Extracting Profits: State Regulation and the Canadian Ombudsperson for Responsible Enterprise

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Abstract

Taking the Canadian Ombudsperson for Responsible Enterprise (CORE) as its focus, this paper critically examines the Canadian government's efforts to regulate the extractive industry. Using insight from ideology theory and critical discourse analysis, and drawing empirically from Canadian Parliamentary debates, official government and NGO reports, and various news items regarding the development of the CORE, we document how dominant voices prioritized the economy, downplayed the systemic violence of the industry, and redirected blame to "underdeveloped" countries, on route to a regulatory framework that is voluntary and which fails to address the underlying causes of corporate harm and violence. While the CORE represents a "logical" state response to corporate crime, we nevertheless emphasize the importance of ongoing debates about its role in combating corporate impunity. This not only reinforces the idea that (capitalist) dominance is never absolute but signals the ever-present nature of resistance and possibility for change.

Keywords: Corporate crime, corporate social responsibility, extractive industry, capitalism

Résumé

En prenant l'Ombudsman canadien de la responsabilité des entreprises (OCRE) comme objet d'étude, cet article offre un examen critique des efforts du gouvernement canadien pour réglementer l'industrie extractive. En utilisant la théorie de l'idéologie et l'analyse critique du discours, et en s'appuyant empiriquement sur les débats parlementaires canadiens, sur les rapports officiels du gouvernement et d'ONG ainsi que sur divers articles d'information concernant le développement de l'OCRE, nous documentons comment les voix dominantes ont donné la priorité à l'économie, ont minimisé la violence systémique de l'industrie et ont redirigé le blâme vers les pays « sous-développés ». Puis, nous montrons comment ces pratiques mènent à un cadre réglementaire au caractère volontaire qui ne parvient

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pas à s'attaquer aux causes sous-jacentes des dommages et des violences corporatives. Si l'OCRE représente une réponse « logique » de l'État face à la criminalité des entreprises, nous soulignons toutefois l'importance des débats qui ont actuellement cours face à son rôle dans la lutte contre l'impunité des entreprises. Ils renforcent non seulement l'idée que la domination (capitaliste) n'est jamais absolue, mais signale également la nature omniprésente de la résistance et de la possibilité de changement.

Mots clés: criminalité des entreprises, responsabilité sociale des entreprises, réglementation, industrie extractive, capitalisme

Introduction

In 2005, Canadian-based Goldcorp, a multinational gold producer, opened the Marlin mine in Guatemala. It was one of the first major extractive projects to operate in that country following its decades-long armed conflict that killed over 200,000 people. Controversy followed the company's decision to operate in Guatemala given the mine was in a region heavily devasted by the conflict and following allegations the company obtained access to the land fraudulently and by exploiting the local Indigenous population's vulnerability and poverty (Gordon and Webber 2016, 97; Simons and Macklin 2014, 235). In 2010, in response to shareholder concerns with these allegations, Goldcorp commissioned an independent assessment of the mine's human rights impact (Simons & Macklin 2014, 76–77), which corroborated Indigenous claims that their rights were not respected but, regardless, legitimated the company's operations (Gordon & Webber 2016, 98).

The mine's operations were also linked to significant increases in concentrations of arsenic in groundwater near the mine that exceeded international health standards for drinking water, and Guatemala's Environmental Management Unit charged the company with leaking cyanide into a nearby river without authorization. In response, mine representatives took out paid advertisements "declaring that the discharge was supervised by public regulatory agencies" (Gordon & Webber 2016, 98–99), a claim disputed by local residents and international NGOs. Despite this, Goldcorp did not change its practices, and no authoritative body has intervened to either mandate its regulatory compliance or sanction the company (ibid.).

Unfortunately, the story of Goldcorp's Marlin mine is not uncommon. Questions abound regarding the extractive industry's role globally in violent land evictions, gang rapes, and the criminalization and repression of peaceful protestors, along with accusations of inflicting serious environmental degradation (Gordon & Webber 2008; Imai, Maheandiran, and Crystal 2014; Simons 2017). In response to growing concerns about the industry's sordid reputation, in 2005 the 38th Parliament's Standing Committee on Foreign Affairs and International Trade issued a "ground-breaking" (Coumans 2012, 668; Keenan 2010, 31) report calling on the Canadian government to strengthen existing corporate social responsibility (CSR) policies affecting the Canadian extractive industry. Paul Martin's Liberal government responded with a multi-stakeholder process (Keenan 2010, 32)—the National

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Roundtables on CSR and the Canadian Extractive Sector in Developing Countries —which finalized its work during the subsequent Parliament under Stephen Harper's Conservative government (Andrews 2007, 1).

The Roundtable report, published in 2007, recommended the government create a "Canadian CSR Framework" (Janda 2010, 98), including an independent extractive-sector ombudsperson (Andrews 2007, 23; Coumans 2012, 671). When Harper's Conservative government ignored this recommendation and instead introduced the CSR Counsellor, some observers decried the offices' lack of independence from government and absence of powers to investigate (Keenan 2010, 33).

In the wake of continued calls for action, the Liberal Party, under the leadership of Justin Trudeau, made a 2015 election campaign promise to create such a position. Once elected, the Liberal government consulted various state and non-state actors before introducing the Canadian Ombudsperson for Responsible Enterprise (CORE). External legal advice provided to the government, leaked publicly only after the CORE's introduction, recommended the ombudsperson have "robust powers to investigate, including the power to compel documents and testimony from companies under investigation" (Dwyer 2020, 1; Keenan 2020, 140). The extractive industry lobbied against this quasi-judicial approach, arguing instead for a position "grounded in collaborative dispute resolution and joint fact-finding" (Keenan 2020, 141).

On April 8, 2019, Trudeau's Liberal government formally introduced the CORE. For some observers, the CORE differs only in name from the CSR Counsellor (Keenan 2020, 141). Like its predecessor, its mandate focuses on *advising* Canadian companies, *reviewing* complaints, promoting existing CSR guidelines, offering "informal mediation services," and advising the Minister for International Trade (Government of Canada 2019, paras. 21–30). The CORE's work centers on the mining, oil and gas, and garment sectors' overseas activities (ibid., para. 3),[1] wherein it partners with industry, non-state actors, and government stakeholders under the guise that "human rights are best realized through collaborative approaches such as information sharing, mediation, and joint fact-finding" (CORE 2021, para. 1).

Using the CORE as our empirical exemplar, we critically examine why, in the face of ongoing and serious allegations about the abuse of power by the Canadian extractive industry, successive federal governments have supported voluntary, non-binding CSR-style measures despite limited evidence of their effectiveness. We argue that the relative impunity enjoyed by the extractive industry is a product of the Canadian state actively (re)producing capitalist relations through regulatory frameworks which reinforce "the destructive activities of corporate capital" (Pearce and Tombs 2001, 186). We document how various discourses about regulating the extractive industry coalesced within particular socio-political-economic conditions to establish the parameters for controlling

[1] The addition of the garment sector to the scope of the CORE's mandate represents one tangible change from the previous government's CSR Counsellor.

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corporate harm and crime and, in the process, (re)produce the corporate capitalist status quo (Pearce and Tombs 2001).

Our analysis draws theoretical insight from Marxist theory to situate the CORE's development against the primary purpose of regulation in capitalist societies "to govern and normalise the way that society is hierarchically ordered" (Whyte 2020, 109). Owing to the nature of capitalist states, and because perpetual class struggles mean capitalism's dominance is never absolute, regulation performs contradictory functions. On the one hand it disciplines in the name of the majority, while on the other it helps advance certain (powerful) interests (Mahon 1979, 171; Soederberg 2010, 46). How we conceptualize corporate regulation thus impacts how we respond to and make sense of corporate wrongdoing. Therefore, in what follows, we outline several ideological discourses involved in shaping common sense understandings of corporate regulation and which effectively downplay the need for the Canadian government to intervene through formal and mandatory laws in favour of the CSR-style measures embodied by the CORE.

Using critical discourse analysis, which aims to uncover the connections between discourse and power relations and how the former shapes, reifies, and reproduces the latter (Fairclough 2010, 45, 50), we interrogated a range of documents to illuminate the assumptions, or dominant knowledge claims, that fueled the CORE's development—the perspectives that rendered the CORE as the most appropriate response. This included the verbatim transcripts of the all-party Parliamentary Subcommittee on International Human Rights (SDIR)[2], which held sixteen meetings between May 2016 and April 2021 regarding human rights abuses within the extractive industry and the most appropriate ways to respond. The SDIR heard testimony and asked questions to fifty-five witnesses from the extractive sector, labour groups, academia, and non-governmental and human rights organizations.[3] We also examined transcripts from the SDIR's predecessor, the Subcommittee on Human Rights and International Development (SDEV), regarding their 2004–2005 study of mining in developing countries and CSR.[4] In addition, to supplement the Parliamentary transcripts and ensure we accounted for a range of voices regarding the CORE, we examined sixty web-based documents, including news articles, op-eds, and NGO reports,

[2] SDIR is the Committee's bilingual acronym. The Committee's French title is "Sous-comité des droits internationaux de la personne du Comité permanent des affaires étrangères et du développement international."

[3] Minutes to these meetings, which we cite in our findings below, can be found at: https://www.ourcommons.ca/Committees/en/SDIR/StudyActivity?studyActivityId=9618050; https://www.ourcommons.ca/Committees/en/SDIR/StudyActivity?studyActivityId=11097060; https://www.ourcommons.ca/DocumentViewer/en/42-1/SDIR/meeting-12/minutes; https://www.ourcommons.ca/DocumentViewer/en/42-1/SDIR/meeting-13/minutes; https://www.ourcommons.ca/DocumentViewer/en/42-1/SDIR/meeting-15/minutes; https://www.ourcommons.ca/DocumentViewer/en/42-1/SDIR/meeting-51/minutes; https://www.ourcommons.ca/DocumentViewer/en/42-1/SDIR/meeting-66/minutes; and https://www.ourcommons.ca/DocumentViewer/en/42-1/SDIR/meeting-76/minutes.

[4] Minutes to these meetings can be found at: https://www.ourcommons.ca/Committees/en/SDEV/StudyActivity?studyActivityId=1267155; https://www.ourcommons.ca/DocumentViewer/en/38-1/SDEV/meeting-12/minutes; and https://www.ourcommons.ca/DocumentViewer/en/38-1/SDEV/meeting-18/minutes.

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that mentioned "corporate accountability," "corporate social responsibility," "Canadian Ombudsperson for Responsible Enterprise," and/or "Canadian extractive sector." Finally, we reviewed 114 pages of government documents obtained via an informal access to information (ATI) request that were sent, received, or prepared for or by the Minister and Deputy Minister for International Trade and representatives from the Mining Association of Canada (MAC), an organization that advocates for and promotes the Canadian mining industry nationally and abroad, Barrick Gold, Goldcorp, Tahoe Resources, or Hudbay Minerals between February 1 and April 17, 2018, pertaining to the creation of the CORE.[5] Our goal was not to uncover one, singular truth about the CORE, nor was it to determine the "best" response to harms and crimes by the extractive industry (although we do discuss some of the underlying problems with certain measures) but instead to extract and scrutinize these multiple, coexisting, and competing sources to uncover how they conceive violence in the extractive industry and related questions of regulation, as well as their connections to systems of domination and the reproduction of capitalist relations. In this sense, we endeavoured to understand how the CORE emerged within the current context, who were considered the "authorized" knowers within debates leading up to its creation, which knowledge claims ultimately prevailed, and how the CORE is mutually constitutive of the broader socio-political-economic context.

The remainder of this article is divided into three sections. The first section briefly explores the history of the Canadian state's relationship with the extractive industry and the contradictory role of regulation in capitalist societies. The second section explores the dominant knowledge claims that shaped the CORE's development and ultimately influenced the Canadian government's decision to maintain a non-binding, CSR-style approach to regulating the extractive industry. The final section reflects on the state of regulating the extractive industry in Canada and the ways in which it ultimately reinforces capitalist class interests.

The Canadian Extractive State

Canada's socio-economic history is bound up with the commodification and exploitation of natural resources, and the peoples located in proximity (Deneault and Sacher 2012, 183–185). Historically, the Canadian state supported the extractive industry to ensure land and resource access important for the construction of the transcontinental railroad (Comack 2018, 460; Deneault and Sacher 2012, 179–180). Since then, elites have promoted the extractive industry's importance to Canada's economic success (Bittle 2015, 140–141). Moore (2016, para 25) suggests that Canadian capital and the state are enmeshed; so much so that corporate profit accumulation is equated to satisfying Canadian interests. This capitalist narrative is important because it provides the state a "legitimate" reason to support the industry and downplay resistance to it.

[5] *Informal* ATI requests are those for full ATI requests previously submitted and filed.

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Deneault and Sacher (2012, 8–9) point out that "every Canadian government to date has supported the mining industry," suggesting a complex history of symbiosis and interdependence between the state and extractive corporations. They list two main reasons for this. First, the Canadian stock exchange is built upon financial speculation, "primarily on natural resources." In the context of the extractive industry, speculation makes it easier for companies to raise funds for "discoveries or promising exploitation prospects" (ibid., 33) and burden investors with financial losses if they yield no results.[6] Second, Canada's British colonial origins promote the amassment of wealth by colonial elites and foreign investors via the exploitation of natural resources (ibid., 9). This historic connection between the Canadian state, capital, and natural resource extraction is important to understanding the contemporary nature of corporate regulation within this industry.

Today, 75 percent of the world's mining companies are based in Canada (Global Affairs Canada [GAC] 2021), accounting for 31 percent of global exploration budgets and $48 billion in mineral production in 2019 (Natural Resources Canada 2020). According to the MAC, the industry contributed $109 billion (5%) of Canada's total nominal gross domestic product; 37 percent of global mining equity was raised on the Toronto Stock Exchange between 2015 and 2020; globally, Canada is among the top countries in the production of minerals, with mineral exports accounting for 19 percent (valued at $106 billion) of Canada's goods exports; and, as of 2020, the mining industry supported approximately 719,000 jobs across the country (Marshall 2020, 6–7; MAC n.d.; Natural Resources Canada 2020). According to these pro-business sources, Canada's extractive industry is vital to the Canadian economy.

Critical scholars argue the state plays an active role in promoting Canadian capitalism by ensuring the necessary conditions exist for profit accumulation (Gordon and Webber 2016, 2–4; Moore 2016, para. 10). This implicates the state in processes of resource extraction which contribute to the oppression of communities—Indigenous, in particular—both at home and abroad (Comack 2018, 467). Thus, extractivism preserves the harmful legacy of colonialism by further displacing, oppressing, and assimilating Indigenous peoples around the globe.

Comack (2018, 456–457) uses the term "corporate colonialism" in reference to Canada's capitalist *and* colonial roots. To maintain the corporate colonial status quo, the Canadian state prioritizes relations (trade, aid, diplomatic) with countries whose economic interests parallel its own (Moore 2016, para. 10; Harvey 2004, 70). Consequently, extraction, which brings economic growth, is promoted as "beneficial" by the state while resistance is labelled "deviant" (Robyn 2001, 86). The result is that Eurocentric forms of development are framed as morally superior in order to advance corporate capitalist interests at the expense of society and the environment.

The Canadian state provides the extractive industry various forms of support globally (Canadian Network on Corporate Accountability [CNCA] 2007, 1;

[6] In 1997, Canadian-owned company Bre-X was accused of fraud for reporting "resources" (gross estimates) versus "reserves" (precise estimates) of extractable minerals, driving up the company's share value by making their projects seem profitable to investors (Deneault and Sacher 2012, 18).

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Deneault and Sacher 2012). For example, it promotes economic forms of development as superior and intervenes around the world to develop mining codes favourable to Canadian capital (Deneault and Sacher 2012, 11). These codes facilitate "negligible taxes, full socialization of costs, disregard for customary and native rights, contempt for environmental issues, absence of regulations governing corporate behaviour, and the list goes on" (ibid., 39). This example, along with many others,[7] highlights how corporate capitalist ideology influences Canadian laws and policies pertaining to the extractive industry, ultimately facilitating the economic success of its corporations and the (re)production of capitalist social relations by prioritizing certain interests over others. How this support plays out internationally is relevant to this article because, as Snider and Pearce (1995, 30) note, national and transnational institutions are important to the functioning of the global economy.

Some argue that despite the global expansion of capitalism via multinational corporations (MNCs), regulatory frameworks have not expanded in parallel (Simons and Macklin 2014, xi). For one, while MNCs continue to expand their operations to and within regions, states are restricted primarily to enforcing regulation only within their territory (Scherer and Palazzo 2009, 415). As such, corporate regulation becomes the responsibility of host states because home states tend to use this restriction to shirk responsibility, arguing that they do not have jurisdiction. However, and unfortunately, for many reasons, host states often lack the resources to effectively regulate foreign multinationals. Moreover, when they do attempt to enact "better" legislation, the process is either obstructed by intense corporate lobbying or halted due to perceived legal-financial risks (e.g., host states' fear of being sued by MNCs for losses via investment agreements; Keenan 2010, 30). In other words, MNCs headquartered in "advanced" capitalist countries with operations in "developing" states often benefit from what Michalowski and Kramer (1987, 36) term the "space between laws," wherein corporations commit acts that are illegal in their home states with impunity because either those same acts are legal (i.e., there are no equivalent regulations) or extant laws are weak, poorly worded, or under-enforced in the host states where they operate. However, jurisdiction is not the only obstacle to determining responsibility.

The complex structure of large MNCs further adds to their legal cover. Canadian mining companies, for instance, use the corporate structure "to avoid taxes and responsibility" and "[m]ines in other countries are held through a dizzying array of private subsidiaries, often incorporated in known tax havens such as the British Virgin Islands, the Cayman Islands, or Luxembourg" (Kuyek 2019, 132). The use of multiple subsidiaries is therefore a legal tactic used to protect parent companies and other powerful stakeholders from assuming liability for their acts. This situation makes it difficult for victims to even seek let alone receive

[7] Such as the Canadian state's (a) initial opposition of the UN Declaration on the Rights of Indigenous Peoples, which requires companies to obtain free, prior, and informed consent before operating in Indigenous territories (Gordon and Webber 2008, 70); and (b) its funneling of Canadian capital into the industry by legally forcing most working Canadians to contribute to the Canada Pension Plan, which holds investments in the industry (Keenan 2010, 31).

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remedy for corporate harm (Simons and Macklin 2014, 252–253). In cases where it *might* be possible to hold a parent company liable, Canadian courts are unlikely to "pierce the corporate veil" (ibid., 253). Even if the courts were willing, powerful MNCs are notorious for engaging in preventive tactics designed to steer court decisions in their favour (i.e., away from any kind of judicial enforcement; ibid., 256), which includes arguing for cases to be heard in host (rather than home) states.

In addition to the legal environment, Canada's socio-political-economic context helps to create and maintain the conditions that allow corporations to commit crimes with relative impunity. Worth mentioning is the advent of neoliberalism in the early 1980s, which changed Canada's political and economic landscape, increasing corporate power via the state. While a detailed account of neoliberalism is beyond the scope of this article, for our purposes we note its roots in a "theory of political economic practices that proposes that human well-being can best be advanced by liberating individual entrepreneurial freedoms and skills within an institutional framework characterized by strong private property rights, free markets, and free trade" (Schwarzmantel 2007, 262). The neoliberal promotion of minimal government interference (Snider 2015, 17) provides one explanation for the disappearance of corporate crime from the vernacular of law enforcement via decriminalization (criminal law), deregulation (state law), and downsizing of "the state's enforcement capability" (Snider 2015, 18). At the very least, neoliberalism's dominance helped render the prospects of introducing new and stringent rules directed at the extractive industry a daunting task.

The under-regulation of the extractive industry is thus part and parcel of ideological perceptions and interpretations of the world (Fairclough 2010, 46; Purvis and Hunt 1993, 474). Working from a critical standpoint, we approach neoliberalism as an *ideological discourse*, based on its "connection with systems of domination" (Purvis and Hunt 1993, 497), and we seek to uncover how this connection influences the Canadian state's response to the extractive industry. What is more, as previously noted, regulation is in and of itself ideological in that its primary purpose within capitalist societies is "to govern and normalise the way that society is hierarchically ordered" (Whyte 2020, 109). It facilitates the continued existence of the current mode of production (Whyte 2020, 114) by preventing capitalism from destroying itself (Whyte 2020, 116).

What follows therefore attempts to unearth the dual function of regulation within capitalist societies as it relates to the extractive industry: to control the harmful actions of corporations while simultaneously (re)securing the conditions necessary for them to survive and thrive.

Findings: Maintaining the Status Quo

In this section we report four claims that we uncovered in the data and which influenced the CORE's development. It is our contention that, although each of these discourses has its own genesis, they nevertheless coalesced around discussion and debate regarding the regulation of the extractive industry to produce specific characterizations of corporate harm and crime and, concomitantly, influence the state's decision to intervene via the CORE. First, dominant voices maintained the

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primacy of the economy, particularly as it relates to claims that economic development is a superior way to ensure "progress," and that regulation is only acceptable if it does not unnecessarily impede this development. Second, an overall commitment to neoliberal principles meant that the Canadian state and extractive industry were deemed morally superior to the foreign states within which the industry operates. Third, crime and violence were seen as the exception, rather than the rule. Fourth, and relatedly, questions surfaced about who should be deemed (legally) responsible and/or held accountable for corporate crime in the extractive industry.

Economic Primacy (Human Rights)

Within capitalist societies, free market ideology purports that the market itself can and will punish wrongdoers and that formal regulation is not needed so long as the market functions properly (Snider and Pearce 1995, 22). It also assumes that all legal (rational) individuals "participate freely and equally in the marketplace and share the same (economic) goals" (Bittle and Snider 2013, 188–189). Likewise, CSR has roots in the idea that corporations are rational actors making rational decisions within the market (Glasbeek 2002, 20). Consequently, it is believed that corporations (a) *can* avoid causing harm and will do so to serve their long-term interests, (b) will actively and carefully maintain important business relationships (e.g., with shareholders and local communities), and (c) will naturally act in accordance with their own self-interests by rationally considering the costs and benefits of their actions (Whyte 2018, 93–94). This "business case" for CSR promotes responsible business as not only the morally just thing to do but a smart business strategy, weaving corporate "conscience" together with capital (Shamir 2011, 329; Soederberg 2010, 141). Though met with much criticism, both within and beyond the academy, this rationale is taken for granted as common sense within business and state circles (Shamir 2011, 329).

Weaving social responsibility together with capital suggests that human rights can be bought and sold, and that those who possess more capital will necessarily have "better" human rights experiences (Soederberg 2010, 141). This sentiment is mirrored in capitalist development models, wherein MNCs are encouraged to consider the social and environmental costs of their projects, often allocating small sums of money to mitigate and/or repair damages incurred (Whyte 2020, 41–43), which reinforces the idea that all problems can be solved with money (Soederberg 2007, 502). Recent campaigns calling on corporations to consider more explicitly, in advance, the social and environmental costs of their projects mean that, along with production and equipment costs, they must be commodified to count (Whyte 2020, 41–43).

The perspective that the economy and human rights are mutually dependent also reinforces capitalism in the ways it shapes bilateral relations between states. The dominant assumption follows that trade relations can be utilized to positively influence the human rights situation in other countries. Whether through foreign direct investment or bilateral aid, it is assumed that when "developing" states accumulate more capital—or simply more experience interacting with "developed"

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capitalist states—they can better address human rights issues in their own countries. Bartholomew and Breakspear (2004, 131), however, caution against the universal application of specific interpretations of what it means to "be developed" and raise important questions about what constitutes "human rights." They argue that associating development with improved human rights to facilitate interstate relations is imperialistic. Human rights, then, cannot and should not be applied unilaterally if it means disrespecting the equal sovereignty of nations to promote one understanding of development and human rights as naturally and morally superior (Bartholomew and Breakspear 2004, 138). Capitalist states' use of human rights as a means to an end thus reveals their underlying priority to accumulate wealth.

The importance of the economy was emphasized in several ways when it came to the CORE's development: in framing CSR as a business advantage; in conceptualizing human rights and the economy as interdependent; in promoting capital as a viable solution to human rights issues; and in depictions of international trade as a higher state priority than human rights. For instance, during a meeting of the SDIR, Tyler Gillard of the Organization for Economic Co-operation and Development (OECD) responded as follows to a question from a Liberal member of parliament (MP) about the link between responsible extraction and profitability:

> Indeed, doing things responsibly is good for business. That is clearly our finding. … Of course, it is worth saying that in the short term, cutting corners can be good for business. As with cutting labour laws and evading taxes, you will see an impact on the bottom line, but in the long term it is not good for business. (SDIR, 3 October 2017, 2)

The economy was further portrayed as paramount, even when considering how to ensure Canadian corporations act responsibly. For example, Craig Forcese, law professor at the University of Ottawa, suggested, "I think it's important to underscore that *human rights observance is a competitive advantage to most businesses*" (SDEV, 1 June 2005, 4, emphasis added). In reference to the CORE, specifically, government documents state:

> Because it believes that trade is best when it works for everyone, the Government has announced it is creating an independent [CORE]. This represents a new global standard in promoting responsible business conduct. … reinforcing Canada's approach to inclusive economic growth, and helping keep Canadian companies at the forefront of responsible business conduct abroad, *a competitive advantage in today's marketplace.* (Government of Canada, CSR memo, ATI Documents 20 February 2018, 42—emphasis added)

CSR is thus framed as a competitive business advantage, and Canadian corporations are urged to engage responsibly not because it is recommended, or even or required by law, but because of its long-term profitability.

In other discussions, the state of the economy and of human rights were described as mutually dependent. A strong economy meant that, for instance, money could be funnelled into human rights efforts for so-called "developing"

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countries. Of note is that Canadian bilateral aid was described as capable of facilitating not only a potential improvement in human rights and corporate accountability in Central America, but also Canada's engagement in the region from a foreign affairs, trade, and development perspective. For instance, David Usher, Director General of Trade Negotiations within the Department of Foreign Affairs, Trade and Development (DFATD) said: "I would underscore … that our basic premise is that engagement with Honduras is better than isolating Honduras. We think that having stronger commercial and economic ties with Honduras gives us an added opportunity to continue our dialogue with the Honduran government and the Honduran authorities in the area of human rights" (SDIR, 9 June 2016, 7).

In other words, trade relations between Canadian and foreign states are leveraged to facilitate dialogue "in the area of human rights," emphasizing the importance of the economy in ensuring these conversations even take place.

According to Glasbeek (2002, 17), "[c]apitalism's strongest argument is that the accumulation of wealth for its own sake is a worthwhile economic and, therefore, meritorious social and political goal," based on the justification that increased wealth is beneficial for everyone. As a self-proclaimed extractive state, Canada primarily achieves this end via the exploitation of natural resources wherein financial gains are used to rationalize many harmful social, environmental, political, or cultural impacts (Deneault and Sacher 2012, 181–182). But this capitalist "more-trumps-less" maxim puts developing states most at risk, especially during inevitable global economic shifts (Snider and Pearce 1995, 29). To compete within international markets, developing states must bend to the will of more advanced capitalist states and the international bodies they influence, which forces them into dependent relationships with their oppressors and further inhibits their advancement (Carroll 2004, 2; Gordon 2010, 142–144).

During Parliamentary meetings, while there was not unanimous support of the economy-first perspective, the extractive industry was conceived as a gift granted by "strong" states to "weak" ones. As argued:

> The reality in rural areas is if they want to have economic development, they do need investment from outside, and typically, whether that generates a lot of direct employment right off the bat, it changes the structure and it changes the economy, and usually for the better in those rural communities. I'm just wondering… is it any less imperialistic to deny rural areas' development than it is to promote it? (Conservative MP David Anderson, SDIR, 28 September 2017, 5)

This sentiment was corroborated by industry representatives, who proclaimed:

> There are numerous benefits that we have—the hiring of people. We employ all these people in the area. We've generated employment. We're doing all kinds of things on the social and the economic front for community development. (Clifford James, TVI Pacific Inc., SDEV, 18 May 2005, 7)

> Canada's minerals industry is a recognized leader at home and abroad, renowned for our … ability to generate economic opportunities in the areas

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> of the world in which we operate. (Andrew Cheatle, Prospectors and Developers Association of Canada [PDAC],[8] SDIR, 5 October 2017, 3)

> You can see the dramatic improvement in income standards and poverty alleviation that result from mining. (Pierre Gratton, MAC, SDIR, 5 October 2017, 6)

In some cases, local community members agreed that economic development was imperative to their stability and well-being; that denying such projects was an infringement on their human rights rather than were the projects themselves. For instance, Pablo Bernardo, a lawyer and Indigenous Subano member from the Philippines argued:

> The IP Subanons belong to the marginalized sector, and only through the development of their ancestral domain do they become economically and socially stable. They want to eat good food, have gainful employment, and send their children to school. They want to be freed from the bondage of hunger, ignorance, and isolation. … It is for that reason they entered into a contract with TVI, which is committed to its mandated obligation—and has in fact initiated it—to develop the ancestral domain of the IP Subanons of Siocon, Zamboanga del Norte. Denying them these basic necessities is simply violating their human rights. (SDEV, 18 May 2005, 6)

Even more-liberal witnesses noted that economic development has the potential to improve people's lives, stipulating, however, that respect for human rights must be involved in the process for such benefits to occur (Diana Bronson, International Centre for Human Rights and Democratic Development, SDEV, 1 June 2005, p. 4). In these instances, critical voices found it difficult to avoid dominant beliefs in the purported benefits of foreign direct investment, despite its demonstrated harms. What is more, within the debates about how to balance economic development and respect for human rights when enacting corporate regulation, alternative arguments lamenting economic primacy were sidetracked by dominant voices that framed regulation as desirable *only if* it did not interfere with the economy.

As noted, a core argument of this article is that regulation has a dual purpose within capitalist societies: to promote economic interests through the advancement of industry *and* corporate adherence to human and environmental rights standards (Whyte 2020; Woodiwiss 2009). Regarding corporate regulation within the Canadian extractive industry, alternative perspectives often highlight the state's need to create stricter or simply more regulation. Beneath this alternative narrative lies the assumption that the creation of mandatory or binding legislation will solve corporate abuses, whose origins are thought to stem, in part, from the state's morally deficient decision not to enact and enforce stricter forms of corporate regulation. What this perspective fails to acknowledge, however, is that current regulatory frameworks are not "failed" but achieve what they were designed to do: "satisfy capitalism's needs" (Glasbeek 2007, 250). As Tombs and Whyte (2020, 19, emphasis in original) argue, "…corporate crime very often occurs not because the state is disobeyed, but generally because the state is *obeyed*." Therefore, neither the current,

[8] The PDAC is an industry lobby group.

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dominant framework of voluntary mechanisms of corporate (self-)regulation heralded by the industry nor mandatory forms advocated by non-state actors adequately address the systemic issue that is capitalism (Fairclough and Fairclough 2012, 7). Nevertheless, there is clearly an issue with perpetuating a system that allows, and even invites, corporations and corporate-centric perspectives to shape the creation of laws and regulations and reinforce corporate impunity for these offences.

When it came to the CORE's development, dominant knowledge claims that states should not interfere too much in the market prevailed. As such, a paradox emerged between the desire, on the one hand, to prioritize economic development and, on the other, to reduce corporate harm. For instance, Dante Pesce of the UN Working Group on the issue of human rights and transnational corporations and other business enterprises argued for a "…smart mix of regulation and incentives that fits the dual purpose of protecting both human rights and investments" (SDIR, 3 October 2017, 7).

This affinity—for striking a balance between investment and respect for human, environmental, and labour rights—was shared even by representatives from Latin American organizations concerned with upholding such rights. As one witness contended:

> *If there was a balance between the foreign investment and basic rights that would apply to the population, we think it would be possible.* That's why our union hopes that we could have an alliance with mining companies to create a mine where workers might win out as well and thus prevent corruption. If this could be done, it would be an example of a mine that works without a negative impact, without violating human rights, and respecting labour rights. We could have responsible mines. That's what we believe. (Francisco Ramirez Cuellar, Movimiento Nacional de Victimas de Corporaciones Multinacionales, SDIR, 19 October 2017, 6, emphasis added)

From an alternative perspective, the regulatory status quo must be challenged because the current system is ineffective. Within debates about whether corporate regulation should be mandatory or voluntary, many Canadian non-state actors (e.g., Amnesty International Canada, MiningWatch Canada, the CNCA, etc.) favoured mandatory mechanisms, citing the ineffectiveness of past and existing voluntary mechanisms as sufficient reason to enact binding legislation. According to these groups, corporate regulation should both enforce compliance and punish non-compliance.

During a 2019 press conference announcing Sheri Meyerhoffer as the new CORE, even Meyerhoffer argued "that the more tools available to her in her new role, the better. She will need them to fulfil the mandate" (Wells 2019, para. 18). When questioned about the CORE's mandate as a witness before the SDIR in February 2021, however, Meyerhoffer's position shifted:

> I am often asked whether we have the tools we need to do our work. I would like my answer to be very clear. We can respond to complaints and initiate reviews. We can engage in mediation and publish our findings. We can make recommendations for action and publicly issue follow-up reports on their

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> implementation. In other words, we can help Canada promote and protect human rights, full stop. (SDIR, 23 February 2021, 1–2)

While the Ombudsperson's first statement supports counter claims calling for the empowerment of the position, their second statement supports the dominant narrative that less is more when it comes to state intervention in the market.

Although disappointing to non-state actors, the CORE's CSR-style approach was welcomed by the mining industry (Lewis 2019, para. 1). The President and CEO of the MAC, for one, opined: "The establishment of an ombudsman, in our view, should be justified based on whether such an office would offer services not currently provided by the CSR counsellor or the NCP [National Contact Point]. Such an office should add to the remedies available to help resolve conflicts on the ground" (SDIR, 15 October 2017, 3).

Others similarly argued that the proposed quasi-judicial CORE would be less efficient and credible than existing non-judicial mechanisms (Lee, Gratton, and King 2019, paras. 5–6).

As the above examples illustrate, the importance of the economy played a role in influencing the federal Liberal government's response to corporate crime within the extractive industry, which took the form of a CSR-style approach. Interestingly, the government's creation of an "ombudsperson" was used to bolster Canada's reputation as a global industry and CSR leader; to reinforce efforts to impose Canada's ideals on other states.

The (Moral) Superiority of (Neoliberal) Canada

In addition to the dominance of economic discourses, we uncovered claims that the Canadian government was well placed to be a social responsibility leader for the extractive industry. In Canada, like in other advanced capitalist states, the dominant class expresses its power via the corporations it controls, meaning contemporary class power manifests as corporate power (Carroll and Sapinski 2018, 3). Because "international credibility" is important to the pursuit and successful control of neoliberal capital (Snider and Pearce 1995, 30), Canadian elites must work to secure and maintain a particular reputation.

Framing non-capitalist states as "less than" or underdeveloped delegitimates non-capitalist values and ways of being while at the same time reproducing existing power relations (Woodiwiss 2009, 117). An ideological effect of this narrative is that the Western, bourgeois experience becomes the universal norm and ideal social formation. As such, its promotion around the globe is considered warranted and even morally imperative (Harvey 2004, 81).

Consistent with neoliberal capitalism's emphasis on the economic dimension of social relations, states were labelled either "strong" or "weak" according to their economic strength or perceived lack thereof. Canada was labelled a strong state through direct comparison with weak states like Guatemala. Canada was also praised as an industry and CSR leader (Lee, Gratton, and King 2019, para. 3) believed to be in an optimal position to improve the human rights situation in other, weaker countries where its extractive industry operates. For example, a news release published by GAC one day in advance of the government's announcement

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of the CORE's creation states: "Building on Canada's existing expertise and leadership in [CSR], these measures will be 'best in class,' reinforcing Canada's approach to inclusive economic growth, and helping keep Canadian companies at the forefront of responsible business conduct abroad, a competitive advantage in today's marketplace" (17 January 2018, para. 5).

In a separate news release, GAC intoned that "Canadian businesses demonstrate leadership around the world when they engage in responsible business practices" (8 April 2019, para. 1). The government's characterization of Canada as a leader was reiterated not only by industry representatives, such as Pierre Gratton, President and CEO of the MAC (SDIR, 15 October 2017, 1), but even well-known human rights activists, such as Alex Neve, former Secretary General of Amnesty International Canada (SDIR, 8 June 2017, 1). As a witness before the SDIR, acting ombudsperson Sheri Meyerhoffer also noted, "The creation of our office represents another example of Canadian leadership on the international stage" (SDIR, 23 February 2021, 2).

Canada's reputation as a leader reinforced the dominant narrative that "Canada's influence matters" (Alex Neve, Amnesty International Canada, SDIR, 8 June 2017, 1). For instance, a Guatemalan youth activist and survivor of an attack on peaceful protestors near a Canadian mine site, said, "We know Canada is a country where human rights are greatly valued and respected, so we need your support immediately as Canadian authorities" (Luis Fernando García Monroy, Youth Organized in the Defense of Life, SDIR, 8 June 2017, 4). Likewise, an independent investigative journalist from Honduras expressed the following: "We would like to see countries such as Canada, countries who have a good long-standing relationship with our country and who have investments in the country, do something to make sure that free, prior, and informed consent is respected and that the human rights of the population are respected" (Felix Molina, SDIR, 8 June 2017, 5).

Hence, despite evidence that Canadian extractive projects are associated with egregious violence, and confirmation of the state's ongoing championing of this industry, dominant voices reinforced Canada's reputation as a "strong" state that not only values, but upholds, social responsibilities and human rights. Moreover, Canada was characterized as somehow more capable than host states of developing and enforcing democratic standards both at home and abroad. For instance, a DFATD employee highlighted Canada's role in improving human rights in Honduras—by "putting more emphasis on advancing democracy, promoting the rule of law, and strengthening the capacity of government institutions and oversight bodies to protect human rights" (André Frenette, SDIR, 9 June 2016, p. 2)—and a Conservative member of the SDIR praised these efforts, saying, "Thank you very much … for your expertise, your efforts, and everything that you've been doing to ensure that countries like Honduras get as much help as they can from Canada to enjoy the kind of democracy that we enjoy" (MP David Sweet, SDIR, 9 June 2016, 2).

Human rights and democracy were thus framed in Western terms, which marked the standard to which countries like Honduras could rise—with the help of states like Canada. Other witnesses suggested that Canada's reputation as a

strong state meant it was obligated to help weaker states establish "effective governance capacity" (Duane McMullen, DFATD, SDIR, 26 September 2017, 2). Overall, these claims helped maintain Canada's reputation as a CSR leader while at the same time obscuring its role in supporting and maintaining the extractive industry.

Corporate Violence as the Exception, Not the Rule

Representing Canada's extractive industry as the pinnacle of "ethical" business also allowed for the reproduction of dominant characterizations of corporate extractive-related violence as the exception, rather than the rule. Social consciousness is influenced by neoliberal market ideology, which leads us to believe that "the [free] market is the most just and effective regulator of economic conduct" (Snider and Pearce 1995). Based on "market-" and "agent-centered" responsibility models (Tombs 2012, 186), for instance, naming and shaming are believed to be sufficient to deter corporate non-compliance and reputational damage is framed as just as effective as binding legislation, if not more (Fauset 2006, 5). The effect is that responses to "systemic capitalist harm and illegality" (Tombs 2012, 186) are constrained. Furthermore, corporations that do get caught (and *maybe* sanctioned) are depicted as "bad apples," which does nothing to address the systemic issues of corporate crime (Whyte 2020, 21).

In conversations leading to the CORE, crime and violence by Canadian extractive corporations was predominantly depicted as the exception. At times, discussions about the state's regulatory role were shaped to reflect this dominant claim. In one SDIR meeting, the MAC was critiqued for misusing findings from a draft academic article that examined "the determinants of social conflict in the Latin American mining sector" (Dr. Paul Haslam, SDIR, 28 September 2017, 1). One witness argued that the MAC "distorted the article's conclusions by very selectively drawing from its core arguments" to enhance Canada's reputation in comparison with other foreign mining firms operating in the region (Dr. Jeffery Webber, SDIR, 28 September 2017, 4). Specifically, by focusing on findings that reported Canada's corporate behaviour as marginally "better" than its foreign counterparts, the MAC selectively excluded the article's core finding that "there are extraordinary levels of conflict involving Canadian mining companies" (ibid., 7). According to this witness, the MAC reported these findings out of context, helping to perpetuate the claims that violence in the industry is rare and that Canada is an industry and CSR leader. Andrew Cheatle of the PDAC, however, supported dominant knowledge claims, saying: "[D]espite our industry's efforts in doing things the right way, right from the start, we are before you today to discuss instances of conflict in Latin America. *These instances represent exceptions and not the rule*; nevertheless, they warrant our close attention" (SDIR, 5 October 2017, 3, emphasis added).

When violence is characterized as the exception, corporations that fail to act responsibly (and get caught) are criticized more for their role in tarnishing the reputation of the Canadian extractive sector than their potential involvement in human and environmental rights abuses. For example, Christine Côté, Acting

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Director of the Investment Trade Policy Division within the Department of International Trade, said, "Canadian companies not meeting CSR standards attract negative publicity for themselves, often damaging not only their own reputations, but perhaps also the reputation of Canada in countries where these problems are arising" (SDEV, 11 May 2005, 2). A UN representative also expressed this sentiment, noting: "If a company doesn't act with due diligence, it will run immediately into problems, and that is going to not only hurt people and cause damage or harm, but also damage the overall reputation of an industry and the reputation and brand of a country" (Dante Pesce, SDIR, 3 October 2017, 7).

According to alternative perspectives, violence is both systemic and widespread within the industry. As a Honduran activist stressed, "We see that there are murders and that nothing is being done" (Bertha Zúniga Cáceres, Civic Council of Popular and Indigenous Organizations of Honduras, SDIR, 8 June 2017, 2), illustrating that corporations are literally getting away with murder. In many discussions, impunity was framed as a host state issue, even by victims.

Placing this responsibility on host states allowed narratives about Canada's superior morality and the industry's innocence to shape discussions about the state's regulatory role. As such, debates about whether host or home states were responsible for—and consequently required to address—corporate impunity surfaced in larger discussions about whose (legal) responsibility it should be to govern Canadian corporations operating abroad: host states, home states, MNCs, or international bodies.

Legal Boundaries Blurred: Redirecting and/or Denying Responsibility

The final discourse relates to the perceived problems of legally controlling MNCs operating abroad. When MNCs commit transgressions overseas, it is often unclear (conveniently, for them) whether the *home* state (i.e., where the company is headquartered) or the *host* state (i.e., where the company is operating) is responsible for holding them accountable. "It is also not clear whether the acts of a foreign subsidiary or its contractors would fall within the jurisdiction of the home state" (Simons 2017, 427). The location of the alleged crime seems, therefore, to be of utmost importance in determining liability for crimes committed by MNCs, illustrating globalization's influence on justice in the sense that it confuses *who* should be responsible for developing and implementing (corporate) human and environmental rights standards.

From our perspective, this is problematic in that, within the context of international law, there is a better chance for host states to be held to account for harms against their citizens (often facing blame for their poor governance structures) than it is for either the private corporations that commit the abuses or, by extension, their home states (Ignacio de Casas 2019, 261–262; Simons 2017, 428). Home state obligations are limited under international law, which stipulates that states are only obligated to respect, protect, and fulfil the human rights of individuals located within their territory, or, in legal terms, under their jurisdiction (Simons 2017, 425). If a corporation domiciled in a particular state commits human rights violations outside of that state's jurisdiction, international law is interpreted such that the

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home state is not liable for those crimes. For this reason, corporations from developed countries can capitalize on the resources located in developing countries—where there is less regulation and "weak" governance—and benefit from impunity in their domiciled states for any transgressions they commit in the process (Simons and Macklin 2014, 16–17).

We are once again reminded of Michalowski and Kramer's (1987, 36) "space between laws," where the illegal actions in MNCs' home states are legal, or existing laws are underenforced, in the host states where they operate. From this, debates ensue over whether MNCs intentionally use these "spaces between" to circumvent laws or are simply their unconscious beneficiaries. Given that MNCs are capable of "influenc[ing] the regulatory climates of developing host nations" (ibid. 38), the former explanation seems more plausible. Due to these jurisdictional issues, developing countries are led to believe that their only recourse lies in the creation of international standards that can better address corporate harm. However, despite crusades in the 1970s to develop a comprehensive set of legally binding standards (ibid. 40–41), no existing international standard provides the reprieve sought by affected communities.

With respect to discussion about the CORE, when extractive industry violence was acknowledged, responsibility was most often redirected from the Canadian state and its corporations to the host countries in which they operate. According to Gary Nash, Assistant Deputy Minister of the Minerals and Metals Sector within the Department of Natural Resources, "While the vast majority of Canadian companies may conduct their business abroad in a proper manner, *inadequate governance in developing countries* can permit companies to operate in a way that will tarnish the reputation of mining and, by implication, of Canada" (SDEV, 11 May 2005, 4, emphasis added). Similarly, Craig Forcese stated, "[C]ountries with poor human rights environments often present poor business climates. Operating in countries with poor human rights records has a cost for businesses" (SDEV, 1 June 2005, 4).

Rather than focusing on affected local communities, these comments highlight obstacles faced by Canadian corporations operating in regions with "inadequate governance." While they clearly implicate host states as partially if not wholly responsible for these issues, witnesses less clearly articulated Canada's role, making it seem as though Canadian corporations' only crime is choosing to operate in problematic environments. As one industry witness noted:

> Weak governance, corruption, extreme inequality, and pre-existing social strife can make investments in some countries difficult. … What we do, therefore, is a very challenging question. There are limits to Canada's extraterritorial reach. In all these cases, we are dealing with complex environments where responsibility is shared and blame can often be hard to assign to any one party. (Pierre Gratton, MAC, SDIR, 5 October 2017, 2)

While this statement acknowledges the complexity of regulating extraterritorial business activity, it still attributes "weak governance, corruption, extreme inequality, and pre-existing social strife" to host states. This implies that Canadian corporations only encounter these issues when operating overseas and therefore

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should not be held solely responsible for issues that arise when "dealing with complex environments."

Host states' "weak" governance is cited as a "significant barrier to ensuring that business operations in developing countries maximize positive developmental results, and mitigate any negative impacts" (Government of Canada, 17 October 2005, para. 51) (read: "weak" host state regulation is the problem, not Canadian corporations' practices or Canadian regulation). Hence, while weak governance is recognized as an impediment to CSR, neither the Canadian state nor Canadian-based MNCs seem open to alternatives.

The CORE: A Step Forward or A Step Back?

This article explored the various political-economic, legal, and corporate ideologies that influenced the Canadian state's decision to create the CORE as a non- versus quasi-judicial grievance mechanism for the extractive sector. Each of the knowledge claims outlined herein—(1) the importance of the economy, (2) Canada's reputation as morally and developmentally superior, (3) extractive industry violence as the exception, and (4) overseas extractive industry abuses as largely *not* the (legal) responsibility of Canada or its MNCs—coalesce in the reification of corporate capitalist power. While these narratives clearly overlap, they represent distinct points which illustrate the kinds of perspectives that inform Canadian state decision-making.

Commonly held assumptions about the importance of the economy meant human rights were framed as secondary concerns, or else their realization was reliant upon capital. Though dominant voices did accept the occurrence of corporate harm, they rejected counter-hegemonic claims that it was a systemic issue, arguing instead that it was either the problem of a few "bad apples" or corrupt and ill-equipped host states that lacked the tools (and will) to properly regulate MNCs. Not only did this reinforce Canada's "good" reputation, it justified CSR-style regulatory approaches based on the assumptions that corporations can and should be trusted to self-regulate, and that the market will step in when they fail to do so.

Language performs an important role in processes of meaning-making based on how subjects are "represented, interpreted, narrated and explained" (Fairclough and Fairclough 2012, 6). According to Fairclough and Fairclough (2012, 6) there are two main accounts of capitalist crises: "systemic and non-systemic." Systemic accounts point to causes that arise from the nature of the current system, including capitalism itself and its neoliberal phase. Non-systemic accounts, on the other hand, refer to causes that arise from elements of the system rather than the system itself; for example, "too much or too little regulation" (Fairclough and Fairclough 2012, 7) or the moral failures of some individuals. To address and remedy systemic social issues requires radical change whereas non-systemic accounts simply call for a return to the status quo. All this is to reiterate that how an issue is discursively framed influences the types of interventions available when seeking its resolution (Bittle and Snider 2013; Jessop 1990). Based on this logic, even the proposed quasi-judicial version of the CORE would not have addressed the systemic issue that is capitalism. Even though it might have made it easier to sanction corporations or for

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victims to access remedy, a quasi-judicial CORE would not have produced the radical change necessary to eradicate corporate crime because arguments for more (or stricter) regulation reflect non-systemic accounts of the underpinning issues. In sum, capitalist solutions to capitalist problems will not create lasting change. Though regulatory reforms do, at times, placate counter-hegemonic groups, they remain designed to reproduce the status quo by securing capitalism's continued reproduction and dominance (Carroll and Sapinski 2018; Jessop 1990; Mahon 1979).

In moving forward, it is important to remember that language is both a stake in and site of class struggle (Fairclough 1989, 89). On discussions about the CORE, specifically, two things are worth noting: (1) that we are *still* debating its establishment and mandate and (2) that we *are* still debating its establishment and mandate. While the first statement expresses discontent—that, despite more than a decade of advocating "better" corporate regulation of the Canadian extractive industry, victims and their allies have merely witnessed the state inch from one ineffective CSR strategy to another—the second point expresses optimism and strength—in that, despite countless disappointments and setbacks, the struggle continues. The latter point thus articulates the enduring force that is resistance; that even if counter-hegemonic struggles yield no short-term victories, their mere existence indicates the possibility for change. As Lipsitz (1988, 149–150) puts it, "victory and defeat are not mutually exclusive categories." We can always use our "failures" to carve a new path forward by uncovering contradictions and inconsistencies within, and counter claims to, the dominant system. We can always create spaces of resistance.

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