-fascism is explained as a phenomenon that owes its salience to ease with which the masses are on over by manipulative arguments, rather than locating the problem in any deeper institutional or structural cause. From this perspective, post-fascism is a cultural expression of an underlying political economy. As Rasmussen (ibid.) argues, right-wing ideologies can not necessarily be challenged simply by reconnecting them with the economic base. Economy itself is not sufficient in order to explain the 'true' cause of post-fascism. This may be the case, and the seductiveness of right-wing ideas under conditions of perpetual political and economic instability may mean that such ideas can develop some internal momentum and relative autonomy. For other authors, an understanding of post-fascism at a cultural level – specifically re-drawing and re-purposing of its Utopianism - can instruct us on the most effective form of challenge to the new right (el-Ojeili, 2018). Yet in many of those accounts, the state and its institutions are generally absent: post-fascism is too often discussed as a purely cultural phenomenon.

Another strain of theorizing around post-fascism *does* foreground a shift in the state/institutional construction and location of political struggles. For authors like Traverso and Meyran (2019) and Ruzza and Fella (2009), the key shift in the structure of right-wing populism is the shift from an extra-parliamentary base (mass movements on the street, a strong paramilitary support, and opposition to democratic politics) to the use of political parties that channel nationalist aspirations through mainstream politics. Traverso (2017) uses the term post-fascism to establish a distinction between the political parties and movements that claim the mantle and the heritance of fascism. Those parties and movements typically dismiss or negate the atrocities of these regimes. Instead, post-fascism for him refers to the movements and parties that evolved from

that tradition to obtain a wider support and legitimacy through a predominantly electoral strategy. Such post-fascist organizations can embrace, often counterintuitively, social movements that were the targets of the 'old' fascism (LGBT communities, or a diverse range of ethnicities and nationalities). Post-fascism can even incorporate diverse strategies of inclusion such as environmentalism and homonationalism (Puar 2014). Post-fascism at the same time retains a commitment to far-right traits such as white supremacy, racist policies on migration, an explicit Islamophobia and anti-Semitism, a strong nationalism and tough authoritarianism.

This perspective understands post-fascism as a formal political phenomenon, a core dynamic that Griffin (1995: 123) describes as democratic fascism. In Spain, the far-right is also capable of masking its fascism through a similar process. However, in this article, we are not concerned with the continuities between Francoism and far-right political parties. Rather we concentrate on the continuities between Franco's state and the contemporary Spanish state. We would argue that the literature on post-fascism, because it is predominantly focussed upon 'social movement' or 'democratic' fascism, has tended not to analyse the vulnerability of the state and its institutions to a process of post-fascism.

Again, in those accounts, there is no analytical focus on the state more generally. Politics appears as an autonomous sphere. This literature does not develop a comprehensive account of the state and the complexity of state institutions. An application of the concept of post-fascism that does foreground the state has been developed by Tamás (2000). Although he shares the core ideas of Traverso and Ruzza and Fella, that post-fascism "does not need storm troopers and dictators" and is "perfectly compatible with an anti-Enlightenment liberal democracy" (ibid.: 53), for Tamás, the positioning of the state in a purely legal sense, as the sovereign power is key to understanding post-fascism. A core feature of post-fascism from this perspective is the assertion that citizenship can and should never be universal and instead is always in the gift of the sovereign (ibid.: 53).

Despite its subtle analyses of culture and politics, one general point we would conclude about the literature on post-fascism: that there is little understanding of how the state organizes the spheres of culture, politics and economy. Indeed, there is no recognition that the state is necessary to materialize and concretise social relationship through those realms, and that as a consequence state institutions play an active role in making and reproducing those spheres of culture, politics and economy (Poulantzas, 2018: 311). In short, the concept of post-fascism in the literature tends to lack a historically or materially grounded analysis of how culture, politics and economy are shaped by social forces, and indeed how they can be or *become* post-fascist. This paper seeks to bring the state into the centre of our analysis of post-fascism in Spain. We therefore intend to explain with detailed reference to the institutions of the Spanish state, how ideas and practices are generated and maintained by state institutions in ways that foster a particular form of exclusionary nationalism and provide a frame for understanding the persistence of far right, Francoist, ideas and practices in Spain.

Brandariz García and Faraldo Cabana (2015) develop the beginnings of a more historically grounded argument around post-fascism in relation to the Spanish state, one that emphasises the centrality of state rationalities, practices, forms of organizing and so on. In studying the steep rise in imprisonment in post-dictatorship Spain, they argue that the inability of the current system to provide redress for the human rights violations of the dictatorship has created "inertias" in the criminal justice system that have left intact "the exceptionalist treatment of certain criminal acts, and the role of penality in governing the sense of disorder arising from accelerated transformations" (ibid.: 16). As the transition to democracy was marked by an "accelerated" transformation because it was forced to adapt the logics and practices of a post-Fordist state at the point at which it had barely become a Fordist welfare state (Jiménez, 2017). Other authors pinpoint significant continuities between the Franco regime and the post-1978 democracy. Jiménez González (2018) sees the continuity of the legal exceptionalism as an ongoing feature of the Spanish political system as the form of dealing with all disruptive movements, whether domestic, or in Spain's colonies since the late nineteenth century.

This paper takes a similar approach. An understanding of the failure of the post-1978 transition to develop a clear rupture between the periods of dictatorship and democracy is crucial for understanding the contemporary Spanish state.[2] But we argue that this is not merely a question of legal or social control. A framework of postfascism can be used to understand the entire complexity of institutions, cutting across cultural, economic and political spheres, and incorporating Spain's enduring form of legal exceptionalism.

We use the term 'postfascism' to state unequivocally that today's Spain is clearly not fascist, but at the same time to stress that the remnants of Franco's fascism in political, economic and cultural modes of power have not been completely eradicated. Following the key contribution made by the debates on postcolonialism and the coloniality of power (Quijano, 2018), what we learn from this debate is that the formal independence of 'former' colonial powers did not transform those societies or transforms the basic coordinates of colonial power that were developed over several centuries. The basis of colonialism remained in place, through an albeit wider range of (cultural, economic and political) mechanisms of power. The key lesson for us in the context of this paper is that you cannot change the basic structure of power relationships simply by changing the name of a state, by changing its flag and by changing its formal political structures. The coloniality of power has a historical and material basis that were slowly solidified over centuries and have continued to operate in a similar way (ibid.). Postfascism, then, is analogous to the "coloniality of power": it reproduces the old forms of exclusion and violence with newly modified and veiled forms.

In the Spanish domestic context, the form of historical memory preserved by the state, the constitutional structure, the administration of politics, law, the police and the military, and a number of other crucial matters of state have prevented or blocked the

[2] The 1978 Constitution was a compromise between a range of political interests but was ultimately written by a group dominated by right wing parties that were closely associated with the Franco dictatorship. The Constitution asserts "the indissoluble unity of the Spanish Nation" as "the common and indivisible homeland of all Spaniards". Also, the Constitution "recognizes and guarantees the right to self-government of the nationalities and regions." This right however is limited by article 155, that assert if a regional government doesn't comply with the obligations of the Constitution "or acts in a way that seriously undermines the interests of Spain" the national government can effectively annul its autonomy by imposing direct rule.

complete severence and transition from the previous regime. The postfascist regime is the outcome of a process of state-making which started in 1939 across the key institutions of power (the police and military, the financial sector, the media, the cultural sphere and so on). The postfascist settlement secured immunity and impunity for Franco's elites when the transition was supposed to signal the birth of a new relationship between citizen and state (Fontana, 2014). The retention of those elites in key political and business positions was a price that was paid for the state conceding basic civil liberties. Thus the grossly unequal social relations that existed under Franco went unchallenged in the transition to formal democracy. It is also important to recognise that Francoism was able to consolidate support for brutal political repression not only in the elites, but also among some section of the wider populace. This came about largely as a result of a relatively short period of Fordism between 1959 to 1973 that was able to improve the material conditions of some key sections of the working class (López and Rodríguez, 2010). In this sense, Franco's regime in the 1960s and 1970s was sustained not only through fear of the violence of the state, but through a fascist corporatism that sought a broad popular support. Perhaps most significantly, through its public support for the regime, the Catholic church played an important role in cementing the popular acceptance of Francoism from the very beginning.

In the discussion that follows, we are primarily concerned with the continuities between Franco's state apparatuses and the current forms that state institutions, or what in Marxist approaches are known as state apparatuses, have adopted. The paper therefore considers postfascism in the sense of the institutional continuity that stretches back beyond the formal ending of fascism. This is also a significant departure from the crude representation of Catalonia in international reportage and analysis as the response of a fragile state to a populist uprising (and this uprising, though is not characterized as a right-wing movement, has all of the elements of cultural utopianism, a revanchist and nostalgic nationalism and so on). If we place an understanding of the material role of the state at the heart of the analysis of this conflict, it does not look like a struggle that arises from a Catalan utopianism or even nationalism; it does not look like a new form of populism, but part of a long process of state crafting, with very clear historical continuities.

In classical Marxist accounts of the state there is a tendency to highlight the repressive apparatuses of the state (the army, police, courts, laws, administration or governments; Poulantzas 2018). According to Poulantzas the repressive apparatuses constitute the central core of state power and have an integral unity. The images of the police violence on 1st October 2017, and the trial of the political prisoners, shape the narrative of the Catalonia struggle. It looks, to an international audience at least, like the conflict is largely a struggle around the disproportionate use of the state's repressive apparatuses.

However, from a Gramscian perspective the state must be understood in a more complex way (Gramsci, 1996). Hegemony - the authority to govern - can never rely on repression alone. The state requires developed economic apparatuses and ideological apparatuses in order to maintain its legitimate authority. Economic apparatuses are understood as the institutional features of the state that allows the social conditions of production to be maintained. The ideological or cultural apparatuses establish the dominant stories about how and why a society is governed in particular ways and in this narrative establishes the limits on any possibility for social change. Ideological/cultural apparatuses therefore transmit the values of the state. They include the Church, trade unions, political parties, schools and universities, and the media. Economic and ideological apparatuses have a relative autonomy from the state as many of them have a private nature. However, in a Gramscian sense, they must be considered as mutually reinforcing features of the state that provide the authority to rule. In the analysis that follows, we identify the elements of postfascism in the repressive, economic and ideological apparatuses of the Spanish state. Following the death of Franco and the transition to democracy, the post-1978 regime set out a very different basis for its own legitimacy. Rather than involving a complete rupture with the fascism of the past, the transition in fact preserved some important continuities in the Francoist system. Those continuities can be understood as having 3 broad dimensions: cultural, economic and constitutional/legal. It is those features of the postfascist regime that the next 3 sections of the paper consider in more detail in order to understand the conflict in Catalonia.

The Cultural Endurance of Francoism

Firstly, we need understand how the Franco era continues to shape *cultural* practices and continues to shape relationships across the different peoples and nations within the Spanish state. A starting point for understanding this legacy is to recognise how Spanish nationalist culture has marginalised and stigmatised the culture of the non-Spanish nations. The suppression of both Basque and Catalan language are perhaps the best known examples of this legacy (although Franco's suppression of non-Spanish culture was universally applied).

The diversity of cultures and languages that exist on the Iberian peninsular are still not valued equally and therefore, they are not protected equally. This enduring hierarchy of culture has helped to homogenise the dominant ways of thinking and acting as a 'state', and has had two major effects. The suppression of non-Spanish culture in the Franco period was very clearly aimed at weakening popular resistance to the Dictatorship. In the post-Franco era it has provided the basis for an enduring Spanish unity. Today, cultural motiffs are used as a means to homogenise cultural diversity: to ensure that the different peoples within Spain are viewed in cultural terms (Spanish first, and Catalan or Basque or Galician second). Catalan music and art, for example, becomes assumed as part of a larger 'Spanish' whole. A project of cultural homogeneity has therefore provided a basis for hegemonic power: it has strengthened 'Spanish' values and cultural motiffs in education, the arts, music and in sport.

The association between the Francoist state and the key symbols of the nation are not easily dismissed. It is the red and yellow nationalist flag restored by Franco that remains the Spanish flag, not the republican tricolor. Spain's national day is the 12th October, the anniversary of the arrival of Christopher Colombus in the Americas. This is Franco's "day of the race" that he consecrated by decree in 1958 to celebrate "a system of principles and norms created to better defend the Christian civilisation across the Hispanic community of nations".[3] Under Franco, this national holiday explicitly celebrated the conquistador traditions of Spain and remains closely bound to a colonial,

[3] This quote is taken from Franco's decree, see: https://theconversation.com/spain-marks-its-national-day-but-not-everyone-is-celebrating-49012.

anti-republican nationalism. The ongoing public funding of the Franco Foundation, the preservation of the Duchy of Franco (a hereditary title gifted to the Franco family by King Juan Carlos), the statues of the Dictator or other important figures of the dictatorship in public places and the streets named after him, are all examples of the cultural endurance of the regime. Together those examples are testimony to a survival of the elements of the Dictatorship at the heart of the Spanish aristocracy and the Spanish state.

This context is accutely relevant to the situation in Catalonia. The current constitutional crisis has been encouraged by the revival of a Spanish identity that exploits the paraphernalia of Spanish cultural nationalism. In 2004 the Spanish conservative party, the PP developed a more explicitly nationalist-authoritarian position on Catalonia and on Spanish nationhood generally in order to destabilise the Socialist party (PSOE) in government and build voter loyalty through explicit appeals to Spanish patriotism. The PP's renewed patriotism was part of a calculated effort to recover political ground after a series of unpopular policies that undermined its support base including Spain's role in the 2003 invasion of Iraq, the sinking of the Prestige oil tanker[4] and the terrorist attacks in Madrid in 2004. The PP's renewed patriotism represented a calculated bid to shift the role of the state from being a welfare and social provider to being a guarantor of the Spanish unity. That is, this strategy sought a repositioning of the role of the state (and the allegiance of voters) from social to national issues (using a simlar process that Beckett and Sasson 1999 refer to in the context of criminal justice in the US). A Spanish boycott of Catalan products, including Cava, was encouraged by the extreme right both inside and outside the PP.[5] This boycott campaign – a clear manifestation of what has become known as *Catalonophobia* – sought to exploit an idealised and homogenised Spanish identity, and in doing so bolstered support for far right groups who claim the mantle of Franco. The boycott is perhaps the most extreme example of a Catalanophobia that has in the past few years seen a growth in the use of racialised

[4] The Prestige disaster was an oil tanker spill that occurred off the coast of Galicia in November 2002. It was probably Europe's largest ever oil spill and a huge environmental disaster. Spanish government ministers were accused by campaigners of negligence in a series of decisions relating to the disaster response.

[5] This call was revived on social media in the days following the 1st October referendum. In the 2006 boycott, sales of Catalan cava are estimated to have fallen by 8%: http://www.elperiodicodearagon.com/noticias/economia/cava-catalan-cae-8-culpa-boicot_230214.html

jokes about the Catalans by comedians and in popular songs.[6] There are also a growing number of petty cases of people being victimised for using the Catalan language in courtrooms, and in other forms of official communication (Bambery and Kerevan, 2018). The most striking evidence that the new Catalanophobia has had an enduring cultural impact is captured in the images published by Spanish news agencies of crowds chanting 'Go get 'em' to the Spanish National Police in front of their barracks as they left to prevent the 1st October referendum.[7] Those manifestations of Catalanophobia give coherence to a renewed Spanish nationalism that reinforces the Spain's right to tell the story of all of 'Spanish' peoples (in a similar process to that articulated by Sayyid, 2014 in relation to the British state's Islamophobia).

The Spanish national story is the universal narrative through which Catalan identity - and the national identify of everybody else under the Spanish Crown – must be defined. If they are not Spanish first, and Catalan, Basque, Galician or Andalusian second, then they remain "selfish" (Catalans), "backward" (the Basques and the Galicians) or "lazy" (the Andalusians). If they project themselves as anything else, the culturally distinct expressions of the peripheral nations become seditious acts against the rest of the nation. Any 'national' conflict now is also projected in ethnic terms (all peoples are Spainish and therefore must be incorporated into the national story) and the formation of different identities and different collective desires is dissolved by the Spanish monopoly over the political sphere. Any deviation is expressed in highly militaristic terms as 'insobordination' or disobedience. Both the PP and right-wing populist party, Ciudadanos, have argued that Catalan claims are invalid because they have already been granted more autonomy than they deserve in financial, political and security matters. The insobordination they have shown demanded a restoration of the primacy of the Spanish nation. Acts that are percieved to be against 'Spanish solidarity' are easily reduced to acts of rebellion and sedition that warrant imprisonent and exile. In February

[6] For example, at the carnival of Cadiz, one performance featured the beheading of the Catalan president in exile, see: https://www.elconfidencial.com/espana/andalucia/2018-01-11/por-que-decapitar-a-puigdemont-en-los-carnavales-no-es-delito-de-odio_1504502/

[7] Those images of people supporting the police projected an image of popular support for police violence that was targeted exclusively against the Catalan people, see: https://www.antena3.com/programas/espejo-publico/noticias/al-grito-de-a-por-ellos-despiden-a-los-agentes-de-refuerzo-en-cataluna_2017092759cb5f380cf2b32f5946e7ab.html

2018, the New York Times reported in relation to a cultural clampdown in Catalonia and the Basque country:

> Whether by law or intimidation, Spain has become a country where the risks of free expression have quietly mounted in recent years. Puppeteers have been prosecuted for inciting terrorism. So have a 21-year-old Twitter user, a poet and some musicians, including the 12 members of a band. A much criticized law has made it illegal to film the faces of police officers on the streets, and sharply restricts public gatherings (Minder 2018).

The desparate need to dominate and subjugate Catalonia culture has become grotesquely visible since the referendum. The spectacle of police confiscating yellow banners, ribbons and balloons from football fans[8] and the banning of the use of the colour yellow by human rights activists[9] is perhaps one of the most extreme and preposterous manfestations of the the state's complete pulverisation of any discussion of the political prisoners.

And yet, the 'banning' of the colour yellow in public places mirrors precisely the logic of the '78 regime which has offically erased the public memory of political repression. The 1978 post-Franco settlement ensured that the new Spanish state would not officially recognise Franco's treatment of politicial prisoners, or even his mass graves (Rodríguez, 2015). Even now, the Spanish state actively works to oppose any efforts to record and recognise the bodies (Domínguez, 2018).

Subordinating Economic Independence

The postfascist regime has in parallel sustained the same form of economic relations, headed by the same elites that thrived in the Franco era. Those same economic elites have directly inherited the mantle of Franco's state-established corporations (Jiménez

[8] Police and security staff confiscated yellow t-shirts and scarves from FC Barcelona fans at the Spanish Cup final with Seville on 21st April 2018. Days before the match, the Spanish Home Affairs Minister, Juan Ignacio Zoido, announced that whistling at the Spanish national anthem before a football match should be regarded as a violent offence and stated that the Spanish government "without a doubt there will be modifications to strengthen the current legislation."

[9] The Spanish electoral board ordered all shows of support using the colour yellow to be removed from Barcelona fountains and public buildings during the election period in December 2017.

Franco, 2017). For example, construction corporations like OHL, Entrecanales and ACS expanded rapidly under Franco and today continue to play a key role in Spain's economy. The banks played a key role through financing the coup d'etat (Banca March) and the subsequent dictatorship (Santander) and continued to flourish after the transition (Juste, 2017). In failing to challenge the power of Franco's oligarchy, the political transition represented a pacification of the previous 'fascist' accumulation regime, and its smooth incorporation into a 'democratic' economy. At the same time, this transition ensured that the link between the regime's violence and social and economic power remained hidden. The post-Franco 'democracy' thus erased from its institutional memory the fact that the primary goal of Francoism had been to interupt a process of social equality based on wealth redistribution.

This same intimate relationship between economic and political power has been an ongoing feature of contemporary Spanish politics. Whilst this continuity was probably more obvious under the PP governments (1996-2004), Franco's economic elite was strategically protected by the PSOE governments that immediately followed the regime (1982-1996). Indeed, it was the privatisation of the former state monopolies, beginning in the 1990s, that opened a new opportunity for that same business elites to consolidate their dominant position. This postfascist structure of political-economic power made Spain particularly vulnerable to large-scale corruption. In some of those privatised corporations, both 'Socialist' and Conservative politicians were given board positions. Other companies (such as Endesa, Telefonica, Argentaria, ADIF and Abengoa) became directly owned by politicians or civil servants.

It was the postfascist structure of political-economic power that had left Spain particularly vulnerable to the economic crisis of 2008. The new Spanish stock exchange IBEX-35, created in 1992, exemplifies this strong connection between political party and corporate elites that dominated politics, the economy and shaped industrial strategy (ibid.) and ultimately ensured the economy would be organised around the financialisation of major public 'megaprojects', the construction boom and the mortgage bubble (López and Rodríguez, 2010).

The economic-political strategy followed by Spanish governments in the aftermath of the 2008 crisis represented a different type of revanchism, but one which sought the same outcome: the Spanish government strategy post-2008 was to shore up the interests of financial elites at the moment they were most vulnerable. The bank bailout in Spain was underpinned by the largest financial aid package in the Eurozone. This partly reflected the depth of the Spanish banks exposure, but it also reflected the need to prop up European, especially German investors who risked huge losses. The rescue package was therefore designed to bail out Europe's financial class as much as Spain's. Indeed, this international solidarity was to be repaid by the EU's astounding failure to rebuke the Rajoy government after the violence of the 1st October 2017 (Bambery and Kerevan, 2018).

The lengths to which the Rajoy government were prepared to push its revanchist strategy is exemplfied in the modification of the Spanish constitution in August 2011. This modification - introduced as a consensus between the ruling PSOE and the PP in opposition – came in the form of article 135 which amended the constitution to guarantee the priotitisation of the repayment of the public debt above *any* social spending. This economic 'stability' measure was key to ensuring the primacy of the interests of the Spanish banks and corporations and foreign capital investors as a matter of *constitutional* priority. The right to profit was effectively secured even when so many of the beneficiaries of this measure were widely known to have been routinely engaged in fraud in the run up to the crisis (Fontana 2011).

Crucially for Catalonia, the burden of the financial crisis disproportionately fell on the peripheries and the regions. In a financialised economy there is a tendency for the the state and the largest corporations to continually absorb resources centrally, drawing infrastructures, civil servants, corporations, banks and the financial activity of the peripheries ever closer to the financial centre. Morevoer, because the largest corporations are impelled to seek influence over, and protection from, political power (through lobbying, inter-locking directorships, the revolving door and so on) this creates an impetus to relocate parent companies at the political centre of power. The deep financialisation of the economy has certainly produced a better outcome for Madrid

than it has for Catalonia. Spain's program of privatisation in the 1990s and 2000s saw some of the the most important public corporations privatised. These companies were in a perfect postition to expand Spanish financial influence globally, in Latin America particularly, and facilitate the get-rich-quick rise of a Madrid-based financial class which historically had been less developed, than, for example the financial class in Barcelona or Bilbao (Juste, 2017; López and Rodríguez, 2010).

The effect of article 135 was therefore to intensify the financial centre at the expense of the periphery. More crude forms of public funding allocation intensified this process of economic centralization. In 2010, regional governments were forced to cut their public deficit at a rate that was three times higher than central government (Manresa, 2018). The budget cuts have left those regional government systems in a highly precarious situation. This strategy was partly legitimised by the strategy of Catalanophobia outlined above. The Spanish government under the PP mobilized and shaped fears and tensions about the 'problem' of the regions, particularly Catalonia, in order to deflect from growing accusations about its mismanagment of the crisis and the corruption scandals it faced.

In sum, austerity policies sought a revanchism – a project that enabled financial elites to recapture their wealth - that targeted both the working class and the property owning class in the peripheral regions. It is at this moment that the sympathy of the latter in Catalonia for pro-independence ideas gained a renewed momentum. The financialisation of the economy had the effect of concentrating power, thus rendering the peripheral nations in a weak position in relation to the national economy. As a result, the allegiance to Madrid of the Catalan bourgeoise became fatally weakened. If the former had been a stabilising force, which throughout the 19th and 20th centuries saw alliance with Spain (even fascist Spain) as a necessary evil (or at least a necessary market for its products), this was no longer the case. It was austerity that broke this historical compromise with Spain: the state could no longer guarantee the protection of the peripheral bourgeoise as it opted to consolidate the hegemonic position of financialised Madrid. Here we can see a clear split within the ruling class between the the small and medium enterprises that largely supported independence as they did not see any

further commercial advantage in remaining part of Spain. Only the 'high bourgeoise', that is the more internationalised sectors of the business class, and the Catalan transnational corporations, remained largely in favour of preserving the Spanish union (Bambery and Kerevan, 2018).

But Catalonian elites are not secure in their support for independence, and neither are they unified in this changing political terrain. The channels of communication and collaboration between Catalan and Spanish capital remain open, especially in the financial sector. Indeed, some large corporations have worked against the independence movement, particularly in the wake of the general strike on the 3rd of October 2017, two days after the referendum (Font, 2015). The significance of this strike cannot be underestimated. The strike was organized to protest against the police repression. This was the first time that workers were mobilized around the question of self-determination. This mobilization - the biggest general strike in living memory - forced the King Felipe VI to appear on national television on the evening of the 3rd of October to underline Spain's determination to stop the independence movement in its tracks. Felipe's failure to mention the police violence on the 1st of October thereby legitimised the state's response and opened the space for the application of the article 155.

The Endurance of the Francoist Constitutional Order

The role of monarch is of huge significance to a third aspect of postfascism that we highlight here: the lasting legacy of the dictatorship on Spain's political and legal institutions. The position of the monarchy was re-established and significantly strengthened by Franco. As part of the 1978 settlement, the position of the monarchy was re-established in order to secure Franco's legacy. There had been no monarch in Spain for 4 decades, but in 1969, Franco officially appointed Prince Juan Carlos, the grandson of the former king, Alfonso XIII, as his successor. In exchange for this appointment, Juan Carlos swore allegiance to Franco's 'Principles of the National Movement'. The 1978 constitution appointed the King officially as the head of state and the head of the armed forces. In the context of a clear *political* lineage between the Monarchy and Francoism that is universally acknowledged, and in far-right circles,

positively celebrated, this does not look like a benign or 'symbolic' monarchy, but one with significant constitutional and political force (Ewing, 2019).

When Felipe addressed his people on the 3rd October, he spoke of the indissolvable unity of Spain in his capacity as head of state and head of the armed forces. His explicit accusation of Catalonia and its institutions of disloyalty opened the political space for the application of the article 155 of the Spanish constitution. It is difficult to imagine any other Monarch in Europe playing such an overtly political role in a civil dispute. And it is impossible to imagine a monarch with a widely acknowledged fascist inheritance making such an intervention anywhere else in Europe.

The 1978 constitutional settlement preserved the continuity with Francoism in other, more hidden, but equally significant ways. The 1977 'Amnesty Law' gave an official amnesty to Franco's political prisoners (Salellas, 2015). The Amnesty Law also stipulated impunity for crimes related to the regime. In 2012 Office of the U.N. High Commissioner for Human Rights made a formal request to Spain to repeal this law because it prevents the procesution and recognition of crimes against humanity. Civil servants who played a key role in the Franco dictatorship, along with judges and police officers (including those who had tortured civilians) quietly remained in place under the terms of the post-Franco amnesty. This continuity of personnel, coupled to the institutional amnesia relating to Franco's mass graves ensured that the institutional culture of fascism went unchallenged inside the state (Hernández de Miguel, 2019).

Of particular significance to the *constitutional* continuity of Franco has been the replication of the way that political control is exerted over the national courts. The *Audiencia Nacional* is the court responsible for inititiating the prosecution of the 9 Catalan political prisoners before their cases are passed to the Supreme Court for trial. This court was created in the image of Franco's notorious Public Order Tribunal. The judges are political appointees; the court explicitly deals with issues of conflict deemed to be 'political'. The *Audiencia Nacional* has been condemned internationally for imprisoning Basque political leaders and for a string of highly controvercial political convictions. It has, for example, convicted a group of activists who burned pictures of

the Spanish king; and notoriously it was responsible for the false conviction of 11 Pakistani men who spent 6 years in prison for terrorism before they were finally released.

The politicisation of the national courts in the post-Franco constitutional settlement is also exemplified by the Spanish Constitutional Court. The Constitutional Court is regularly deployed routinely to reign in the various autonomous parliaments. Since 2006 more than 40 laws passed by the Catalonian Parliament have been blocked by the Constitutional Court using the argument that the Parliament has no competency to legislate on such issues. In reality, the Court has been crudely and deliberately narrowing the boundaries of the Catalonian Parliament's competencies. Most of the blocked laws were concerned with securing social rights, and protecting people against impact of austerity. The most striking of these blocked laws was passed in July 2015 to mitigate the worst effects of the crisis. This law banned the eviction of people before they were offered social housing and included a measure to protect the vulnerable against their water and electricity supplies being cut off. This law had cross-party support in the Catalan Parliament.[10] Other interventions included the blocking of laws on gender equality and climate change. A pattern in the judgments of the court has been the protection of conservative and ruling class interests.

At one level, this is simply a manifestation of a coercive strategy to impose austerity that has been described at authoritarian neoliberalism (Clua-Losada and Ribera-Almandoz, 2017). From a longer historical perspective, the postfascist structure of power provides the apparatus that enables techniques of authoritarian neoliberalism to be implemented with ease. The Constitutional Court is not a jurisdictional body; it is not part of the judicial system nor is it regulated by the same law that regulates judges and magistrates. Its members do not have to be accredited judges and are chosen directly by the organs of government (the Spanish parliament, central executive and the adminstative body for the courts). Between 2012-2017, it was presided over by

[10] This law had cross-party support in the Catalan Parliament as it came from a 'Popular Legislative Initiative'. In this procedure, the bill is initiated by a petition of a minimum of 50,000 signatures before it is debated in the Catalan Parliament.

Francisco Pérez de los Cobos, a member of the PP and the brother of Diego Pérez de los Cobos, who was in charge of coordinating the police operations on the 1st of October and had been a senior official in the PP government. Andrés Ollero, who previously spent 17 years as a MP in the Congress of Deputies representing the PP, is currently the magistrate of the court.

The ease with which Spain convicts political prisoners and forces politicians into exile is a mark of a model of a deeply politicised judiciary. The constitutional model adopted in the highest courts enables a form of political control of the legal system that has its origins in the Franco regime. Indeed the contuities run even deeper in a formal legal sense. The crime of rebellion used by Rajoy, and the current government to detain political prisoners was established in 1900 but crime was specificaly revived by Franco to prosecute and execute thousands of opponents using his military courts. We are not claiming that the practice of imprisoning political opponents and forcing people into exile remotely resembles the *scale* of the Franco regime, but what we are claiming is that this practice reflects the *modus operandi* of the dictatorship very precisely.

The fall of Rajoy's PP government in 2018 opened new opportunities for a more democratic response to the Catalan constitutional crisis in Spain. However, as we have signaled here, no government alone can change the nature of the political regime if it cannot precipitate a rupture with the postfascist structure of power. A change in government can't precipitate a transformation of the state apparatuses on its own. To that we would add that whilst the Socialist Party PSOE is less implicated in the 2004 Spanish nationalist turn described earlier in the paper, is a political party that is organised around a commitment to Spanish unity.

Three recent examples illustrate how a change in government is unlikely to represent a softening in the Spanish government clampdown. First in the trial against the 9 political prisoners and other Catalan activists and politicians taking part in the Supreme Court, both popular accusation and the public attorney and the lawyer of the government are asking for the same punishment. Even though the popular accusation is initiated by the extreme-right wing of the party VOX which explicitly makes a claim to the Francoist

political tradition. That is, the Socialist government and the public attorney are presenting the same charges as the extreme-right are in the trial against the Catalan political prisoners. Second, in the elections of April 2019 several Catalan political prisoners were elected as members of the Spanish parliament. The same week they were sworn in, the Spanish board of the Parliament controlled by the PSOE decided to suspend them, thus immediately shifting the balance of power in the parliament crucially to the right. Third, in early 2019, 16 activists were illegally detained by the Spanish police force in Girona. Among them there were two mayors from a radical leftist party. The Spanish Home Office avoided any public condemnation of the action even though they did not know the police raid was going to happen.

These there cases show that the relatively recent change in government is unlikely to make a significant difference to the state's response to the Catalan crisis. Central to Spain's mode of power whether under both the PP and PSOE has been its readiness to resort to 'exceptional' measures. A hallmark of the fascist regimes of the 1930s was the imposition of state of emergency powers to legitimate extreme police powers and the militarisation of politics and the arbitrary use of force against civilian populations. This is the same logic we find in the imposition of article 155: an exceptional juridical solution – a state of exception - to restore order (Agamben, 2005). Governance now entails resorting to extraordinary measures as if the crisis that legitimises it emergency powers is now permanent. The sovereign power – Spain - has invoked the capacity to reduce its opponents to subjects with no rights. Once its opponents are excluded from the protection of the law, they can be beaten, denigrated and harassed (ibid.). It is barely recognised in public discussion, but we should not forget that article 155 was a constitutional provision that was demanded by the Francoist authors of the 1978 constitution and reluctantly agreed to by the non-Francoist 'fathers' of the constitution.

Conclusion: Resisting the Postfascist State

We reiterate that we cannot compare the scale of the repression of today directly with Franco. After all, according the the UN, the Franco regime disappeared 115,000 people, more than any other state in the 20th century with the exception of Cambodia. The current regime is neither Francoist or fascist, but is *postfascist*. As we have shown, the

Catalonian crisis is shaped by many of the same rationales, the same values, and the same authoritarianism that existed under Franco. Postfascism shapes the struggle for Catalonia; its features are woven into the conflict between Spanish state and the movement for self-determination and therefore will not be easily erased.

If postfacism is the fabric into which the current conflict is woven, this is not to say that the movement for independence can be simplistically characterised as a 'resistance to postfascism'. The struggle for independence has mobilised Catalonian *nationalism*; the decision to move to the referendum was achieved with the support and leadership of the political and business elites as part of a project for 'Catalonia'. But this movement is by no means narrowly nationalist or apolitical. Indeed, the Catalonia independence movement has consistently defined itself as a popular mobilization *against* nationalism: against the explicitly nationalist authoritiarianism of the Spanish state.

We are often told that in the context of modern democracies like the UK, Denmark or the Netherlands, the monarchy is merely a docile and harmless relic of a symbolic power. In the context of Spain, rejecting the monarchy means something quite powerful. It means the rejection of the authority of the King, the ultimate symbol of Spanish unity and authority. Resisting Spain's autocratic power over Catalonia today also means resisting the mode of state power which guarantees that the same political-business-finance class keeps a tight grip on power. This is why the pro-independence left talk of 'breaking' the constitutional basis of the Spanish oligarchy and the dismantling of the 1978 settlement as the real prize in this struggle. To break the constitution of 1978 means something just as powerful as the rejection of the authority of the King. Indeed, it means precisely the same thing: it means opening up a new terrain for social transformation. The current conflict cannot therefore be dismissed by its opponents, or cherished by its supporters, as a purely 'national' or 'cultural' question (Robinson, 1983).

The argument we have set out here indicates that the Catalan question is not merely a narrow "national" or "cultural" question. Instead, the Catalan resistance represents a direct assault upon the *postfascist* Spanish state. And it is the postfascist nature of the

current situation that opens space for transformation in cultural, economic and political spheres. Because the struggle for national liberation is unaviodably a struggle against postfascism, this means it is also unavoidably a struggle for economic and social alternatives: alternative ways of *thinking* about where power lies and alternative ways of *taking power* (Bernat and Whyte, 2019).

References

Agamben G (2005) *State of Exception*. Chicago: Chicago University Press.

Bambery C and Kerevan G (2018) *Catalonia Reborn: how Catalonia took on the corrupt Spanish state and the legacy of Franco*. Edinburgh: Luath Press.

Beckett, K and Sasson, T (1999) *The Politics of Injustice: Crime and Punishment in America*. SAGE, Thousand Oaks.

Bernat, I (2018) The Crimes of the Powerful and the Spanish crisis. In Bittle, S, Snider, L, Tombs, S and Whyte, D (eds.) *Revisiting the Crimes of the Powerful: marxism, crime and* deviance, Abingdon: Routledge, 2018.

Bernat I and Whyte D (2019) Catalonia, Postfascism and Popular Sovereignty. in Bernat I and Whyte D (eds.) *Building a New Catalonia: self-determination and emancipation*, Barcelona and Edinburgh: Pol-len and Bella Caledonia.

Borràs J (2018) *En nom d'Espanya Activistes contraris a la independència provoquen, en tres mesos, 139 incidents violents a Catalunya, entre els quals 86 agressions físiques*, mèdia.cat, 9th February, available online at: https://www.media.cat/2018/02/09/en-nom-despanya/.

Brandariz García JA and Faraldo Cabana P (2015) *Consequences of Post-fascism in Security Policies in Spain. Security Dialogues* 6 (1-2): 203-222.

Clua-Losada M and Ribera-Almandoz O (2017) Authoritarian neoliberalism and the disciplining of labour in Tansel, C B (ed.) *States of Discipline: Authoritarian Neoliberalism and the Contested Reproduction of Capitalist Order*. Lanham, Maryland: Rowman and Littlefield.

Domínguez I (2018) Patrimonio impide a las familias el acceso al Valle de los Caídos para las primeras exhumaciones. *El País*, 23 April, available online at: https://elpais.com/politica/2018/04/23/actualidad/1524463208_308910.html

Ewing K (2019) Spain's Vicious Rule of Law, in Bernat I and Whyte D (eds.) *Building a New Catalonia: self-determination and emancipation*, Barcelona and Edinburgh: Pol·len and Bella Caledonia.

Font M (2015) Deu grans Empresaris que han fet campanya contra la Independència. *Crític*, 7 October, available online at: http://www.elcritic.cat/actualitat/deu-grans-empresaris-que-han-fet-campanya-contra-laindependencia-6138

Fontana J (2013) *Por el Bien del Imperio*. Barcelona: Pasado y Presente.

Fontana J (2014) *La Formació d'una Identitat: una història de Catalunya*. Barcelona: Eumo.

Gramsci, A (1996) *Selections from the Prison Notebooks, Vol. 1*. London: Lawrence and Wishart.

Griffin, R (1993) *The Nature of Fascism*. London and New York: Routledge.

Griffin R (1995) The 'post-Fascism' of the Alleanza Nazionale: a case study in ideological morphology. *Journal of Political Ideologies* 1(2): 123-145.

Hernández de Miguel C (2019) *Los campos de concentración de Franco: Sometimiento, torturas y muerte tras las alambradas*. Madrid: Ediciones B.

Jiménez González A (2018) Enemigos del estado: las guerras legales de España contra obreros e independentistas. *Misión Jurídica* 15: 185-207.

Jiménez Franco D (2017) *Mercado-estado-cárcel en la democracia neoliberal española*. Barcelona: Anthropos.

Juste R (2017) *Ibex-35: una historia herética del poder en España*. Madrid: Capitán Swing.

López I and Rodríguez E (2010) *Fin de Ciclo: financiarización, territorio y sociedad de propietarios en la onda larga del capitalismo hispano 1959-2010*. Madrid: Traficantes de Sueños.

Manresa J (2018) El govern espanyol eleva en més de 5.200 milions el sostre de de despesa per als pressupostos del 2019. *Ara*, 20 July, available online at: https://www.ara.cat/economia/DIRECTE-govern-espanyoldespesa-pressupostos_0_2054794636.html

Minder R (2018) Spanish Artwork Denounced Political 'Persecution'. It was Ordered Removed. *New York Times*, 23 February, available online at: https://www.nytimes.com/2018/02/21/world/europe/spain-artcensorship-catalonia.html

Morillo I (2018) Por qué decapitar a Puigdemont en los carnavales de Cadiz no es delito de odio. *El Confidencial*, 11 January, available online at: https://www.elconfidencial.com/espana/andalucia/2018-01-11/por-que-decapitar-a-puigdemont-en-los-carnavales-no-es-delito-de-odio_1504502/

el-Ojeili C (2018) Reflecting on Post-fascism: Utopia and Fear. *Critical Sociology* DOI: 10.1177/0896920518768867.

Payne, S (1985) *Falange: Historia del fascismo Español*. Madrid: Ruedo Ibérico.

Payne, S (1992) *El Fascismo*. Madrid: Alianza.

Poulantzas N (2018) *Fascism and Dictatorship: the Third International and the Problem of Fascism*. London: Verso.

Puar, J (2007) *Terrorist Assemblages: Homonationalism in Queer Times*. Durham: Duke University Press

Quijano A (2018) Coloniality of Power, Eurocentrism, and Latin America. *Views from the South* 1(3): 533-580.

Rasmussen MB (2018) Postfascism, or the Cultural Logic of Late Capitalism, *Third Text*, DOI: 10.1080/09528822.2018.1549797.

Robinson CJ (1983) *Black Marxism*. London: Zed Press.

Rodríguez E (2015) *Por qué Fracasó la Democracia en España*. Madrid: Traficantes de Sueños.

Ruzza C and Fella S (2009) *Re-inventing the Italian Right: Territorial Politics, Populism and 'Post-Fascism'*. London: Sage.

Sabrià S (2006) El cava catalán cae el 8% por culpa del boicot. *El Periódico de Aragón*, 7 February, available online at: https://www.elperiodicodearagon.com/noticias/economia/cava-catalan-cae-8-culpa-boicot_230214.html

Salellas L (2015) *El Franquisme que no marxa*. Barcelona: Saldonar.

Salellas B, Vehí M and Bernat I (2017) *The Minotaur of '78*. Barcelona: CUP, available online at: http://cup.cat/sites/default/files/el_minotaure_del_78_revisat_angl.pdf;

Sayyid S (2014) *Recalling the Caliphate. Decolonization and World Order*. Oxford: Oxford University Press.

Saz, I (2004) Fascismo y Franquismo. València: Universitat de València.

Tamás GM (2000) On Post-Fascism: how Citizenship is Becoming an Exclusive Privilege. East *European Constitutional Review*. 9: 53-61.

Traverso, E (2017) *Els Nous Rostres del Feixisme*. València: Balandra.

Traverso E and Meyran R (2019) *The New Faces of Fascism: Populism and the Far Right*. London: Verso.

Tusell J (1988) *La Dictadura de Franco*. Madrid: Alianza.

CONCLUSIONES:

ESTADO, CRIMEN Y PODER

En esta tesis hemos intentado comprender cómo se producen los crímenes de los poderosos, los mecanismos que llevan a la comisión de tales crímenes. Primero hemos buscado comprender y analizar dicho concepto en la historia de la criminología crítica. Así, en la introducción hemos rescatado la genealogía de los crímenes de los poderosos, pero atendiendo a los debates epistemológicos que surgen de revisarlo en la actualidad. Los cuatro artículos que constituyen el cuerpo central de esta tesis comparten una misma mirada sobre el estado y su papel constitutivo en las condiciones que llevan a los crímenes de los poderosos. Pero en ellos también hemos prestado mucha atención al rol de la economía política en las condiciones formativas de esos crímenes. El tercer elemento al cual hemos prestado una especial dedicación ha sido la dimensión internacional de los crímenes de los poderosos. En nuestro caso, esta dimensión se refiere a un plano europeo prioritariamente, y su rol co-constitutivo en las condiciones de posibilidad de dichos crímenes.

En la introducción hemos analizado el origen de la noción de crímenes de los poderosos para encontrar un canon criminológico que vaya más allá de la aproximación individualista dominante en la criminología. En este sentido, la criminología debe integrar las estructuras de poder dentro de su aproximación al crimen para capturar la complejidad de los crímenes cometidos por los actores colectivos y poderosos como son el estado y la corporación. La omisión de sus crímenes del acervo criminológico es parte de un proceso de normalización y legitimación de sus prácticas predatorias. La necesidad de una disciplina que dé cuenta de los daños y crímenes de estados y corporaciones que sufren las personas y comunidades desposeídas y vulnerables, en el norte global pero sobre todo en el sur global, sigue siendo acuciante.

La incapacidad para entender y da cuenta de los crímenes que generan mayor daño socila nos informa de que la criminología es un discurso que reproduce un marco cultural que es tolerante con las prácticas predatorias de los grupos de poder, reforzando esas prácticas al no problematizarlas se representan como normales y legítimas. Además, la

criminología reproduce el poder de criminalizar a los desposeídos y restringe lo que es criminal en sus prácticas. De este modo, hay que introducir en el debate cómo las estructuras de poder y desigualdad (colonial, racial, clase, género) se despliegan en la sociedad, concretamente definiendo qué es el crimen y las prácticas del sistema penal. Los crímenes de los poderosos y los crímenes estatal-corporativos deben ser centrales en el campo criminológico, de otro modo no seremos capaces de entender la naturaleza de los crímenes de los actores colectivos que subyacen a sus prácticas de acumulación y dominación. El crimen corporativo ha de ser entendido como parte y como representación del estado actual de las relaciones de poder corporativo. Es decir, el crimen corporativo no puede ser entendido como un fenómeno aislado, como un evento concreto, sino que hay que entenderlo como un proceso social más amplio incardinado dentro de una economía política.

En el primero de los cuatro artículos nos hemos centrado en la comprensión del rol infraestructural del estado en la producción de los crímenes corporativos. Estudiamos el modo en que el estado deviene parte integrante en la comisión de tal crimen. Partiendo del caso del Prestige hemos procurado analizar el modo de operar del estado en el crimen corporativo, al mismo tiempo que, hemos buscado ver cómo esos crímenes son parte consustancial del modo de acumulación capitalista y cómo se garantiza la impunidad para esos crímenes. Nos ha interesado destacar el papel del estado estableciendo las condiciones de posibilidad para que esos crímenes pudieran ocurrir. Para ello hay que ir más allá del momento concreto en el cual se produce el crimen y entender cómo las prácticas de los actores corporativos han sido promovidas y sustentadas en toda la cadena de producción, distribución y consumo para apuntalar el poder corporativo. De este modo, hemos afirmado que estos crímenes no se produjeron por un desafío a las lógicas o leyes del estado, sino más bien al contrario. Son el resultado de la persecución del lucro privado bajo las condiciones pautadas por el estado. Esta estrecha interrelación entre estado y corporación hace que la distinción clásica entre estado y corporación, asumiendo, el primero, el rol de guardián de los intereses generales y, el segundo, el de los intereses privados se nos revele como falaz. Ya no podemos pensar a estos actores como competidores en un juego de suma cero. Al contrario, ambos actores se refuerzan mutuamente (Tombs y Whyte 2015). Una de las

primeras cosas que hace todo estado después de cada crimen o crisis es volver a establecer las condiciones necesarias para el re-establecimiento de la producción y acumulación. Aquí es donde se visualiza con total nitidez que la principal función social del estado es la de promover la acumulación, facilitar la posibilidad de un ritmo sostenido y continuado de beneficios y, de este modo, satisface su otra gran función de legitimación (O'Connor 1973).

En el segundo artículo hemos analizado la economía política de los crímenes de los poderosos y cómo ha sido la financiarización de la economía la que ha tenido un papel fundamental en los crímenes que se han producido al calor de la crisis económica y social. El giro neoliberal desde finales de los setenta y la financiarización acelerada desde los años noventa han hecho que este sector de la economía adquiera un peso preponderante (Laval y Dardot 2013). Así, las empresas financieras obtienen beneficios del pago y retorno de capital, principalmente a través de la provisión de servicios y bienes a las clases populares (Lapavitsas 2013a). Esta forma de acumulación que se genera en la esfera de la distribución se conoce expropiación o desposesión financiera. Sin embargo, cuando analizamos el papel del estado en esta reestructuración económica, de nuevo, visualizamos una intervención dirigida a consolidar un régimen de acumulación. La relación entre los actores públicos y privados, en el transcurso de la financiarización, se entiende mejor como el resultado de un proceso político de concentración del poder de clase que ha generado un ensamblaje en la producción de crimen y daño estatal corporativo. De este modo, los crímenes asociados a la crisis deben ser conceptualizados como un proyecto de clase que define el régimen de poder emanado de la transición en un plano endógeno, pero también en un plano exógeno conformado por la integración española en el arreglo espacial de la Unión Europea (López y Rodríguez 2010). Ambos planos se reforzaron conjuntamente hasta que la financiarización puso en peligro el acceso a muchos derechos para la mayoría de la población. No obstante, aquí el papel de estado tampoco puede ser menospreciado generando las condiciones de posibilidad para la epidemia de los desahucios a través de todos los dispositivos jurídicos y políticos necesarios para dirigir la economía y para sostener un régimen de acumulación muy concreto.

El tercer artículo agrega a los anteriores, basados en el análisis del estado y de la economía política, el plano internacional. De este modo, el papel de las instituciones europeas y las instituciones financieras internacionales se colocan en el centro del análisis. Si en un plano endógeno hemos visto como el estado creó un mercado 'liberado' para la acumulación por desposesión financiera, con un gran esfuerzo de re-regulación por parte de las distintas administraciones, es necesario también observar como esta lógica se reproduce a escala europea. El régimen de poder europeo, deslegitimado a partir de la crisis de 2008, queda garantizado por la aplicación de un estado de excepción permanente en los países de la periferia sur (Agamben 2014). Esta excepcionalidad permanente es capaz de suspender la soberanía estatal y los derechos de la ciudadanía del sur de Europa para poder salvaguardar los intereses del capital financiero y volver a generar las condiciones de un nuevo ciclo de acumulación rentista o un nuevo régimen de permisividad (Whyte 2014). El origen de esta excepcionalidad está precisamente en la necesidad de garantizar la impunidad para el capital financiero germano-centrado, pero también para bancos, constructoras y promotoras absorbiendo los distintos estados de la periferia europea gran parte de sus deudas para así volver a poner los cimientos de un nuevo ciclo de acumulación. En nuestro análisis de la creación de la deuda pública y la constitucionalización del pago de los intereses hemos podido observar cómo se garantizan los derechos del capital internacional (Cutillas y Wessling 2013). La reconversión de la deuda privada en deuda pública permite garantizar la impunidad corporativa, o lo que es lo mismo, cerrar el círculo del régimen de permisividad. La constitucionalización del pago de la deuda pública o su incorporación a los balances del estado ha sido un elemento clave para volver a generar un nuevo régimen de permisividad postcrisis que posibilitara un nuevo ciclo de acumulación a través de las medidas de austeridad. Sin embargo, esta lógica de poder inserta dentro de la Unión Europea se reproduce a escala ampliada también hacia fuera. Es decir, este régimen de poder que opera al interno de la Unión Europea se manifiesta aún más claramente hacia su afuera constitutivo. Es, de este modo, que tantas personas pueden ser muertas en la frontera sur europea. De nuevo, para el mantenimiento de un régimen de poder y acumulación se requiere una construcción de la otredad en un plano simbólico, pero también jurídico que las haga subalternas (Calavita 2005). Subalternas cuando intentan alcanzar nuestras costas, pues se subordinan sus vidas a los intereses

de otros. Subalternas cuando cruzan la frontera en relación con una ley de extranjería que regula sus derechos *como* otros.

El cuarto artículo pretende analizar el rol jugado por el estado a la hora de entender el peligroso fenómeno del auge de la extrema derecha, particularmente en Europa, donde ya se dio la violencia fascista en el período de los fascismos históricos desde los años 20 en adelante. Este artículo, trayendo a discusión el rol del estado en dicho auge contemporáneo o resurgimiento de los movimientos de extrema derecha, aporta una mirada novedosa a los análisis recientes sobre la cuestión. A su vez, esta mirada que sitúa el estado en el centro, nos permite entender mejor una arquitectura institucional sustentada sobre unas relaciones sociales complejas y que no caiga en la falacia de la autonomía de lo político. En este sentido, el régimen de poder en el estado español queda radiografiado a través del escrutinio de los aparatos económicos, represivos e ideológicos por emplear la expresión de Poulantzas (2018). Un régimen de poder *postfascista* que no puede comprenderse sin analizar las continuidades en estas tres esferas fundamentales de la sociedad: economía, instituciones políticas y culturales (Fraser 2015). De nuevo, este ejercicio teórico se realiza examinando qué papel ha jugado el estado y sus instituciones en el mantenimiento del *ancient regime* en el tránsito hacia esta nueva sociedad en la cual suponía que precisamente el estado debía garantizar una ruptura con aquél. Así, siguiendo los análisis de Quijano (2000) sobre la colonialidad del poder y su pervivencia más allá de las supuestas independencias formales respecto de las antiguas metrópolis podemos entender mejor la dificultad para lograr una transición en las sociedades post-autoritarias que constituyan una verdadera ruptura y den pie a una nueva relación entre el soberano y su pueblo. El soberano retiene para sí poderes excepcionales que le garantizan suspender el derecho (Agamben 2005) para garantizar una arquitectura institucional que sujeta unas relaciones sociales particulares.

Veamos ahora con un poco más de detalle y a modo de conclusión de esta tesis como funcionan esas tres dimensiones con relación a nuestros ejemplos.

El primer artículo a discusión, estudiando el papel del estado, nos ha permitido releer las conexiones entre dos sucesos que parecían aislados: el vertido de petróleo en las costas gallegas y la muerte de los trabajadores en Morecambe Bay. Hemos sugerido una comprensión de los crímenes de los poderosos que no focalice únicamente en unas prácticas percibidas como criminales. Estableciendo estas conexiones visualizamos la insuficiencia de centrar nuestra atención en los momentos de ruptura o los fallos de control y regulación del estado (Tombs 2012). Las condiciones que llevaron a dichos sucesos no se pueden encontrar en una decisión o acción concreta del estado o del gobierno. Fueron el resultado del mantenimiento de un patrón de relaciones sociales -incorporados en unas prácticas sociales y económicas concretas- que han existido durante décadas. Estos crímenes no ocurrieron porque el estado fuera desobedecido por una empresa, sino más bien al contrario. Estos crímenes son el resultado de la *obediencia* al estado.

Los crímenes corporativos aquí descritos emanan de una arquitectura de poder en la cual los estados garantizan a las corporaciones distintos privilegios y capacidades infraestructurales. La crisis del Prestige fue ciertamente agravada como consecuencia de la negligencia de los reguladores norteamericanos, de los sistemas internacionales de regulación marítima y de la actuación del gobierno español. No se puede hablar únicamente de crímenes iniciados por el estado, como se hace en la literatura específica de los crímenes estatal-corporativos, ya que no da cuenta de todo el esfuerzo, la inversión y el papel jugado por el estado. Los distintos reguladores están aquí enfrentados entre ellos y no parece que ninguno se beneficie directamente de los crímenes acaecidos. Si hay un interés común no está claro que esté relacionado con las circunstancias inmediatas que llevaron al desastre, sino en un nivel más general en un régimen de permisividad global. En realidad, estamos ante un régimen de permisividad que permite la acumulación de capital a través de los mercados de petróleo que a su vez son esenciales para el ritmo de acumulación global, tanto en la producción como en la distribución de mercancías.

Es este proceso de acumulación de riqueza lo que está garantizado y sostenido en cada momento, en cada etapa de un complejo régimen de permisividad. Y este proceso de

acumulación de capital es muy revelador sobre la estructura de las relaciones sociales. Los trabajadores de Morecambe Bay, Inglaterra, murieron produciendo valor para una corporación a través de la mercancía marisco. La mercancía marisco, sin embargo, en algún momento en el pasado fue un recurso común. Lo que puso sus vidas en riesgo fue la forma de producir y cosechar esa mercancía. No obstante, su posición como trabajadores se hizo más vulnerable por la distribución mercantilizada de otro recurso antiguamente común, el petróleo. Precisamente, fue a través de la distribución del petróleo para su refinamiento, esto es, para la producción de dicha mercancía clave para sostener el ritmo de producción y de distribución de otras mercancías se generaron las causas para el desastre doble, ecológico y social, en Galicia y en Morecambe Bay. Es decir, la imposibilidad de recoger marisco en Galicia por la contaminación del petróleo fue lo que intensificó las relaciones sociales de explotación en Morecambe Bay, poniendo de manifiesto las conexiones globales del régimen de producción, distribución, explotación y acumulación.

Si las relaciones sociales de extracción, expropiación y explotación que crearon el Prestige y Morecambe Bay han de ser confrontadas, entonces necesitamos contemplar algo más profundo que un simple giro en la relación entre el estado y la corporación. Necesitamos pensar sobre cómo las relaciones sociales deben ser modificadas para alterar, no únicamente las condiciones que encontramos en los momentos de ruptura, sino para actuar en las relaciones sociales que están profundamente condicionadas en los momentos de producción, distribución y consumo.

Los crímenes y daños corporativos son el resultado de la mercantilización de lo que en algún punto en el pasado fueron recursos comunes. La producción, distribución y consumo de los recursos mercantilizados manifiesta las condiciones subyacentes para que se den esos crímenes. Entonces, si queremos confrontar estos crímenes y las relaciones sociales que los hacen posibles debemos contemplar cómo podemos gestionar los comunes de un modo sustentable para el bien común. Esto no parece posible bajo relaciones coloniales, patriarcales y capitalistas. Por ello, los crímenes estatal-corporativos han de ser ubicados dentro del desarrollo actual de las relaciones sociales y de poder coloniales, patriarcales y capitalistas.

En el segundo artículo hemos discutido también la importancia del estado junto con la de la economía política para comprender como se generalizaron las hipotecas como forma prioritaria de acceso a la vivienda y, la epidemia de desahucios que vino a continuación. En este sentido, hemos destacado la imposibilidad de entender crímenes corporativos como actos aislados y la necesidad de ubicarlos dentro de la estructura social (Pearce 1978). Hoy, esta máxima nos fuerza a entender estos crímenes dentro de la financiarización de la economía producida durante el giro neoliberal para mayor beneficio corporativo. De este modo, un análisis crítico del papel del estado en la financiarización es fundamental. La financiarización ha acabado por diluir la dicotomía entre el sector público y privado que todavía opera en el orden social imaginario. El estado continúa generando las situaciones de posibilidad para estos crímenes, estableciendo las condiciones ideales para que el poder corporativo conquiste nuevos dominios para hacer negocios y obtener mayores niveles de rentabilidad empresarial. En este sentido, el estado tiene un papel destacado en la promoción de nuevos nichos de mercado.

De este modo, la victimización y el crimen corporativo -no solo en la forma de las hipotecas y desahucios- deben ser entendidas como un proceso en lugar de la suma de eventos *concretos*. Podemos localizar el crimen corporativo dentro de una economía política más amplia y de un conjunto de relaciones sociales que subordinan los distintos derechos (Bernat y Whyte 2017). Los crímenes corporativos juegan un papel central dentro del continuado proceso de acumulación de poder y riqueza. En este sentido, las corporaciones no solo son actores institucionales, sino relaciones de poder institucionalizadas donde tiene lugar la acumulación de beneficios. A pesar de que es un terreno en disputa donde hay lucha y resistencia, reglas distintas aplican a los diferentes actores en su campo. Los límites y normas en el terreno están marcados y establecidos por los crímenes de los poderosos, permitiendo a los actores corporativos acumular a través de la desposesión financiera. En este sentido, las corporaciones han demostrado su capacidad para hacer aprobar leyes en su provecho, amenazar gobiernos, desplegar prácticas ilícitas, negar derechos y desposeer a la gente como si atesorara una suerte de

capital criminal que garantiza la impunidad por su comportamiento y un ritmo continuo de acumulación de riqueza.

El siguiente elemento de análisis que ha guiado nuestro segundo artículo es la consideración sobre la naturaleza internacional del capitalismo. De acuerdo con la geografía económica (Krugman 1992), en los países periféricos y semi-periféricos del capitalismo global, esta dimensión internacional es esencial para entender las dinámicas de la regulación corporativa y los crímenes a nivel local. Las instituciones financieras internacionales son agentes clave para estudiar cómo la regulación se centra en la consecución del crecimiento económico, pero ignorando el desarrollo social. En el caso español la economía política está marcada por unas relaciones internacionales que restringen -de iure y de facto- su soberanía en muchos sentidos. Sin duda, las instituciones europeas y tratados de la Unión Europea facilitan el camino a una agenda neoliberal que fomenta el poder del capital, permitiendo y asegurando sus inversiones a nivel regional y global. Las instituciones europeas como la Comisión o el Banco Central así como sus principales tratados y muchas directivas, promueven normas reguladoras que benefician el poder corporativo. Las múltiples esferas y planos de la legalidad a nivel internacional generan una competencia feroz por atraer capitales al mismo tiempo que abren espacios de impunidad. Esta impunidad garantizada por el estado español se redobla con la intervención de las instituciones europeas que no solo no velan por el cumplimiento de sus propias directivas. Así, el Memorándum de Entendimiento Europeo firmado entre la Comisión Europea y el estado español reafirma la impunidad y revela cuán implicado está también el mega-estado europeo en la consolidación del poder corporativo europeo. Los supuestos derechos de los ciudadanos empequeñecen al lado de la protección constitucional de los intereses del capital financiero (art. 135 CE). Pero el aspecto internacional del capitalismo abordado por la geografía económica tiene otra vertiente sobre la dimensión política del poder que puede ser analizada desde la óptica agambeniana (2005). Empleando esta perspectiva se desprende una comprensión del poder en el seno de la UE.

Ha sido la mirada agambeniana la que ha guiado el tercer artículo. En él hemos sostenido la idea de que un estado de excepción permanente opera como parte de una estrategia

de dominación política y geoeconómica. El proyecto de clase y colonial que define el régimen de poder europeo es fruto de un proceso de integración de los países periféricos en el acuerdo espacial de la Unión Europea. Las condiciones formativas de esta excepcionalidad han sido alcanzadas, precisamente, por el conjunto de medidas tomadas por la UE y esos mismos estados. Las distintas administraciones han jugado un rol activo que ha llevado a esta situación. En este sentido, regulación a regulación, ley a ley, medida a medida, ha quedado claro que el estado-nación ha sido también fundamental de este mecanismo de gobierno. Sin embargo, el dispositivo estado de excepción permanente ha devenido más persuasivo en el proceso de financiarización de la economía, donde las corporaciones han ganado peso institucional en la provisión de servicios y derechos. Este proceso de empoderamiento corporativo hace todavía más fácil que la constitución formal sea curvada materialmente por el poder corporativo (Bernat y Whyte 2015) vaciada de cualquier contenido sustantivo.

La excepcionalidad en este régimen de poder europeo se ha dado en tres esferas distintas. Primero, en la deuda pública que es el resultado en gran parte de la deuda privada, constitucionalizada para asegurar su pago, aun cuando la población gritó *OXI*. Segundo, la impunidad de las corporaciones, fueran estas instituciones financieras u otras empresas extractivas, de servicios, agro-alimentos o industriales con regulaciones, legislación e impunidad a medida. Tercero, la muerte en la frontera sur y el extendido racismo de estado y la otredad legalizada que niega los derechos humanos y si quedaba alguna duda el Tribunal Europeo de Derechos Humanos siempre pude secundar dichas políticas de muerte en la frontera. Estas son tres formas de despotismo en la UE, de negación de derechos, de la voluntad popular. En situaciones de crisis, cuando el discreto encanto de la ideología y de los medios de comunicación fallan, entonces los dispositivos del poder soberano emergen para garantizar un régimen capitalista y de poder colonial. La Troika, el Fondo Monetario Internacional, la Comisión Europea o del Banco Central Europeo parecen forzar a los bárbaros sur-europeos a modernizarse para ajustarse a los recortes, para rebajar las pensiones, las ayudas y los derechos sociales más básicos, privatizando los bienes y activos públicos.

En nuestro análisis de la creación de deuda pública y la crisis de deuda soberana, hemos observado cómo los derechos del capital internacional han sido salvaguardados. El caso de la reconversión de la deuda privada en deuda pública para garantizar la impunidad corporativa sirvió, a su vez, para cerrar el círculo del régimen de permisividad. En este sentido, la constitucionalización de la deuda y los derechos del capital internacional son un elemento que sostiene una vez más el régimen de poder europeo y produce un nuevo arreglo espacial post-crisis que permite un nuevo ciclo de acumulación a través de las medidas de austeridad y re-mercantilización de derechos (Aglietta y Brandt 2015). El caso de la deuda pública nos muestra que la relación entre el estado y la corporación está siempre en evolución, haciendo que el proceso de arreglo social esté en constante actualización, donde las fuerzas sociales en disputa buscan imponer un acuerdo social favorable a sus intereses, pero en este caso favorece la consolidación de una relación desigual entre centro y periferia. Así, las instituciones europeas y el resto de los estados del sur son parte fundamental de la financiarización de la economía, manteniendo la continuada subordinación del sur de la UE y del régimen de poder germano-centrado tal como también afirmaba nuestro análisis desde la geografía económica en el segundo artículo.

La excepcionalidad corporativa y los crímenes de los poderosos son una demostración inequívoca de la falacia de la eficiencia de los mercados y de la eficacia corporativa en su gestión. Este discurso reivindica que los mercados son necesarios para el éxito económico de la sociedad e intenta esconder las conexiones profundas entre las corporaciones y el estado, la intrínseca dependencia entre ambas instituciones que se refuerzan continuamente. Esta relación simbiótica enmascara las relaciones sociales que subyacen al estado y a la corporación. Este nuevo acuerdo post-crisis produce derecho: modificando leyes, cambiando la constitución, creando un nuevo régimen de acumulación de capital, es decir, el permiso para las corporaciones y sus crímenes que aumenta el poder corporativo. La violencia de la austeridad ha sido legalizada para pacificar las relaciones sociales desiguales (Knox 2017). Este nuevo acuerdo es el resultado de la violencia del poder corporativo, pero continúa aumentando y concentrando mayor poder, así asegurando los nuevos crímenes corporativos son perpetuados y re-actualizados. Pero la violencia del poder corporativo no sólo se refiere

a las prácticas criminales que tienen por objetivo aumentar los beneficios, sino extender la impunidad corporativa. No importa si las prácticas empleadas están dentro de la ley. En el caso de las participaciones preferentes hemos visto que estas corporaciones son demasiado poderosas para ser castigadas. Nadie se sorprende de que apenas haya habido procesos legales contra estas empresas por su mal hacer por qué el reequilibrio que tuvo lugar a raíz de la financiarización las convirtió en actores demasiado poderosos. La captura del derecho por la Europa corporativa garantiza la total impunidad a las corporaciones. De este modo, la economía política de los crímenes poderosos es el reverso de la economía política del no castigo de los crímenes de los poderosos. Sin duda, esta forma de acumulación de capital está devastando las comunidades del sur de Europa impactando severamente en las condiciones de vida de las clases populares de estos países. La población desaventajada de esos países del nuevo arreglo espacial europeo son los más duramente castigados por estos ataques del poder corporativo y por la acumulación por desposesión financiera en la UE.

Sin embargo, este régimen de poder colonial europeo se dirige hacia su exterior constitutivo igual que hacia su interior. En este sentido, la violencia corporativa en los países del sur global permite la expropiación extractivista de los recursos de estos países. La destrucción de las comunidades para el saqueo de los recursos es una constante. Esta acumulación por desposesión colonial tiene efectos cruciales para las vidas de las personas que viven en dichos países, haciendo a menudo insostenible la vida en sus propias comunidades. Este ataque del capital contra la vida en el sur global es origen y causa una elevada violencia, sobre todo para aquellas personas que se oponen a semejante expropiación corporativa de sus recursos. El asesinato de activistas comunitarias y ambientales es apenas noticia a pesar de la cotidianidad de las muertes. Pero esta violencia corporativa tiene otra dimensión cuando las personas migran como resultado de este ataque corporativo contra sus comunidades y sus relaciones sociales. Las migraciones de las personas como resultado de esta destrucción de su modo de vida, todavía las hace más vulnerables ya sea en sus propios países o cuando se dirigen hacia el norte global. Esto es más que evidente cuando tratan de alcanzar el continente europeo. Así, la excepcionalidad en la frontera sur nos muestra cómo el racismo de la

UE ha convertido el mediterráneo en un campo de muerte. El racismo es una política de estado en el sur de la UE, pero también de toda la UE. Políticas, agencias, leyes, policías, cárceles, campos y un sinfín de dispositivos de poder lo atestiguan, causando el retorno de las migrantes, el encierro en barcos, la deportación forzosa bajo sedación, la brutalidad policial o los campos de refugiados saturados. La securización de la frontera se ha convertido en una prioridad europea consciente del privilegio y de la violencia necesarias para garantizar esta forma de vida que parece no alcanzar para todas. De este modo, estableciendo restricciones en la entrada, dificultando el acceso se van creando las condiciones de muerte para las personas que tratan de llegar a Europa. A su vez, los países del sur, gracias a sus elites occidentalizadas y corruptas, convertidos en meros guardianes de un espacio vital que se niega a los otros, a los ajenos, y que pueden ser hechos morir para protegerlo. El racismo distribuye desigualmente la posibilidad de muerte. El racismo de estado es una política de muerte para las migrantes, de muerte directa o se pueden hacer morir dificultando el acceso, aumentando el riesgo para la muerte. Esta necropolítica como tecnología de gobierno para insertar el poder de muerte (Mbembe 2011) sobre todo el exterior constitutivo de la UE, sobre sus vecinos del sur. Un racismo que no se puede desligar de la violenta jerarquía global que divide a los distintos países (Sayyid 2017), ni de los siglos de colonialismo europeo. Pero el racismo no se queda en la frontera exterior de la UE, sino que permea todas las relaciones sociales en el interior de los países con la construcción legal de la irregularidad y la alteridad generando una división en el seno de las clases populares (Calavita 2005).

En este artículo, hemos analizado cómo el estado de excepción permanente es el dispositivo que garantiza un régimen de poder en el interior de la UE para mantener unas relaciones de dominación y subordinación entre centro y periferia. El estado de excepción permite introducir la dimensión política dentro del orden jurídico e imponer la decisión soberana (Agamben 2004). El estado de excepción es el dispositivo que permite la dominación y reproducción de un régimen de poder. Sin embargo, los efectos de este régimen de poder europeo se proyectan también sobre el exterior de la UE en una relación colonial que violenta su afuera constitutivo. El estado de excepción ratifica la dominación capitalista, corporativa, patriarcal y colonial mientras legaliza la violencia

necesaria para mantener dichas relaciones de poder. Estas relaciones se re-actualizan continuamente, nunca están plenamente solidificadas. Para la subversión de las mismas, tarea central de toda aspiración crítica, hay que pensar el poder soberano y sus dispositivos de gobierno.

La necesidad de pensar el poder soberano y cómo opera a través del estado de excepción para mantener un régimen de poder concreto nos ha llevado a entender los regímenes de permisividad o andamios de legalidades (Comaroff y Comaroff 2006). Hemos buscado analizar esta dinámica europea y sus repercusiones en el sur del continente y cómo afecta a su afuera constitutivo. Pero si nos centramos, de nuevo, en el caso español, con estas mismas herramientas teóricas, podemos ver cómo se inserta un régimen de poder endógeno más allá de la autonomía de lo político (Negri 2003) y del fetichismo del derecho (Comaroff y Comaroff 2006). El orden de las cosas español en el momento presente supone un ejemplo paradigmático que permite analizar desde el interior de los estados-nación su necesidad de pacificar a su población, en medio de una crisis (constitucional) que sacude sus cimientos y amenaza a su poder constituido. Es en estos momentos de crisis cuando mejor se aprecia la violencia del poder soberano y el funcionamiento del estado de excepción. Un poder que reclama para sí el uso de la violencia, una violencia conservadora de derecho como vimos el primero de octubre de 2017, pero también creadora de derecho (Benjamin 2010). Una violencia de estado que permitirá justificar una medida excepcional tal como la aplicación del artículo 155 por primera vez en la historia constitucional española. Una violencia que desdibuja la diferencia entre ciudadanos y enemigos, que niega derechos que se pensaban permanentes. Así, se suspenden los derechos de parte de la ciudadanía que se ha atrevido a desobedecer el mandato del poder soberano. La suspensión de sus derechos a parte de la población permite pacificar las relaciones sociales que sustentan dicho régimen de poder, mientras transitamos de una sociedad de bienestar a otra de malestar (Rodríguez 2003).

La violencia de estado que hemos visto en los últimos tiempos en Catalunya subraya una continuidad en las esferas de la cultura, política y economía que hemos descrito como postfascista (Bernat y Whyte 2019). El postfascismo español está, material e

ideológicamente, dirigido desde la política. Partiendo de una crítica a la politización de la justicia podemos observar como fuerzas sociohistóricas fraguan el desarrollo institucional y político. La forma concreta de estado que es defendida en la crisis constitucional española está en la base del conflicto que atraviesa Catalunya. En el último artículo que integra esta tesis hemos elaborado un análisis que a su vez desafía las formas hegemónicas de entender el postfascismo, los movimientos populistas y el auge del nacionalismo en el contexto neoliberal, al mismo tiempo que rechazábamos la noción ampliamente sostenida en los medios de comunicación de masas mayoritarios europeos de que el conflicto en Catalunya fuera fruto del nacionalismo catalán y de que la violencia del estado fuera una respuesta a dicho nacionalismo. Hemos puesto de manifiesto que más bien se trata de un conflicto alimentado por el nacionalismo español para sostener un régimen de poder postfascista, para defender *España*, una forma estado muy particular Unas relaciones de poder que se establecieron bajo un uso despiadado de la violencia de estado a través de la guerra y de la represión que la siguió. Así, la paz social que siguió a dicho conflicto debe ser comprendida como la continuación de esa lucha que se institucionalizó en las estructuras e instituciones del estado. Lo que hemos sostenido en el artículo es que el término fascista no es adecuado para describir la situación en el Reino de España. Es un sistema político liberal con su consecuente economía de mercado subsidiada por el estado, pero también hemos señalado que las instituciones clave del sistema de gobierno y administración, la estructura de su industria y los valores culturales e ideológicos nunca sufrieron una verdadera depuración ni transformación. Es en este sentido que afirmamos que el régimen de poder es postfascista. A la benigna transición española le faltó un momento de ruptura con el *ancient regime* franquista.

El régimen de poder actual español tiene sus raíces en la dictadura de un modo muy directo y que evidencia la idea foucaultiana que la política es la guerra por otros medios. El régimen de Franco estaba fuertemente asentado sobre el poder militar, es difícil imaginar como podría ser de otro modo si surgió de un golpe de estado perpetrado por el ejército colonial en primer lugar. La guerra civil que siguió a dicho golpe fue para la derecha una cruzada nacional para restaurar la integridad y el honor de un país humillado por sus derrotas militares y una izquierda que quería desafiar las relaciones

de propiedad, de género y territoriales. Una república que había ido demasiado lejos en su concesión de derechos a las clases populares, a las mujeres y a las naciones periféricas (Balfour 2002). El régimen de poder que se instaló tras la victoria del ejército, fascistas, monárquicos y demás defensores del golpe continuó fuertemente vinculado a lo militar y autoritario.

El acuerdo constitucional que siguió a la muerte del dictador y la transición a la democracia formal representó un intento fallido de rendir cuentas con el *ancient regime*. Así, no fue posible hacer justicia para los prisioneros políticos, ni para los que fueron condenados a trabajos forzosos, ni para los y las exiliadas o ejecutados por orden de tribunales militares, ni para encontrar a los desaparecidos en fosas comunes y cunetas ni a los niños robados. Pero aún, no se pudo volver a cuestionar unas relaciones sociales profundamente injustas, unas relaciones de dominación basadas en el poder de clase, género y nacionalidad que fueron las que se escondían detrás del golpe militar y la posterior dictadura.

Así, el régimen de poder se reproduce entre esferas o dimensiones y a través de los aparatos económicos, políticos e ideológicos del estado. La continuidad de las elites económicas quizás representa el ejemplo más palmario de ese intento fallido de interrumpir la estructura de poder. Son las elites económicas las que han heredado el manto de Franco a través de las corporaciones sostenidas o establecidas durante la dictadura (Juste 2017). Algunas de ellas son empresas de la construcción como OHL, Entrecanales, ACS u otras vinculadas a la energía como Naturgy se expandieron rápidamente gracias al franquismo, pero continúan hoy jugando un papel clave (Maestre 2019). En el sector financiero es también obvia esta vinculación, ya fuese con los bancos que financiaron el golpe como la Banca March o durante la dictadura como el Santander Bank. Esta continuidad se vio con mayor facilidad durante los años de gobiernos conservadores, pero también en los de gobiernos progresistas. La privatización de los antiguos monopolios estatales a principios de los 90 facilitó a estas elites consolidar su posición dominante.

Entre los aparatos represivos del estado y las instituciones políticas es también translúcida esta relación de continuidad. El legado constitucional del franquismo se observa en la reintroducción de la monarquía como herramienta central para garantizar unas elites conservadoras, con su papel de jefe del ejército y garante de la unidad territorial del estado. Este representa la permanencia e indivisibilidad de la unidad nacional. Este rol de la monarquía eleva el principio de la unidad española por encima de muchos derechos de la ciudadanía a la vez que la vincula a los 'Principios fundamentales del Movimiento Nacional' (Soto 1998). No en vano, fue el Rey Felipe VI quien salió el 3 de octubre de 2017 cuando una huelga general hizo tambalearse los cimientos del régimen. La ley de amnistía de 1977 para los torturadores y todas las personas implicadas en la dictadura garantiza la protección legal de los verdugos y otro personal del régimen, a pesar de la petición formal de Naciones Unidas de su derogación. Pero la amnistía no solo garantiza impunidad, sino también la pervivencia de una cultura institucional. La continuidad también está rígidamente integrada en la estructura de dichas instituciones que aseguran el poder del estado central donde comandan las fuerzas conservadoras (Taibo 2014; Navarro 2006).

En la esfera cultural e ideológica encontramos el antecedente directo de esta crisis constitucional en la apuesta de la derecha española de explotar la parafernalia del nacionalismo cultural español (Taibo 2014). Los fundamentos culturales estaban ya servidos antes de la crisis fiscal y de la estrategia re-centralizadora. Especialmente a partir de 2004 el partido conservador desarrolló una estrategia explícitamente nacionalista y autoritaria respecto a Catalunya, y sobre la españolidad en general, como herramienta para desgastar al partido socialista en el gobierno y construir una lealtad de sus votantes a través de llamados al patriotismo español. Este intento del PP era parte de un esfuerzo calculado de recuperar terreno político después de una serie de políticas desastrosas e impopulares como la invasión de Iraq, el hundimiento del Prestige y la gestión de los atentados terroristas en Madrid 2004. Este nuevo patriotismo representó un intento para modificar el rol del estado de garante del bienestar de la población a guardián de la unidad de España. Es decir, redirigir el rol del estado (y la simpatía de los votantes) de las cuestiones sociales a las nacionales. Desafiar las demandas catalanas de mayor autonomía era una parte central de esta estrategia. En

ese contexto cabe entender el boicot a los productos catalanes que se llevó a cabo con el apoyo de la extrema derecha, dentro y fuera del PP. Pero sin duda, el punto central fue el recurso al estatuto de autonomía del PP frente al Tribunal Constitucional. Cuatro años más tarde el Alto Tribunal acabó derogando parte del mismo a pesar de haber sido aprobado por los parlamentos español y catalán y hubiese sido refrendado por la población de Catalunya. Todo ello acompañado de una identidad española que refuerza una jerarquía cultural en la cual las distintas lenguas y expresiones culturales son valoradas desigualmente. Donde todo aquello que no es leído como español o que no puede ser subsumido en la españolidad es visto como una cuestión provinciana o bien desafiante. La españolidad es la identidad con derecho a expresarse en la esfera pública con plenitud de garantías. Las expresiones culturales periféricas son percibidas como actos sediciosos contra el resto de la nación española. El nacionalismo español ha devenido la forma ideológica que vela un régimen de poder y sus relaciones sociales profundamente desiguales.

Esta incapacidad para desafiar un régimen de poder concreto parece fenómeno común en los países que han accedido a la democracia formal en tiempos recientes, ya sea aquellos que venían de largos períodos coloniales, los que provenían del bloque soviético o los que se adhirieron a esta desde regímenes autoritarios a este lado del talón de acero. Ya sea en países postcoloniales, postcomunistas o postfascistas la fe en sus respectivas constituciones, desde Chile a Sudáfrica, desde Eslovenia a la India, desde Croacia a España, ha sido la metáfora compartida de un mundo nuevo por venir, el sueño de un nuevo inicio, de un cambio radical que espantara los fantasmas y las pesadillas de un pasado autoritario, violento y arbitrario. La ideología común para conjurar estas pesadillas es el patriotismo constitucional que recorre estos países que anhelan un nuevo comienzo y que imaginan una nueva cultura política democrática erguida sobre la soberanía popular y los derechos civiles (Comaroff y Comaroff 2016).

Y a pesar de ello, hemos visto modificar esas mismas sacrosantas constituciones para salvar bancos, priorizando los derechos del capital a los de la ciudadanía, se han aprobado leyes mordaza en nombre de la seguridad ciudadana, para impedir ejercer derechos y evitar el ejercicio de la prensa, se reforman códigos penales, para proteger

el estado víctima y al policía de delitos de odio (Sim 2004), los derechos de periodistas y manifestantes se desvanecen en el aire en nombre de la legalidad. El derecho como dique de contención contra el desorden y la legalidad como sustituta de la justicia (Comaroff and Comaroff 2006) están detrás de la criminalización de aquellos que protestan contra un régimen de poder constituido.

La fuerza del derecho se revela priorizando el estado de derecho y la legalidad por encima de la justicia. Fetichismo de un derecho que es garante del poder constituido, a la vez que esconde el régimen de poder que lo sostiene. Un régimen de poder abrasivo con los desposeídos y con la disidencia política. Es la fetichización del derecho la que permite evaluar la justicia de una demanda social en base a su adscripción a la constitución. Sin embargo, el derecho, y el derecho penal en particular, tienen por objetivo preciso extirpar el contexto social de las disputas. Así, el proceso de individualizar la responsabilidad y la culpa permite al estado cubrir el contenido social y político de los conflictos. Es decir, el derecho penal permite enmascarar el contenido político de un conflicto. Por ello, tanta insistencia desde el nacionalismo español de negar la existencia de presos políticos, los presos catalanes por organizar el referéndum son presos comunes dicen. Demandas y sujetos colectivos son transformados en individuos que quebrantaron la ley (Rodríguez 2003). Esta es la magia del derecho penal, reforzar la apariencia de igualdad mientras sostiene la injusticia.

El estado judicializa el presente para negar el carácter político de determinadas luchas políticas, a través de la ley mordaza, las reformas constitucionales, el encarcelamiento de los presos políticos o el procesamiento de cientos de activistas que luchan por la autodeterminación. El régimen de poder y su formalización democrática se vigilan también desde Tribunales Constitucionales y Juntas Electorales que deciden quien puede presentarse, quien puede ser presidente, que está permitido en campaña y fuera de ella, más allá de la voluntad popular que también ha de ser vigilada y legalizada. De este modo, lo profano es consagrado, nada se desvanece en el aire y la palabra -constitución- se hace cuerpo.

Entonces, por muy dolorosa que sea nuestra relación con la historia, con el fascismo y el colonialismo, lo que habremos de politizar de nuevo es el pasado, para liberar este presente, para combatir su régimen de poder y desafiar su arquitectura institucional. Mal iremos si aquellxs que aspiran a una transformación social y contra la opresión reproducen el imaginario político de la cultura de la legalidad como forma de hacer política (Hudson 2006), confundidas por la falacia de la autonomía de la política, si la lucha por la justicia, la lucha feminista, la lucha decolonial o la lucha de clases se convierten en meras acciones judiciales, en simples demandas en los tribunales, en demandas laborales, penales o de derechos humanos, habremos sucumbido ante el fetichismo del derecho.

REFERENCES

A

Agamben, G., (1998) *Homo Sacer. El poder soberano y la nuda vida*. Valencia: Pre-Textos.

Agamben, G., (2004) *Estado de excepción*. Valencia: Pre-Textos.

Agamben, G., (2005) *State of Exception*. Chicago: Chicago University Press.

Agamben, G., (2010) Notas preliminares sobre el concepto de democracia. In: J. Bassas Vila, dir., *Democracia en suspenso*. Madrid: Casus Belli.

Agamben, G., (2014) *Archeologia della Politica*. Seminario en la University of Girona, Mayo.

Aglietta, M., (1979) *Regulación y crisis del capitalismo*. Madrid: Siglo XXI.

Aglietta, M. y Brandt, T., (2015) *Un New Deal para Europa. Crecimiento, euro, competitividad.* Madrid: Traficantes de Sueños.

Aglietta, M., and Moatti, S., (2002) *El FMI: del orden monetario a los desórdenes financieros.* Madrid: Akal.

Agozino, B., (2003) *A Counter-Colonial Criminology*. London: Pluto.

Aguilera, F. y Naredo, J.M. (2009) Introducción, en: Federico Aguilera (Coordinador), *Economía, poder y megaproyectos*, 3–18. Lanzarote: Fundación César Manrique.

Akin, O., Montalvo, J.G. Villar, J.G., Peydró, J.-L. y Raya, J.M., (2014) The Real Estate and Credit Bubble: Evidence from Spain. *SERIEs*, 5(2-3): 223–243.

Althusser, L., (2008). *On Ideology*, London: Verso.

Amin, S., (1986) *El desarrollo desigual.* Barcelona: Planeta.

Amin, S., (1997) *El capitalismo en la era de la globalización.* Barcelona: Paidós.

Arrighi, G., (1999) *The long twentieth century*. London: Verso.

Atiles, J., (2016) *Apuntes para abandonar el derecho: estado de excepción colonial en Puerto Rico.* Cabo Rojo: Educación Emergente.

Aulette, J. y Michalowski, R., (1993) The imperial chicken fire: States, corporations, and public health. En: K. Tunnell (Ed.), *Political crime in contemporary America*. New York: Garland Press.

Aulette, J. y Michalowski, R., (1995) Fire in Hamlet. A case-study of State-Corporate Crime. En: G. Geis, R. Meier y L. Salinger (eds), *White- Collar Crime. Classic and Contemporary Views*. New York: Free Press.

B

Balestrini, N. y Moroni, P., (2006) *La horda de oro. La gran ola revolucionaria y creativa, política y existencial (1968-77).* Madrid: Traficantes de Sueños.

Balfour, S., (2002) *Deadly Embrace. Morocco and the road to the Spanish civil war*. London: Oxford University Press.

Ballbe, M. y Caicedo, Y., (2012) El ataque alemán desahucia a España, noviembre 29, *El País*.

Bambery, C. y Kerevan, G., (2018) *Catalonia Reborn: how Catalonia took on the corrupt Spanish state and the legacy of Franco*. Edinburgh: Luath Press.

Banco Mundial, (2007) *Draining Development? Controlling Flows of Illicit Funds from developing countries.* http://documents.worldbank.org/66815

Barak, G., 2018. *Unchecked Corporate Power: Why the Crimes of Multinational Corporations Are Routinized Away and What We Can Do About It*. London: Routledge.

Baker, R. y Joly, E., (2011) Illicit Money. Can it be Stopped? En: N. Gilman, J. Goldhammer y S. Webber (eds.), *Deviant Globalization*. New York: Continuum.

Baratta, A., (1986) *Criminología Crítica y Crítica del Derecho Penal*. Mexico DF: Siglo XXI.

Bazzicalupo, L., (2010) *Biopolítica: un mapa conceptual*. Santa Cruz de Tenerife: Melusina.

Beckett, K. y Sasson, T., (2000) *The Politics of Injustice*. Thousand Oaks: Sage.

Benjamin, W., (2010) *Crítica de la violencia*. Madrid: Biblioteca Nueva.

Bernal, C., (2014) Daños sociales y delitos estatal-corporativos en la crisis europea. En: I. Rivera, (ed.), *Delitos de los estados, mercados y daño social*. Barcelona: Anthropos.

Bernat, I., (2014) Desahuciando a inmigrantes: una etnografía en una comunidad dañada. *Crítica Penal y Poder*, 7: 35–63.

Bernat, I., (2015) Entendiendo los desahucios: financiarización, poder corporativo y derechos mercantilizados. *Sortuz*, 7(2), 88–104.

Bernat, I., (2018a) The Permanent State of Exception in the Southern Periphery of Europe. *Oñati Socio-legal Series* Vol 6(8), 925-949.

Bernat, I., (2018b) The Crimes of the Powerful and the Spanish crisis. En: S. Bittle, L. Snider, S. Tombs y D. Whyte (eds.), *Revisiting the Crimes of the Powerful: Marxism, Crime and Deviance*. London: Routledge.

Bernat, I., Jiménez, D. y Forero, A., (2016) Miedo y Saqueo en el Sur. En: S. Tombs y D. Whyte, *La Empresa Criminal.* Barcelona: Icaria.

Bernat, I. y Whyte, D., (2015) Entendiendo los orígenes del crimen estatal-corporativo: un análisis de los desastres del Prestige y Morecambe Bay. *Crítica Penal y Poder*, 9 (1), 255-278.

Bernat, I. y Whyte, D., (2017) State-corporate crime and the process of global accumulation: mapping a global regime of permission from Galicia to Morecambe Bay. *Critical Criminology*, 25 (1), 71-86.

Bernat, I. y Whye, D., (2019a) State-Corporate Crime En: M. Rorie, *The Willey Handbook on White-collar Crime*. New York: Willey

Bernat, I. y Whye, D., (2019b) Catalonia, Postfascism and Popular sovereignty En: I. Bernat y D. Whyte (eds.), *Building a New Catalonia: Self-determination and Emancipation*. Barcelona: Pol·len and Bella Caledonia.

Bonger, W., (1967) *Criminality and Economic Conditions*. New Jersey: Agathon Press.

Bonilla-Silva, E., (1999) The Essential Social Fact of Race. *American Sociological Review*, 64 (6), 899-906.

Borràs J (2018) *En nom d'Espanya Activistes contraris a la independència provoquen, en tres mesos, 139 incidents violents a Catalunya, entre els quals 86 agressions físiques*, mèdia.cat, 9th February, available online at: https://www.media.cat/2018/02/09/en-nom-despanya/.

Bourdieu, P. (1986) The forms of capital. En: J. Richardson, *Handbook of Theory and Research for the Sociology of Education*. Westport: Greenwood.

Bourdieu, P., (2000) *La Dominación Masculina*. Barcelona: Anagrama.

Box, S., (1983) *Power, Crime and Mystification*. London: Tavistock.

Bradshaw, E. (2014). State-corporate environmental cover-up: The response to the 2010 Gulf of Mexico oil spill. State Crime Journal, 3(2), 163–181.

Braithwaite, J., (1984) *Corporate Crime in the Pharmaceutical Industry*. London: Routledge.

Braithwaite, J., (1995) Transnational Regulation of the Pharmaceutical Industry. En: G. Geis, R. Meier y L. Salinger (eds), *White-Collar Crime. Classic and Contemporary Views*. New York: Free Press.

Brandariz, J. A., (2014) *El gobierno de la penalidad. La complejidad de la política criminal contemporánea.* Madrid: Dykinson.

Brandariz García, J. A., y Faraldo Cabana, P., (2015) Consequences of Post-fascism in Security Policies in Spain. *Security Dialogues* 6 (1-2): 203-222.

Brown, W., (2015) *El pueblo sin atributos: la secreta revolución del neoliberalismo.* Barcelona: Malpaso.

Bruce, A., y Becker, P., (2007). State-corporate crime and the Paducah Gaseous Diffusion Plant. *Western Criminology Review*, 8(2), 29–43.

Burnett, J., & Whyte, D., (2010) *Wages of Fear.* Leeds and Liverpool: PAFRAS and University of Liverpool.

Busqueta, J.M., (2013) *L'hora dels voltors*. Lleida: El Jonc.

C

Cain, M. y Howe, A., (2008) Introduction. Women, Crime and Social Harm. En: M. Cain y A. Howe (ed.) *Women, Crime and Social Harm*. Oxford: Hart.

Calavita, K., (2005) *Immigrants at the Margins: Law, Race and Exclusion in Southern Europe.* Cambridge University Press.

Calavita, K. y Suárez-Navas, L., (2003) Spanish immigration law and the construction of difference: citizens and "illegals" on Europe's Southern border. In: R. Warren Perry y B. Maurer, (eds.), *Globalization Under Construction. Governmentality, Law, and Identity.* Minneapolis: University of Minnesota Press.

Campesi, G., (2011) *Soggetto, disciplina, governo: Michel Foucault e le tecnologie politiche moderne.* Milan: Mimesis.

Campesi, G., (2018) Crisis, Migration and the Consolidation of the EU Border Control Regime. *International Journal of Migration and Border Studies*, 4 (3), 196-221.

Carr, M., (2012) *Fortress Europe: Inside the war against immigration*. London: Hurst.

Carstens, K., (2003) Ready (or not) for oil spills—EU waters mapped for risk. *Politico.eu*. 17th September.

Catalán Deus, G., (2003) *DesPrestige: el ocaso del Partido Popular ante la mayor catástrofe ambiental en España*. Madrid: La Esfera.

Cavallero, L. y Gago, V., *Una lectura feminista de la deuda. Vivas, libres y desendeudadas nos queremos.* Buenos Aires: Rosa Luxemburg Fundation.

Clua-Losada, M. y Ribera-Almandoz, O. (2017) Authoritarian neoliberalism and the disciplining of labour. En: Tansel, C. B., (ed.) *States of Discipline: Authoritarian Neoliberalism and the Contested Reproduction of Capitalist Order*. Maryland: Rowman and Littlefield.

Colau, A. y Alemany, A., (2012) *Vides Hipotecades. De la bombolla hipotecària al dret a l'habitatge.* Barcelona: Angle.

Colau, A. y Alemany, A., (2013) *¡Sí se puede! Crónica de una pequeña gran victoria*. Barcelona: Destino.

Coleman, J., (1987) *The Criminal Elite. The Sociology of White-Collar Crime*. New York: St Martin's.

Coleman, C. y Moynihan, J., (1996) *Understanding Crime Data*. Buckingham: Open University.

Coleman, R., Sim, J. Tombs, S. y Whyte, D., (2009) Introduction. State, Power, Crime. En: R. Coleman, J., Sim, S., Tombs y D. Whyte. (eds.) *State, Power, Crime*. London: Sage.

Comaroff, J. y Comaroff, J. L., (2006) Law and Disorder in the Postcolony. Chicago: The University of Chicago Press.

Comaroff, J. y Comaroff, J. L., (2016) *The Truth about Crime. Sovereignty, Knowledge, Social Order.* Chicago: Chicago University Press.

Cooper, V. y Whyte, D., (2017) Introduction: the Violence of Austerity. En: V. Cooper y D. Whyte (eds.), *The Violence of Austerity*. London: Pluto.

Cutillas, S. y Wessling, U., (2013) La deuda en España. En: Plataforma Auditoría Ciudadana de la Deuda (¡No debemos!, ¡no pagamos!, coord.), *¿Por qué no debemos pagar la deuda? Razones y alternativas.* Barcelona: Icaria.

Cressey, D., (1953) *Other's People Money*. Montclair: Patterson Smith.

Crucciotti, T. y Matthews, R., (2006) The Exxon Valdez oil spill. En: R. Michalowski y R. Kramer (eds.), *State-corporate crime: Wrongdoing at the intersection of business and government.* New Brunswick: Rutgers.

D

De Giorgi, A., (2010) Immigration control, post-fordism and less eligibility. A materialist critique of the criminalization of immigration across Europe. *Punishment and Society*, 12 (2), 147-167.

De Sousa Santos, B., (2010) *Para Descolonizar Occidente. Más allá del pensamiento abismal.* Buenos Aires: Clacso.

Dean, M., (2010) *Governmentality: Power and Rule in Modern Society.* London: Sage.

Di Masso, A., Castrechini, A. y Valera, S., (2014) Displacing Xeno-Racism: The discursive legitimation of native supremacy through everyday accounts of 'urban insecurity'. *Discourse & Society*, Vol. 25, 3, pp. 341-361.

Domènech, X., (2011a) *Cambio politico y movimiento obrero bajo el franquismo. Lucha de clases, dictadura y democracia (1939-1977).* Barcelona: Icaria.

Domènech, X., (2011b) Crisis de hegemonía y movimientos de resistencia. *Papeles de relaciones ecosociales y cambio global*, 116: 63-74.

Domínguez, I., (2018) Patrimonio impide a las familias el acceso al Valle de los Caídos para las primeras exhumaciones. *El País*, 23 April, disponible online en: https://elpais.com/politica/2018/04/23/actualidad/1524463208_308910.html

Dussel, E., (2016) *Filosofías del sur: descolonización y transmodernidad*. Madrid: Akal.

Dymski, G., (2009) Racial Exclusion and the Political Economy of the Subprime Crisis. *Historical Materialism*, 17: 149–179.

E

Ecologistas en Acción, (2012) *Nunca más? Una catástrofe como la del Prestige puede volver a ocurrir. Los problemas de una sociedad adicta al petróleo.* www.ecologistasenaccion.org.

EFE, 2014. Un jurista advierte de que la venta de preferentes fue una estafa a “gran escala”. *El País* [online], 10 February. Available from: https://elpais.com/economia/2014/02/10/actualidad/1392049289_426430.ht ml [Accessed 15 August 2018].

El Mundo, 2011. Zapatero y Rajoy pactan reformar la Constitución para limitar el déficit. *El Mundo* [online], 23 August. Available from: https://www.elmundo.es/elmundo/2011/08/23/espana/1314089107.html [Accessed 10 June 2018].

Etxezarreta, M., (2002) Europa S.A. En: G. Galdón (ed.) *Mundo S. A*., Barcelona: La tempestad.

Ewing, K., (2019) Spain's Vicious Rule of Law. En: Bernat, I. y Whyte, D., (eds.) *Building a New Catalonia: self-determination and emancipation*, Barcelona: Pol-len and Bella Caledonia.

F

Federici, S., (2010) *Revolución en punto zero*. Madrid: Traficantes de Sueños.

Federeci, S., (2019) *El Patriarcat del Salari*. Manresa: Tigre de Paper.

Fernández, G., (2016) *Alternativas al Poder Corporativo*. Barcelona: Icaria.

Fernández, G., (2018) *Mercado o Democracia*. Barcelona: Icaria.

Fernández, G. y Hernández, J., (2018) Entre el proteccionismo de Trump y el librecambismo neoliberal. *Viento Sur*, 151: 15-26.

Fernández Durán, R., (2006) *El tsunami urbanizador: Sobre sus causas y repercusiones devastadoras, y la necesidad de prepararse para el previsible estallido de la burbuja inmobiliaria.* Barcelona: Virus.

Fernández-Savater, A., (2013) La cultura de la transición y el nuevo sentido común. *Cuadernos de eldiario.es*, 1: 16–18.

Fleisner, P., (2015) *La vida que viene: estética y filosofía en el pensamiento de Giorgio Agamben.* Buenos Aires: Eudeba.

Font, M., (2015) Deu grans Empresaris que han fet campanya contra la Independència. *Crític*, 7 October, disponible online en: http://www.elcritic.cat/actualitat/deu-grans-empresaris-que-han-fet-campanya-contra-laindependencia-6138

Fontana, J., (2011) *Por el bien del imperio: una historia del mundo desde 1945*. Barcelona: Pasado y Presente.

Fontana, J., (2014) *La Formació d'una Identitat: una història de Catalunya*. Barcelona: Eumo.

Forero, A., (2014) Soberanía limitada, delitos estatal-corporativo y daño social: los desahucios y suicidios en España. En: Iñaki Rivera Beiras (ed.), *Delitos de los Estados, de los mercados y daño social*, 167–181. Barcelona: Anthropos.

Foster, J.B., (2010) The Financialization of Accumulation. *Monthly Review*, 62(5): 1–17.

Foucault, M., (1991) *The Order of Things*. London: Routledge.

Foucault, M., (2006) *The Birth of Biopolitics*. New York: Picador.

Foucault, M., (2012) *Cal defensar la societat*. Barcelona: Proteus.

Fraser, N., (2015) *Fortunas del feminismo*. Madrid: Traficantes de Sueños.

Friederichs, D., (2010) *Trusted Criminals*. Belmont: Wandsworth.

Friedrichs, D., (2018) Crimes of globalization and Asian dam projects: powerful institutions and slow violence. En: S. Bittle *et al*., (eds.), *Revisiting the Crimes of the Powerful: Marxism, Crime and Deviance.* London: Routledge.

Friedrichs, D., and Friedrichs, J., (2002) The World Bank and the Crimes of the Globalization: a Case Study. *Social Justice*, 29 (1-2), 13-36.

G

Gago, V. (2019) *La Potencia Feminista o el deseo de cambiarlo todo*. Madrid: Traficantes de sueños.

Gandarilla, J. G., (2018) *Colonialismo Neoliberal: Modernidad, devastación y automatismo de mercado.* Buenos Aires: Argentina.

García Montalvo, J., (2008) *De la Quimera Inmobiliaria al Colapso Financiero*. Barcelona: Bosch.

García Montalvo, J. y Raya, J. M., (2012) What is the Right Price of the Spanish Real State. *Spanish Economic and Financial Outlook*, 1(3): 22–28.

Garland, D., (1997) Governmentality' and the problem of crime: Foucault, criminology, sociology. *Theoretical Criminology* 1(2), 173-214.

Geis, G. y Goff, C., (1983) Introduction. En: E. Sutherland, *White-Collar Crime. The Uncut Version*. New Haven: Yale University.

Geis, G., Meier, R. y Salinger, L., (1995) Introduction. En: G. Geis, R. Meier y L. Salinger (eds), *White- Collar Crime. Classic and Contemporary Views*. New York: Free Press.

Georgoulas, S., (2018) Grecia: crimen-estatal corporativo en la época de los memorandos. *Crítica Penal y Poder*, nº 14, 5-21.

Gilman, N., Goldhammer, J. y Webber, S., (2011) Introduction. En: N. Gilman, J. Goldhammer y S. Webber (eds.), *Deviant Globalization*. New York: Continuum.

Graeber, D., (2012) *En deuda: una historia alternativa de la economía*. Barcelona: Ariel.

Gramsci, A., (1971) *Selections from the Prison Notebooks*. London: Lawrence and Wishart.

Green, P. y Ward, T. (2012) State crime: a dialectical view. En: Mike Maguire, Rod Morgan, and Robert Reiner (eds.), *The Oxford Handbook of criminology 5th edition* Oxford: Oxford University Press.

Greenpeace, (2012) *Otro Prestige es Posible. Reflexiones para evitar otra marea negra*. www.greenpeace.es.

Griffin, R., (1993) *The Nature of Fascism*. London and New York: Routledge.

Griffin, R., (1995) The 'post-Fascism' of the Alleanza Nazionale: a case study in ideological morphology. *Journal of Political Ideologies* 1(2): 123-145.

Guareschi, M. y Rahola, F., (2011) *Chi decide? Critica della ragione eccezionalista.* Verona: Ombre Corte.

H

Hagan, J., (2010) *Who Are the Criminals? The Politics of Crime Policy from the Age of Roosevelt to the Age of Reagan.* New Jersey: Princeton University.

Hansen, R., (2008). Multinational enterprise pursuit of minimized liability: Law, international business theory and the prestige oil spill. *Berkeley Journal of International Law*, 28(2), 410–451.

Harcourt, B., (2010) Neoliberal Penality: A Brief Genealogy. *Theoretical Criminology*, 14(1): 74–92.

Harcourt, B., (2011) *The illusion of Free Markets. Punishment and the Myth of Natural Order.* Harvard: Cambridge.

Harvey, D., (2004) *El Nuevo Imperialismo*. Madrid: Akal.

Harvey, D., (2005) El arte de la renta: la globalización y la mercantilización de la cultura. En: D. Harvey, *et al.* (eds.), *Capital financiero, propiedad inmobiliaria y cultura.* Barcelona: Macba.

Harvey, D., (2006) *Spaces of Global Capitalism*. London: Verso.

Harvey, D., (2010) *The Enigma of Capital and the Crisis of Capitalism*. New York: Oxford.

Hebberecht, P., (2015) Willem Bonger: the unrecognized European pioneer of the study of white-collar crime. En: J. van Erp, W. Huisman, G. Van de Walle (eds.), *The Routledge Handbook of White-Collar and Corporate Crime in Europe*. London: Routledge.

Herbert, I. y Nash, E., (2004). How Spain's insatiable appetite fuels a desperate pursuit of cockles in Morecambe. *The Independent*, 15th February.

Hernández de Miguel, C., (2019) *Los campos de concentración de Franco: Sometimiento, torturas y muerte tras las alambradas*. Madrid: Ediciones B.

Hillyard, P., (2013) Zemiology Revisited. Fifteen years on. En: J. Gilmore, J.M. y David Scott (eds.), *Critique and Dissent*. Ottawa: Red Quill.

Hillyard, P. y Tombs, S., (2004) Beyond Criminology? En: P. Hillyard, C. Pantazis, S. Tombs y D. Gordon (eds.), *Beyond Criminology. Taking Crime Seriously*. London: Pluto.

Hudson, B. (2006) Beyond white man's justice. Race, gender and justice in late modernity. *Theoretical Criminology* vol. 10(1): 29-47.

I

Iadicola, P. (2010) Controlling Crimes of Empire. *Social Justice*, 36(3), 98–110.

Iadicola, P. (2011) Do Empires commit State Crime? En: D. Rothe y C. Mullins (eds.), *State crime: Current perspectives*. New Brunswick: Rutgers.

Inurrieta, A., (2013) Una estafa piramidal y consentida. *Alternativas económicas*, 1, Marzo, 13-14.

J

Jansen, F., (2017) Smarters borders. Challenges and limitations of data-driven borders. En: M. Gržinić, (ed.), *Border Thinking: Disassembling Histories of Racialized Violence.* Publication Series of the Academy of Fine Arts Vienna, vol. 21. Sternberg Press.

Jessop, B., (1990) *State Theory. Putting Capitalist States in their Place*. Cambridge: Polity.

Jessop, B., (2002) *The Future of the Capitalist State*. Cambridge: Polity Press.

Jiménez, D., (2014) Crímenes que producen castigo. Sobre el sentido del jubileo en una administración general del daño. *Crítica Penal y Poder*, 7: 85–121.

Jiménez, D., (2017) *Mercado-estado-cárcel en la democracia neoliberal española*. Barcelona: Anthropos.

Jiménez González, A. (2018) Enemigos del estado: las guerras legales de España contra obreros e independentistas. *Misión Jurídica* 15: 185-207.

Juste, R., (2017) *IBEX-35: Una historia herética del poder.* Madrid: Capitán Swing.

K

Karmy, R., (2016) *Escritos bárbaros: ensayos sobre razón imperial y mundo árabe contemporáneo.* Santiago de Chile: LOM.

Kauzlarich, D., y Matthews, R., (2006) Taking stock of theory and research. En: R. Michalowski y R. Kramer (eds.), *State-corporate crime: Wrongdoing at the intersection of business and government*. New Brunswick: Rutgers.

Kepner, C. y Soothill, J.H., (2015) *El Imperio del Banano*. Madrid: Akal.

Knox, R., (2017) Legalising the Violence of Austerity. En: V. Cooper y D. Whyte, (eds.), *The Violence of Austerity*. London: Pluto.

Kothari, M., (2008) *Informe del relator especial sobre una vivienda adecuada como elemento integrante del derecho a un nivel de vida adecuado* A/HRC/7/16/Add 2, de 7 de Febrero, Naciones Unidas.

Kouvelakis, S. y Lapavitsas, C., (2018) Grècia: el gir repressiu de Syriza. *Jornada*, 13 de Octubre.

Kramer, R. C., (1992) The space shuttle challenger explosion: A case study of state-corporate crime. En: K. Schelgel y D. Weisburd (eds.), *White collar crime reconsidered*. Boston: Northeastern University.

Kramer, R. y Michalowski, R., (2006) The invasion of Iraq. En: R. Michalowski y R. Kramer (eds.), *State-corporate crime: Wrongdoing at the intersection of business and government.* New Brunswick: Rutgers.

Kramer, R., Michalowski, R. y Kauzlarich, D. (2002). The origins and development of the concept and theory of state-corporate crime. *Crime and Delinquency*, 48(2), 263–282.

Krugman, P., (1992) *Geografía y comercio*. Barcelona: Bosch.

Krugman, P., (2012) *¡Acabad ya con esta crisis!* Barcelona: Crítica.

L

Lapavitsas, C., (2009a) *El capitalismo financiarizado: expansión y crisis*. Madrid: Maia.

Lapavitsas, C., (2009b) Financialised Capitalism: Crisis and Financial Expropriation. *Historical Materialism*, 17: 114–148.

Lapavitsas, C., (2011) Theorizing Financialization. *Work, Employment and Society*, 25(4): 611–626.

Lapavitsas, C., (2013a) *Profiting Without Producing: How Finance Exploits us All*. London: Verso.

Lapavitsas, C., (2013b) *Crisis en la Euro zona*. Madrid: Capitán Swing.

Lasslett, K., (2010) Scientific method and the crimes of the powerful. *Critical Criminology*, 18(3), 211–228.

Lasslett, K., (2014) *State crime on the margins of empire: Rio Tinto, the war on Bougainville and resistance to mining.* London: Pluto.

Laval, C. y Dardot, P., (2013) *La Nueva Razón del Mundo*. Madrid: Gedisa.

Lazarsfeld, P. y Thielens, W., (1958) *The Academic Mind* Glencoe, Free Press.

Lemke, T., (2011) *Biopolitics: an advanced introduction*. New York / London: New York University Press.

López, I. y Rodríguez, E., (2010) *Fin de ciclo. Financiarización, territorio y sociedad de propietarios en la onda larga del capitalismo hispano (1959–2010)*, Madrid: Traficantes de sueños.

López, I. y Rodríguez, E., (2011) "The Spanish Model." *New Left Review*, 69: 5–28.

Lugones, M., (2015) Colonialidad y Género. Hacia un Feminismo Decolonial. En: W. Mignolo (ed.), *Género y descolonialidad*. Buenos Aires: Del Signo.

Luxemburg, R., (1913) *The Accumulation of Capital*. London: Routledge.

M

Maestre, A., (2019) *Franquismo S. A.* Madrid: Akal.

Mann, M., (1984) The Autonomous Power of the State. Its Origins, Mechanism and Results. *European Journal of Sociology*, vol. 25, 185-213.

Manresa, J., (2018) El govern espanyol eleva en més de 5.200 milions el sostre de de despesa per als pressupostos del 2019. *Ara*, 20 July, disponible online en: https://www.ara.cat/economia/DIRECTE-govern-espanyoldespesa-pressupostos_0_2054794636.html

Marx, K., (1993) *Grundrisse: Foundations of the critique of political economy*. London: Penguin.

Matthews, R., (2006). Ordinary Business in Nazi Germany. En: R. Michalowski y R. Kramer (eds.), *State-Corporate Crime: Wrongdoing at the intersection of business and government.* New Brunswick: Rutgers.

Matthews, R., y Kauzlarich, D., (2000) The crash of valujet flight 592: A case study in state-corporate crime. *Sociological Focus*, 33(3), 281–298.

Martín del Barrio, J., (2018) Novo Banco, el "banco bueno" del Espirito Santo, pierde 1.400 millones. *El País*, 28 March. Available from: https://elpais.com/economia/2018/03/28/actualidad/1522255785_475704.html [Accessed 3 August 2018].

Massey, D., (2007) *Categorically Unequal*. New York: Sage.

Mazzucato, M., (2013) *The Entrepreneurial State: Debunking Public vs. Private Sector Myths.* London: Anathem.

Mbembe, A., (2001) *On the Postcolony*. Oakland: University of California Press.

Mbembe, A., (2011) *Necropolítica*. Santa Cruz de Tenerife: Melusina.

Melossi, D., (2002) *Stato, Controllo Sociale, Devianza*. Milano: Mondadori.

Melossi, D., (2015) *Crime, Punishment and Migration*. London: Sage.

Messuti, A. (2008) *La Justicia Deconstruida*. Barcelona: Bellaterra.

Michalowski, R. y Kramer, R. (2006) The Critique of Power. En: R. Michalowski y R. Kramer (eds.), *State-Corporate Crime: Wrongdoing at the Intersection of Business and Government*. Brunswick: Rutgers.

Mies, M., (2019) *Patriarcado y Acumulación a escala mundial*. Madrid. Traficantes de sueños.

Mignolo. W. y Walsh, C., (2018) *On Decoloniality: Concepts, Analytics, Praxis*. Durham, NC / London: Duke University Press.

Minder, R., (2018) Spanish Artwork Denounced Political 'Persecution'. It was Ordered Removed. *New York Times*, 23 February, disponible online en: https://www.nytimes.com/2018/02/21/world/europe/spain-artcensorship-catalonia.html

Missé, A., (2013) Atrapados en la gran ratonera de las preferentes. *Alternativas económicas*, 1, Marzo, 9-11.

Molotch, H., (1976) The City as a Growth Machine: Toward a Political Economy of Place. *American Journal of Sociology*, 82(2): 309–332.

Morillo I (2018) Por qué decapitar a Puigdemont en los carnavales de Cadiz no es delito de odio. *El Confidencial*, 11 January, disponible online en: https://www.elconfidencial.com/espana/andalucia/2018-01-11/por-que-decapitar-a-puigdemont-en-los-carnavales-no-es-delito-de-odio_1504502/

N

Naredo, J.M., (2009) Economía y poder. Megaproyectos, recalificaciones y contratas. En: *Economía, poder y megaproyectos*. Lanzarote: Fundación César Manrique.

Naredo, J. M., (2010) El modelo inmobiliario español y sus consecuencias, *Coloquio sobre urbanismo, democracia y mercado: una experiencia española (1970–2010)*. Paris.

Naucher, (2013) *El proceso del 'Prestige'. Once años a la deriva*. www.naucher.com.

Navarro, V., (2002) *Bienestar insuficiente, democracia incompleta*. Barcelona: Anagrama.

Navarro, V., (2006) *El Subdesarrollo social de España. Causas y consecuencias*. Barcelona: Anagrama.

Negri, A., (2003) *La Forma-Estado*. Madrid: Akal.

O

Obsevatori Desc, (2013) Emergencia habitacional en el Estado español: La crisis de las ejecuciones hipotecarias y de los desalojos desde una perspectiva de los derechos humanos. Online. Available HTTP: http://observatoridesc.org/sites/default/files/2013-Emergencia-Habitacional.pdf

O'Connor, J., (1973) *The Fiscal Crisis of the State*. New York: Sant Martin's Press-

el-Ojeili, C., (2018) Reflecting on Post-fascism: Utopia and Fear. *Critical Sociology* DOI: 10.1177/0896920518768867.

P

Panayotov, S., (2017) Necropolitics in the East. En: M. Gržinić, ed., *Border Thinking: Disassembling Histories of Racialized Violence*. Publication Series of the Academy of Fine Arts Vienna, vol. 21. Sternberg Press.

Pantazis, C. y Pemberton, S., (2009) Nation States and the Production of Social Harm. En: R. Coleman, J., Sim, S., Tombs y D. Whyte. (eds.), *State, Power, Crime*. London: Sage.

Pashukanis, E., (2001) The General Theory of Law and Marxism. New Jersey: Transaction Publishers.

Pavarini, M., (1985) *Control y Dominación*. Mexico DF: Siglo XXI.

Pawiro, S., (2010) Bivalves: Global production and trade trends. En: G. Rees, K. Pond, D. Kay, J. Bartram, y J. Santo Domingo (eds.), *Safe management of shellfish and harvest waters*. London: IWA.

Payne, S., (1985) *Falange: Historia del fascismo Español*. Madrid: Ruedo Ibérico.

Payne, S., (1992) *El Fascismo*. Madrid: Alianza.

Pearce, F., (1976) *Crimes of the powerful: Marxism, crime and deviance*. London: Pluto.

Pearce, F. y Tombs, S., (1998) *Toxic Capitalism. Corporate Crime and the Chemical Industry.* Aldershot: Ashgate.

Pearse, P., y Walters, C., (1992) Harvesting regulation under quota management systems for ocean fisheries: Decision making in the face of natural variability, weak information, risks and conflicting incentives. *Marine Policy*, 16(3), 167–182.

Pérez Orozco, A., (2014) *Subversión feminista de la economía*. Madrid: Traficantes de Sueños.

Pérez Orozco, A., (2017) *Aprendizajes de las Resistencias Feministas Lationamericanas a los tratados de comercio e inversión*. Bilbao: Paz con Dignidad.

Pérez Orozco, A., (2018) Prólogo. En: G. Fernández, *Mercado o Democracia*. Barcelona: Icaria.

Piñero, G. y Fresnillo, I., (2013) La deuda en el mundo. In: Plataforma Auditoría Ciudadana de la Deuda ¡No debemos!, ¡no pagamos!, (coord.), *¿Por qué no debemos pagar la deuda? Razones y alternativas*. Barcelona: Icaria.

Pontell, H., et al., (2014) Too big to fail, too powerful to jail? On the absence of criminal prosecutions after the 2008 financial meltdown. *Crime, Law and Social Change*, 61 (1), 1-13.

Poulantzas, N., (2018) *Fascism and Dictatorship: the Third International and the Problem of Fascism*. London: Verso.

Prada, A., Varela Uría, M., y Vazquez, M. J., (2002) Dos preguntas sobre el caso 'Prestige'. *El País*, 7 de Diciembre.

Puar, J., (2007) *Terrorist Assemblages: Homonationalism in Queer Times*. Durham: Duke University Press

Q

Quijano, A., (2000) Colonialidad del Poder, Eurocentrismo, y América Latina. En: E. Lander (ed.) *La colonialidad del saber*. Buenos Aires: Clacso.

Quijano, A., (2018) Coloniality of Power, Eurocentrism, and Latin America. *Views from the South* 1(3): 533-580.

R

Rancière, J., (2010) Las democracias contra la democracia. En: *Democracia en suspenso.* Madrid: Casus Belli.

Rasmussen, M. B., (2018) Postfascism, or the Cultural Logic of Late Capitalism, *Third Text*, DOI: 10.1080/09528822.2018.1549797.

Reiman, J., (1976) *The Rich get Richer and the Poor get the Prison. Ideology, Class and Criminal Justice.* Needham Heights: Allyn and Bacon.

Robinson, C. J., (1983) *Black Marxism*. London: Zed Press.

Rodríguez, E., (2003) Un puño sin brazo ¿Seguridad ciudadana o criminalización de la multitud? En: González, J., *et al. La Criminalización de la Protesta Social*. La Plata: La Grieta.

Rodríguez, E., (2015) *Por qué Fracasó La Democracia en España. La transición y el régimen del '78.* Madrid: Traficantes de Sueños.

Rothe, D., (2006) Iraq and Halliburton. En: R. Michalowski y R. Kramer (eds.), *State-corporate crime: Wrongdoing at the intersection of business and government.* New Brunswick: Rutgers.

Ruggiero, V., (2005) *Delitos de los débiles y de los poderosos. Ejercicios de anticriminología.* Buenos Aires: Ad-hoc.

Ruggiero, V., (2013) *I crimini dell'economia. Una lettura criminologica del pensiero economico.* Milan: Feltrinelli.

Ruggiero, V. y South, N., (2010) Green criminology and dirty collar crime. *Critical Criminology*, 18, 251-262.

Ruggiero, V., (2013) *The crimes of the economy: A criminological analysis of economic thought.* London: Routledge.

Ruzza, C. y Fella, S., (2009) *Re-inventing the Italian Right: Territorial Politics, Populism and 'Post-Fascism'*. London: Sage.

S

Sabrià, S., (2006) El cava catalán cae el 8% por culpa del boicot. *El Periódico de Aragón*, 7 February, disponible online en: https://www.elperiodicodearagon.com/noticias/economia/cava-catalan-cae-8-culpa-boicot_230214.html

Said, E., (2002) *Orientalismo*. Barcelona: Mondadori.

Salellas, L., (2015) *El Franquisme que no marxa*. Barcelona: Saldonar.

Salellas, B, Vehí, M. y Bernat, I., (2017) *The Minotaur of '78*. Barcelona: CUP, available online at: http://cup.cat/sites/default/files/el_minotaure_del_78_revisat_angl.pdf

Sassen, S., (2001) *The Global City. New York, London, Tokyo*. Princeton: Princeton University.

Sassen, S., (2003) *Contrageografías de la Globalización. Género y ciudadanía en los circuitos transfronterizos*. Madrid: Traficantes de Sueños.

Sassen, S., (2015) *Expulsiones. Brutalidad y complejidad en la economía global*. Madrid: Katz.

Sayyid, S., (2014) *Recalling the Caliphate: Descolonization and World Order*. London: Hurst.

Sayyid, S., (2017) Post-racial paradoxes. Rethinking European racism and antiracism. *Patterns of Prejudice*, 51 (1), 9-25.

Saz, I., (2004) *Fascismo y Franquismo*. València: Universitat de València.

Schmitt, C., (1991) *El concepto de lo político*. Madrid: Alianza.

Schmitt, C., (2009) *Teología política*. Madrid: Trotta.

Schwendinger, H. y Schwendinger, J., (1977) ¿Defensores del orden o custodies de los derechos humanos? En: I. Taylor, P. Walton y J. Young (eds.) *Criminología Crítica*. Mexico DF: Siglo XXI.

Shapiro, S., (1990) *Wayward Capitalists*. New Haven: Yale University.

Sim, J. (2004) The Victimised State and the Mystification of Social Harm. En: P. Hillyard, C. Pantazis, S. Tombs y D. Gordon (eds.), *Beyond Criminology. Taking Crime Seriously*. London: Pluto.

Slapper, G. y Tombs, S., (1999) *Corporate Crime*. Essex: Longman.

Snider, L., (1993) *Bad Business. Corporate Crime in Canada*. Scaraborough: Nelson.

Snider, L., (2000) The Sociology of Corporate Crime: an Obituary (Or: Whose Knowledge Claims have Legs?). *Theoretical Criminology*, 4 (2), 169- 206.

Snider, L., (2008) Corporate Economic Crimes. En: J. Minkes y L. Minkes (ed.) *Corporate and White-Collar Crime*. London: Sage.

Stravrakakis, Y., (2013) La sociedad de la deuda. Grecia y el futuro de la postdemocracia. En: A. Badiou, *et al*., *El síntoma griego*. Madrid: Errata naturae.

Surís, J., y Garza, M. D., (2003) Evaluation of direct and indirect damages. Methodology and work programme for the Prestige case. En: A. Prada y M. J. Vazquez (eds.), *Economic, social, and environmental effects of the 'Prestige' spill*. Santiago de Compostela: Consello da Cultura Galego.

Sutherland, E., (1940) White-Collar Criminality. *American Sociological Review*, 5, 1-12.

Sutherland, E., (1945) Is 'White-Collar Crime' Crime? *American Sociological Review*, 10, 132-139.

Sutherland, E., (1999) *El Delito de Cuello Blanco*. Madrid: La Piqueta.

van Swaaningen, R., (2011) *Perspectivas europeas para una Criminología Crítica*. Buenos Aires: B de f.

T

Taibo, C., (2018) *Comprender Portugal*. Madrid: Los libros de la Catarata.

Tamás, G. M., (2000) On Post-Fascism: how Citizenship is Becoming an Exclusive Privilege. East *European Constitutional Review*. 9: 53-61.

Tappan, P., (1947) Who is the criminal? *American Sociological Review*, 12, 96-102.

Taylor, I., Walton, P. y Young, J., (1973) *La Nueva Criminología*. Buenos Aires: Amorrortu.

Taylor, I., (1997) The Political Economy of Crime. En: M. Maguire, R. Morgan y R. Reiner, eds., *The Oxford Handbook of Criminology*. Oxford: Oxford University.

Tilly, C., (2010) *Democracia*. Madrid: Akal.

Tombs, S., (2012) State-corporate symbiosis in the production of crime and harm. *State Crime*, 1(2), 170–195.

Tombs, S., (2016) *Social Protection after the crisis. Regulation without enforcement*. Bristol: Policy.

Tombs, S. y Hillyard, P., (2004) Towards a political economy of Harm. States, corporations and the production of inequality. En: P. Hillyard, C. Pantazis, S. Tombs y D. Gordon (eds.), *Beyond Criminology. Taking Crime Seriously*. London: Pluto.

Tombs, S. y Whyte, D., (2003) *Unmasking the Crimes of Powerful. Scrutinizing States and Corporations.* New York: Peter Lang.

Tombs, S. y Whyte, D., (2009) The State and Corporate Crime. En: R. Coleman, J., Sim, S., Tombs y D. Whyte. (eds.), *State, Power, Crime*. London: Sage.

Tombs, S. and Whyte, D., (2015) *The Corporate Criminal: Why Corporations Must Be Abolished.* London: Routledge.

Toussaint, E., (2014) *Bancocracia*. Barcelona: Icaria.

Traverso, E., (2017) *Els Nous Rostres del Feixisme*. València: Balandra.

Traverso, E. y Meyran, R., (2019) *The New Faces of Fascism: Populism and the Far Right*. London: Verso.

Tusell, J., (1988) *La Dictadura de Franco*. Madrid: Alianza.

U

Ugwudike, P., (2015) *An Introduction to Critical Criminology*. Bristol: Policy Press.

V

Valdés, J., (2015) Prólogo. En: C. Kepner y J. H. Soothill *El Imperio del Banano*. Madrid: Akal.

Varela Lafuente, M., Garza, D. y Prada, A., (2003) Impactos económicos del vertido. En: Ernesto Sánchez (ed.), *La Huella del Fuel*. A Coruña: Fundación Santiago Rey.

Vasapollo, L., Martufi, R., y Arriola, J., (2014) *El despertar de los cerdos: PIIGS, Portugal, Irlanda, Italia, Grecia, España.* Madrid: Maia.

Velázquez-Gaztelu, J. P., (2015) *Capitalismo a la Española*. Madrid: La esfera de los Libros.

Vilar, P., (1984) *Història d'Espanya*. Barcelona: Crítica.

W

Walklate, S., (2003) *Understanding criminology: Current theoretical debates* (2nd ed.). Buckingham: Open University Press.

Whyte, D., (2007) The crimes of neo-liberal rule in occupied Iraq. *British Journal of Criminology*, 47(2), 177–195.

Whyte, D., (2009) *Crimes of the powerful: A reader*. Maidenhead: Open University Press.

Whyte, D., (2014) Regimes of permission and state-corporate crime. *State Crime Journal*, 3(2), 237–246.

Whyte, D., (2015) *How Corrupt is Britain?* London: Pluto.

Wonders, N. y Danner, M., (2006). Globalization, state-corporate crime, and women. En: R. Michalowski y R. Kramer (eds.), *State-corporate crime: Wrongdoing at the intersection of business and government.* New Brunswick: Rutgers.

Casos

Reino de España v. American Bureau of Shipping, United States Court of Appeals for the Second Circuit, No. 10-3518-cv. Spain.

Provincial Audience (Section 1). Sentence num. 2641/2013 13th November. Spain.

Supreme Court (Room II). Sentence num. 11/2016 14th January