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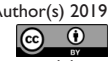

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Grappling with injustice: Corporate crime, multinational business and interrogation of law in context

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Abstract
This article interrogates criminological ambivalence towards law as both essential in the control of corporate crime and as an enabler of corporate harm. It argues we can make sense of such tensions by seeing law—in its plurality of soft and hard forms—as constituent elements within multiple fields of struggle, in which laws operate as tools wielded to influence contested rules, and as rules governing regulatory struggles. This argument is developed by bringing criminological analyses of the law's role in business facilitation and regulatory enforcement together with sociological analyses of 'fields of struggle'. The value of this approach in illuminating law's ambiguous role in relation to corporate harm is illustrated through two cases of multinational business activity in Indonesia.

Keywords
Corporate crime, fields of struggle, hard and soft law, multinational business, regimes of permission

Law has an ambivalent presence in criminological analyses of corporate crime.[1] Assumptions about the strength of law are implicit in claims that weak law and enforcement are responsible for poor business conduct, and in associated calls for greater use of

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criminal penalties (Clinard and Yeager, 1980; Snider, 2000, 2009; Tombs, 2002). At the international level, renewed demands for a treaty on business and human rights resonate with such views, arguing that enforceable, black letter law enabled through a treaty could address the harms perpetrated by multinational corporations (Business & Human Rights Resource Centre, n.d.). In stark contrast, criminologists also call attention to law *as* violence (Rothe and Kauzlarich, 2016), comprising 'regimes of permission' (Whyte, 2014) that legitimize harmful business practices. On this view, belief in law as the solution to corporate crime is misplaced, overlooking the symbolic violence inherent within law and legal practice that perpetuates the status quo (Bittle and Frauley, 2018). Law—usually understood within such accounts as enabled by and enforced under state authority[2]—can thus be understood as both the problem and the solution to corporate harm.

The central goal of this article is to interrogate such criminological ambivalence towards law as both essential in the control of corporate crime and as an enabler of corporate harm. While criminological analyses of enforcement typically focus on binding forms of state-issued law (hard law), we are interested in both hard and soft law (Abbott and Snidal, 2000). Soft law is not underpinned by coercive systems of state enforcement, but nonetheless draws on institutionalized rules to establish an 'explicit normative framework' that claims authority over business conduct (Finnemore and Toope, 2001: 743). We argue that we can make sense of criminological ambivalence by seeing law—in its plurality of soft and hard forms—as part of ongoing fields of struggle, in which laws operate as tools wielded to influence contested rules, and as rules governing regulatory struggles.

This argument is developed by bringing criminological analyses of corporate and white-collar crime, focused on law's role in both enabling and controlling corporate harm, together with sociological analyses of 'fields of struggle'—a rich literature that encompasses analyses of fields inspired by both Fligstein and McAdam (2011) and Bourdieu (1987). The value of a fields approach in illuminating law's ambiguous role in relation to corporate harm is illustrated through two case studies in Indonesia: one of company–community conflict in the palm oil sector and the other of a privately financed forest conservation project developed under the United Nations' REDD+[3] programme. Our analysis shows how a field perspective can identify productive ways of grappling with law while recognizing the inherent tensions surrounding the role of law within fields of regulatory struggle.

Field of struggle

The fields literature defines a field by reference to a struggle or contest over a specific prized outcome (Levi Martin, 2003: 30), for example redress paid by a business to a community stemming from a grievance. Robust empirical work (Dezaley and Madsen, 2012; Fligstein and McAdam, 2011; Levi Martin, 2003) allows for an interrogation of (in this case) how law is used in a specific struggle and to what effect. From a field of struggle perspective *how* law is drawn on to resist and assist community struggles against corporate harm depends on *where* the struggle is taking place.

The concept of a field of struggle holds together the actors and the field. A field's constitution is actor-centric, in that the boundaries of the field are drawn by who is

engaged in the struggle. Field theorists differ regarding the degree to which they explicitly theorize the endogenous dynamics within a field of struggle as a product of economic, cultural and political legacies and inequalities of the places within which a struggle occurs (Emirbayer and Johnson, 2008; Liu and Emirbayer, 2016; Swartz, 2014). On our view, each actor engaged in a field of struggle moves within particular social and geographical locations, and their motivations and capacities are embedded in the distinctive history and structure of those places. The field of struggle is then constituted within and across these multiple sites. This view resonates with a Bourdieusian account of fields, which understands actors, and the resources they have at their disposal, in light of their relative position in related fields that shape the economic and cultural resources they can draw on in any given struggle. The purpose of our analysis, though, is not to theorize the diversity of possible socio-spatial (or in this case field) arrangements, or indeed their similarity (Jessop et al., 2008; Mayer, 2008), but rather how actors might discipline and control multinational corporate behaviour in their midst and so re-arrange the power dynamics in a field. This actor-centric orientation towards the field resonates with Mayer's (2008: 416) reflection on socio-spatiality, arguing that 'it is never the spatial form that acts, but rather social actors who, embedded in particular (multidimensional) spatial forms and making use of (multidimensional) spatial forms, act' and, to what effect.

How do rules govern the field of struggle?

Rules of the game govern the struggle, distribute power among actors in the field and are shaped by interests of those (incumbents) who benefit from the status quo (Fligstein and McAdam, 2011). Their composition is complex and dynamic. For Fligstein and McAdam (2011; see also Fligstein and Vandebroeck, 2014: 109) the rules of the game are explicit 'common knowledge', understood and agreed to. This shared understanding means 'actors understand what tactics are possible, legitimate and interpretable for each of the roles in the field' (Fligstein and McAdam, 2011: 4). Rules of the game advantage incumbent actors yet challengers abide them because of the stability they bring. Rules appear relatively fixed, notwithstanding the jockeying for position and the way issues are defined (see also Swartz, 2014). How these rules are constituted, though, is unstable and can change, 'as soon as the dominated [. . .] threaten to assemble the ingredients previously used for success' (Levi Martin, 2003: 33).

Whereas rules are sometimes generated and contested within the boundaries of a given field of struggle, rules that have been generated at other times and places can be brought into the field by actors engaged in the struggle. While appropriation of these exogenous rules can be used to maintain the status quo, they may also enable substantive change. The rich debates that have emerged around fields generate important insights that aid exploration of how contestation over rules can allow different actors to engage in the struggle, and alter the character of what kinds of rules apply. The capacity to alter which rules apply within a field of struggle has profound implications because the constitution and number of rules at play in turn affect the constitutive nature and boundaries of the field (Fligstein and McAdam, 2011; Goldstone and Useem, 2012; Levi Martin, 2003; Swartz, 2008, 2014). Different rules can either include or exclude specific actors as parties to a struggle.

This can materially affect the capacity to discipline multinational corporations, for example using the *Alien Tort Claim Statute* (28 U.S.C. § 1350; ATS) in the United States. Recent attempts to bring cases under this statute have foundered because of the inability to establish that the affected communities have legal standing (Seibert-Fohr, 2018).

Moreover, different kinds of rules can extend the boundaries of the field in the creation of 'new jurisdictional geographies' (Sassen, 2006: 388). Jurisdictions can extend beyond those defined by hard law to include soft, non-binding or quasi-legal rules exemplified by the UN Guiding Principles on Business and Human Rights (hereafter Guiding Principles). It is clear from the history of these Guiding Principles, including by Ruggie's (2013) own account, that their development resulted from a struggle to push the boundaries of jurisdiction pertaining to international business accountability beyond the nation-state, first through demands for strengthened international legal regulation, and subsequently through emergence of the Guiding Principles as an instrument of 'soft law' when struggles between advocates of hard law and voluntary approaches reached an impasse. State laws, particularly those of host states where manufacturing within global supply chains takes place, often position northern multinational corporations *outside* of the boundaries in fields of struggle that aim to bring such corporations legally to account. The development of the Guiding Principles and the mechanisms developed to give them substance (identified as non-judicial redress mechanisms or NJMs) extended the boundaries of the field of struggle, enabling accountability of multinational corporations for their abuse of human rights beyond host state boundaries.

To be sure, there are significant problems and weaknesses in this (expanded) field of struggle created by these Guiding Principles (Bittle and Snider, 2013). Nonetheless, their capacity to reshape the field importantly affords legitimacy to actors excluded by host state legal processes (e.g. international non-governmental organizations (NGOs)). New sites of contestation within that extended field have emerged at varying points of time during these struggles, centred for example around NJMs endorsed by the Guiding Principles, such as the World Bank Group's Compliance Advisor Ombudsman and the National Contact Point processes created under the auspices of the Organization for Economic Co-operation and Development (OECD). Rather than radically reshaping controls over international business activity, the reshaping of the field brings to light new sites of struggle where redress (which remains rare) might occur (Daniel et al., 2015), or where the failure of such struggles can enable new sites of condemnation for activists to spur more meaningful change. Non-judicial approaches, not as *the* solution but as part of an 'ecosystem', are argued to be an important contributor to civilizing international business, and a visible expression of the Guiding Principles (Rodríguez-Garavito, 2017).

Criminological analyses offer further insights into the nature of the 'rules of the game' in disciplining business conduct. The weakness and loopholes in relevant laws and the feeble character of enforcement are perennial themes in the criminological analysis of corporate crime. From the earliest scholarship, the law was implicated most specifically in the need for stronger enforcement of relevant laws. Businesses were recidivists who got away with light punishment (Sutherland, 1983). In the language of this article, the rules of the game in the control of corporate crime were premised on under-enforcement, shaped alternatively by the capture of regulators by the businesses they were charged to control and by systematic under-resourcing of regulators (Clinard and Yeager, 1980). In the

context of corporate crime, rules are not only defined by what is explicitly written down (e.g. in a legal statute) but also how they are enforced. How rules shape business behaviour depends, in large part, on expectations of and experiences with law enforcement.

Criminologists also draw attention to the close symbiotic relationship between government and business that weakens legal controls (for example in the deregulation of the finance sector) and exacerbates lax enforcement (Snider, 2000). Business criminality is shaped by this close relationship, and thus transformed into something less than criminal (Carson, 1980a, 1980b), a dynamic some label as state-facilitated corporate crime, with enforcement systematically and intentionally undermined (Kramer et al., 2002). In this dynamic also, time and place matter. Depending on the particular historical moment, strengthening a law as a response to business malfeasance can signal to one audience the robust nature of government action in disciplining future behaviour, while weak enforcement can signal an ongoing willingness to provide business with a conducive investment climate (Aubert, 1952; Carson, 1974, 1980a; Pearce, 1976).

Law and the rules of the game

Critical to this article is understanding the relationship between the rules of the game governing a field and law, including binding (hard) and 'soft' law regimes—the influence of the latter (e.g. the UN Guiding Principles or multi-stakeholder accreditation schemes) being limited largely to mediation, exhortation, condemnation or, in the case of accreditation schemes, expulsion. For some, law might be equated with rules and interchangeable with them. But a Bourdieusian reading would make such an equation problematic. Bourdieu (1987; for a recent similar analysis see Bittle and Frauley, 2018) wrote of the symbolic violence wielded through the use of the law. The law appears as authoritative, even impartial, yet it is shaped by specific interests and utilized by those who have the requisite levels of symbolic capital (in the form of legal skills and prestige). Social capital is required first to ensure a broader social investment in the law as having authority and impartiality and simultaneously providing capital-holders with the capacity to wield it successfully. Hence, 'these are the people who can put the most skilful exercise of formal rigor (summum jus) to the service of the least innocent ends (summa jus)' (Bourdieu, 1987: 850).

If so, appeals to either hard or soft law might be better understood as *strategies* within a field of struggle rather than constituting the rules of the game per se. The role law plays within a field can shift between being constitutive of the rules of the game governing a struggle and comprising strategies for changing them. Arguably, recourse to the *Alien Tort Statute* highlighted above is a strategically rational approach for activist lawyers, given their possession of relevant forms of symbolic capital, in bringing multinational corporations to account for their human rights abuse. Alien tort legislation does not frame the rules of the game in the business and human rights field. Neither do the Guiding Principles or soft law redress schemes. Each constitutes a possible, albeit uncertain, strategy in the pursuit of specific justice goals.

A field analysis of struggles for justice also calls for critique of assumptions behind what constitutes 'progressive law' in understanding the rules of the game. Law considered progressive in controlling business harm in the Global North can prove a legal

'irritant' in the Global South[4] (Teubner, 1998). This observation extends beyond repressive colonial era security laws, to where law is intended to protect the environmental 'wilderness' against encroaching industrialization. In a critical analysis, Rosaleen Duffy (2010: 45–78) traces how the northern fantasy of the wilderness, implemented through national parks and designated wilderness areas, erased local Indigenous practices from North America to South Africa—which had shaped land for centuries. Environmental protection can be set against social justice providing the means for eviction even as local communities resist engendering localized systems of corruption to enable local people access to their historical livelihoods.

The rules of the game and regimes of permission

Rules of the game emerge, then, as a product of interacting strategies and the rules that actors seek to promote. Different—and competing—laws might be brought in to constitute the 'rules of the game' that need to be navigated by those demanding redress and accountability. Some of these laws aim to facilitate business activity (as part of regimes of permission in Whyte's language) while others attempt to discipline and control those businesses. The tension between these legal regimes highlights the dynamism in the state's role vis-a-vis business. Tombs (2012) and Whyte (2014) draw on Gramsci to highlight the state's role in managing an 'ethical' relationship between business and government to maintain social order. In pursuing this aim, the state engages in a 'complex disciplinary process' (Whyte, 2014: 240) to manage social relations, which includes some control of business harm that might threaten those relations. Haines (2011), drawing on Habermas, draws attention to a similar dynamic. She looks to the role of political risk in shaping regulatory controls where governments attempt to maintain the conditions for capital (and secure their own revenue) while also reassuring citizens of protection from the harmful activities of business. Again, tensions and contradictions arise. In managing political risk, harms to workers and the environment continue—unless and until they threaten to heighten political risk. State support *for* business, then, is an inevitable corollary to regulatory control *of* business where both are enabled through law. Law, in particular corporate law, is a critical enabler of business activity (Glasbeek, 2002; Tombs and Whyte, 2015). Regimes of permission can emanate from quite different institutions of the state (e.g. industry policy, mining and energy departments) when compared with those attempting some form of discipline (e.g. occupational health and safety, environment departments, fair trading and so on) (Carson, 1982).

Examination of regimes of permission within the Global South may also be important. Contrary to assumptions of the overwhelming role of state weakness in underpinning the impunity of multinational conduct, state elites can be complicit in the perpetration of harm, caught up in and exploiting post-colonial relationships at the expense of many (Connor and Haines, 2013; Connor and Phelan, 2015; Standing, 2015). The implementation of state laws can be critical in maintaining regimes of permission with respect to business conduct. Examples are the awarding of fishing licences to supertrawlers in Senegal (Standing, 2015) and mining licences to Australia in the case of Bougainville (Lasslett, 2014). Questionable relationships between Malaysian elites in the palm oil industry in Indonesia, Varkkey (2013) argued, were an important reason behind the

impotence of the Indonesian government in combatting the annual smoke haze that blankets the region—despite its toxic impact on humans and devastating environmental impact. In each case, a regime of permission emanates from government, underpinning damaging corporate conduct.

Irrespective of whether the concern is with the Global North or South, an exclusive focus on enforcement can distract attention from interrogating the influences shaping the law itself. As McCarthy (2011: 91) puts it:

> under the influence of the dominant political forces, narratives of illegality shift policy attention away from the unacceptable topics of how access to resources is shaped by the political economy and power relations onto the comparatively safe issue of law enforcement.

Yet, global context remains important in teasing apart the interaction between the regimes of permission and discipline at the state level and the power dynamics along a global supply chain. States in the Global South can struggle to enforce disciplinary control (Braithwaite, 2006; Rothe and Friedrichs, 2015), particularly when businesses within their jurisdiction comprise part of a global supply chain linked to corporations in the Global North. Attracting international investment can reduce the levels of protection in already weak regulatory systems (such as Free Trade Zones (Greider, 1997)). Local laws that protect local industry can be subject to considerable pressure by northern governments (as in the case of genetically modified crops in India (Stańczak, 2017)). The US concept of 'regulatory takings' can support northern companies in their efforts to undermine social and environmental controls over multinational business undermining efforts of southern states to protect their citizens from such activity (Tienhaara, 2006). A determined focus on control of business harm does not necessarily remove multiple constraints that countries in the Global South face when trying to protect their citizens or their environments.

Locating the field of struggle

Two case studies in Indonesia are used to illustrate the insights above: the first of these is the company Wilmar's activities in the palm oil sector in West Kalimantan and Sumatra. The second is a forest conservation project developed by private sector investors in partnership with the NGO Fauna and Flora International in West Kalimantan, under the international REDD+ framework, which seeks to tackle carbon emissions associated with deforestation and forest degradation by creating financial incentives for forest conservation activities. Each case study was spatially constituted at the multiple sub-national, national and transnational scales over which the grievance was contested, and temporally constituted around the dynamics of the particular grievance.

The data for each case involved documentary analysis and extensive interviews undertaken between 2011 and 2013 with affected communities, local and international NGOs, businesses, government and staff from the Compliance Advisor Ombudsman (CAO) and Roundtable on Sustainable Palm Oil (RSPO). This resulted in 48 interviews with 61 people through fieldwork in West Kalimantan and Jakarta for the REDD+ case, and 60 interviews and focus groups with 130 people in Jambi, West Kalimantan and

Jakarta in the Wilmar case[5] together with documents relevant to each case.[6] Data collection was framed to ensure it was comprehensive and included as many actors as possible within each case and hence within the relevant field.

In analysing these cases, our purpose is directed theoretically as much as empirically—mining these cases to explore how the concept of a field of struggle draws attention to the interplay between different actors, rules and laws in a situation of considerable injustice and inequality. The palm oil case involved land grabs and intimidation associated with the expansion of palm oil plantations in Jambi and Riau in Sumatra and Sambas in West Kalimantan. Here, the 'soft law' opportunities and extended jurisdiction provided by the CAO were able to be drawn into the field of struggle, albeit under difficult and challenging circumstances, against permissive regimes of Indonesian laws and their implementation that resulted in land being taken from customary owners. The REDD+ case is one of contrast, where significant efforts were made to comply with safeguards endorsed by the Indonesian government that required the consent of local people before setting up the REDD+ project. Such Indonesian regulatory safeguards can be viewed as important in securing a just process. Despite local support, the project failed.

The section below provides necessary context in explaining the laws, standards and practices relevant to the struggles in both our case studies. Each case is then presented separately to provide insight into which laws, standards or guidelines were considered authoritative and why, and how this shaped the rules governing the struggle and hence the actors that could exert direct influence. In doing so, the cases provide insight into whether and how hard or soft laws comprised pathways or obstacles to justice, and under what conditions they facilitated or obstructed community access to redress.

Setting the scene: Legal context in Indonesia

The legal context in Indonesia reflects the various pressures alluded to above, characterized by multiple and overlapping regimes of permission associated with colonization and decolonization. Western conceptions of law were introduced by the Dutch during colonization to assist with the assertion of Dutch sovereignty. Customary law predated colonization and was drawn into colonial control retaining considerable local-level influence through Indigenous leaders incorporated into the colonial project. Post-independence, natural resources were required, through the 1945 constitution, to be regulated 'for the welfare of the nation', yet loose definitions of what this meant saw it used during the Soeharto period (1968–1998) to increase patronage and political power (for a fuller discussion see McCarthy, 2011). Post-Soeharto liberalization, and International Monetary Fund-led structural adjustment policies, provided for significant increases in palm oil production, even as political liberalization allowed for greater contestation in land appropriation (Pichler, 2015).

Indonesia has a presidential system with multiple levels of government from central, provincial, district, subdistrict to village levels, and obtaining land use licences for both REDD+ and palm oil projects requires a mix of approvals and recommendations at each of these levels (Ardiansyah et al., 2015). Control over land use is distributed across multiple government agencies at national and sub-national levels. The Ministry of Forestry controls land classified as forest land, which constitutes approximately 70% of Indonesian

land. Also relevant are the National Lands Agency with responsibility for determining and assessing land title and the Ministry of Agriculture and Rural Development tasked with agricultural development. Critically, palm oil plantations and REDD+ projects can only legally operate on land classified by the Ministry of Forestry as Convertible Production Forest.

The legacies of history have resulted in considerable complexity in land use and land ownership laws, with multiple competing sets of rules overlaid and nominally active. Discretion at the local level remains important. McCarthy (2011: 98) argues:

> [a description of] legal complexity can obscure the distinction between legal norms and the power play that is so important in determining outcomes. Local officials have considerable discretion in deciding how policy gets translated into decisions and the extent to which accommodations are made with regional interests and 'local customs'.

Of critical importance to this local discretion is the uncertain recognition of the rights of forest dwelling peoples. A 1960 agrarian law (Basic Agrarian Law) recognizes multiple kinds of customary law, however, the Ministry of Forestry that administered state land typically interpreted state forest as having no rights attached, essentially as uninhabited (Colchester, 2011). Decisions made on the ground, then were of critical importance to whether local communities did or did not have access to their land.

Rules of the game as they relate to international context: The growth of soft law

Both Palm Oil and REDD+ involve global business activities: palm oil through supply chains that end in processed food, biofuels and consumables across the globe, and REDD+ through the involvement of private investors seeking to produce carbon credits for trade in international markets. In terms of community access to justice there are other avenues (involving soft law) for communities to pursue their grievances. For the sake of clarity, and to analyse the interaction between hard and soft law relevant to obtaining redress through means that extended beyond state boundaries, we will focus attention on regimes that were of direct relevance to our cases. In the case of Palm Oil, these were World Bank safeguards that pertain to World Bank lending into palm oil projects. Wilmar received a loan from the International Finance Corporation (IFC), the private lending arm of the World Bank, that brought community grievances within the aegis of the CAO (Balaton-Chrimes and Macdonald, 2016). These safeguards exercise authority over IFC lending practices, rather than direct control over the funded businesses. In the case of a breach of the safeguards, aggrieved communities can take a claim to the CAO, an independent agency of the World Bank Group. In the case of palm oil, too, there is the Roundtable on Sustainable Palm Oil (RSPO), a member-based multi-stakeholder initiative, which generates and administers a range of standards aimed at improving social and environmental practices in the sector. None of these initiatives are enforceable by or incorporated within Indonesian law.

REDD+ is subject to international standard setting through the United Nations Framework Convention on Climate Change (UNFCCC). This convention has developed

a range of safeguards pertaining to REDD+ projects, that include the need for free prior and informed consent from affected communities. These safeguards are then drawn into national (in this case Indonesian) policy and regulation, to be implemented through the state's administrative apparatus. In addition, there are a range of non-enforceable private certification standards around Climate, Community, Biodiversity and Carbon accounting (Balaton-Chrimes and Macdonald, 2016).

Palm oil

Wilmar is one of the largest oil palm processing companies in Indonesia, with elite connections in both Indonesia and Singapore. Activities of its Indonesian subsidiaries were associated with significant social and environmental harm to communities in Jambi, Sambas and Riau. The research centres on the 2007–2011 period when communities were subjected to violence and intimidation, pushed off their land and pressured into signing away rights to their land. Where licences were issued, there were accusations that they were issued outside of proper legal procedure. Despite this, there was little significant intervention on behalf of the communities taken by any state agency investigating the alleged breaches. One expert commented, 'the law is seen as the solution for many plantations, but for many people it is seen as part of the problem'.[7]

State law and regimes of permission

With minimal state intervention to support communities, then, what role did state law play in this case? First, through historical policies of internal migration and second, government licensing of resource extraction. Following Indonesian independence, successive national policies had pressured the local Indigenous people in Jambi, the Batin Sembilan, to move from their ancestral land to villages. Simultaneously, the government provided logging, cocoa and rubber companies with the necessary licences to exploit the forest. Specifically, in the Jambi area, licences for logging and Oil Palm were issued to BT Bangun Desa Utama during the Soeharto dictatorship on ancestral Indigenous land without the knowledge of the Batin Sembilan. In the 1990s and 2000s, when land clearing for oil palm began, the Batin Sembilan became concerned that they were losing their ancestral land. The company had changed hands on multiple occasions. At the time of the research PT Asiatic Persada owned the licence and considered the Batin Sembilan to be occupying the land illegally. Asiatic Persada occasionally tolerated, but at other times forcibly removed, the Batin Sembilan from the plantations and accused them of stealing the palm fruit (Balaton-Chrimes and Macdonald, 2016).

Asiatic Persada claimed they had law and morality on their side. They pointed to licences issued by the governor of West Kalimantan as their demonstration of legality. Some interviewees also described companies such as Asiatic Persada as moral by virtue of their employment of local people and their payment of tax. The company itself looked to the state in claiming the legality of the licence they held. Although customary claims competed with state-issued licences, companies had a further advantage, threatening to countersue the government for flawed licences if the government conceded to customary claims.

Changing the rules, changing the boundaries of the field: The Compliance Advisor Ombudsman

To secure at least some measure of redress, the Sambas, Riau and Jambi communities took their grievance claims to the CAO, an avenue made possible because the plantations had been partly funded by the International Finance Corporation. Two NGOs, Forest Peoples Program and Sawit (Palm Oil) Watch, assisted local communities in making the claims. A mediated settlement with Wilmar was reached in two locations, Riau and Sambas (Balaton-Chrimes and Macdonald, 2016).

How this was achieved is important in understanding the struggles over the rules of the game and the boundaries of the field in this case. Initially, Wilmar had argued that they legally owned the land, and as such that CAO standards regarding the rights of customary land owners were not applicable (an argument accepted within Indonesia). However, this was challenged by the communities' appeal to the CAO who accepted that the land was inhabited by Indigenous people. This meant the Batin Sembilan were entitled in accordance with the IFC's Performance Standards to free prior and informed consent before a plantation could proceed. Because of the CAO's intervention, and entry of their rules governing IFC finance into the field of struggle, Wilmar's legal team changed their position on the need to negotiate. This decision then provided the platform for mediated settlements in Riau and Sambas. From a field perspective, a change in which rules applied changed the standing of actors within the field of struggle. Mediation resulted in at least some redress, albeit limited and incommensurate with the level of harm experienced (Balaton-Chrimes and Macdonald, 2016). Nonetheless, this illustrates that, in certain cases, international standards (soft law) can provide forms of recourse (and thus leverage) for local communities that state-based law has not facilitated.

The result for Jambi, though, demonstrates the fluid nature of boundaries surrounding a field of struggle. In the case of Jambi, Asiatic Persada was on-sold to two companies that were not funded by the International Finance Corporation. For this reason, the boundaries of the field contracted back towards the state, and the authority of Indonesian law, and communities in Jambi lost the leverage provided by the IFC. The leverage provided by an appeal to the Roundtable on Sustainable Palm Oil was even more limited. Wilmar is an RSPO member and so some access for communities to claim a grievance against Wilmar should have been possible. Yet, Wilmar suffered no sanctions as a result of these claims.

There is one further element to the mediation agreements in Sambas. The return of land from Wilmar in one specific area, Sajingan Kecil, was complicated by the Provincial Plantations Section of the Agriculture Ministry's decision not to recognize the return of land to the community, which formed part of the mediated settlement. Hence, the community was not given legal title to the land, without which they could not get access to a bank loan to improve conditions in their village. Success in pushing the boundaries of the field in one instance, can be stymied in terms of implementation when boundaries of the field change.

Differences between government officials in similar elite structural positions are also important. Officials in the Agriculture Ministry acted to block the return of land. However, local government individuals were involved in mediation in the Jambi area,

showing interest in learning from the CAO and in being able to assist communities in accessing redress. However, as summarized above, these officials were unable to ensure continuation of the mediation process when Asiatic Persada sold their licences.

There are a number of key lessons from the Wilmar case. First, multiple laws meant that state strength in part resulted from the political decisions regarding which law held authority within the field of struggle surrounding the Wilmar case. The company then could be shielded from sanction by this political valorization of the land as uninhabited and their licence as valid. Second, the reason for access to mediation in Riau and Sambas was due to a change in the applicable rules which extended the boundaries of the field to include new actors such as the CAO. Including the CAO as an actor meant that their rules came into play which validated the communities' grievances because of the strength of those rules around free, prior and informed consent. Third, the extension to the boundaries of the field of struggle over Wilmar's activities (i.e. jurisdiction) was determined by the International Finance Corporation funding Wilmar. Hence, by Asiatic Persada selling their licences around Jambi, the boundary of the field shrank back to the state and communities lost their leverage. Fourth, agreement under CAO rules does not guarantee implementation when implementation returns the boundaries of the field to the state (in terms of land ownership). Finally, it is not law, regulations or standards per se that are important here, but how they are drawn on within the struggle and given authority.

REDD+

The Siawan Belida REDD+ project provides a useful contrast point to the palm oil case in exploring the central concern of this article—namely how law might be understood as a 'grappling point' for use by communities in the face of entrenched inequalities. In this case, the central concern was that the right of the local villagers to maintain their traditional livelihoods was respected, and more broadly that relevant communities benefited from the REDD+ project.

REDD+ is a contentious practice. Essentially, it requires preservation of the forest for the purposes of creating carbon credits in a trading system. From one perspective, the transformation of forest preservation into a commercial proposition appears as yet another neo-liberal encroachment (Howson, 2018) and to an extent it is. Customary boundaries between forest dwelling communities become commodified, potentially exacerbating conflict within communities and radically altering community relationships and understandings of self. Some within Indonesia understand REDD+ as wholly problematic in and of itself and reject any such projects on these grounds alone.

Indeed, some such concerns arose in the Siawan Belida project. Local villagers were concerned with the fairness of benefit sharing, fuelled by previous experiences of inequitable payments by logging companies. Important, too, was the uncertain nature of land tenure and the possibility that stakeholders outside of the project would claim entitlement while the local villagers would fail to gain from the project (Macdonald and Ardhianto, 2016).

Other aspects of the project need consideration in understanding this field of struggle. First, from the perspective of local villagers, their fear of the proposed REDD+ project was partially influenced by the way they perceived others to have been locked out of

ancestral land due to the creation of conservation areas, in particular a nearby National Park (resonating with Duffy's work above). Here, the concern was not business related, but rather related to misappropriation of forest from whatever quarter. Second, to be considered for a REDD+ project, the forest had to be classified as open for conversion (Hutan Produksi Konversi) and hence vulnerable. In the absence of a viable REDD+ project, conversion to palm oil plantation was highly likely. Indeed, the project was initiated in part to prevent such an outcome. There was reason, then, for cautious support for such a project if the concerns of local people around boundaries, traditional practices and benefit sharing could be reached.

The question, then, is whether the rules governing this field of struggle were conducive to such an outcome. At one level there was room for optimism. The governance framework around REDD+ is reasonably strong, including safeguards around free prior and informed consent, benefit sharing, transparency and respect for traditional knowledge. Further, there is the capacity for implementation of this framework via a Country Safeguard System within the host country (here, Indonesia) (Rey et al., 2013).

There was considerable effort expended by project proponents and local NGOs to ensure that the project had an ethical beginning. Indonesian legal requirements were respected by international investors (in this case the transnational private company BioCarbon). The project partner for the Siawan Belida REDD+ initiative was Fauna and Flora International. As required by Indonesian law, a small local company Wana Hijua Nusantara was set up to ensure majority ownership of the project remained within Indonesia. Initial activity was focused on gaining consent from the eight villages directly affected, with NGOs working to develop trust in the project at the village, district and provincial levels. This involved considerable time and effort from communities and NGOs to develop a solid basis for the project that took account of interests around ownership and access as well as proper processes in the event of complaints.

Yet these were not the only rules at play in this field. Most particularly, the Provincial government needed to sign off on the necessary licence, the Ecosystem Restoration Concession, for the project to proceed. The Provincial government's scepticism of the project's ability to raise local revenue resulted in delays, and finally a refusal to issue the licence. Disagreements regarding at what stage community consent should be sought—before or after the issue of a licence—generated divisions between local leaders and the government. Ultimately, carefully negotiated agreements knitted together in the remote communities involving significant emotional investment on both sides were in danger of falling apart.

One step forward?

There is one final actor relevant to both cases, palm oil and REDD+, that is important to consider here. A local legal NGO, Alliance of the Indigenous Peoples' of the Archipelago (AMAN), expanded the field of struggle again—not internationally but constitutionally. AMAN took the Government of Indonesia to the Constitutional Court and in 2013 was successful in gaining constitutional recognition of customary forest as separate from state forest (Pichler, 2015; Walden, 2017). This decision has significant potential impact for an estimated 40 million Indonesians in 22,000 villages, for whom the ruling provides

strengthened protections for their claims to forest heritage and associated livelihood opportunities. But a constitutional decision needs to be enacted through state law—a process that is proving slow (Walden, 2017). Nonetheless, the decision is potentially important and changes the nature of the struggle by changing the rules of the game and locating Indigenous people more securely as legitimate actors within the field.

Bringing it together: Grappling with law

Taken together, these cases show how communities engaged in fields of struggle around corporate crime and corporate harm are confronted by law and need to engage with a variety of hard and soft laws as possible grappling points in their pursuit of justice. In the case of Indonesia, there is significant complexity to and ambiguity of state law. In our cases, this meant the state designated land as 'uninhabited' despite customary land ownership by Indigenous peoples being recognized under prior laws. Understanding 'which law' is constitutive of the rules of the game within a field of struggle involves much more than legal determination of which specific law applies. In the face of this complexity, political decisions valorizing one law over others consolidated and extended regimes of permission that provided Wilmar 'legal' status for their actions. Both complex interactions between rules and the resultant regimes of permission that facilitate harm are shaped by history but enacted in the present in which incumbent governments have an interest in maintaining the legitimacy of 'their' laws. Political expediency at multiple levels was involved both in determining which law applied and in law enforcement. This means that not only the law, but also multiple state institutions were necessarily involved. Hence, the possibilities for communities to negotiate directly with companies in terms of returning land were circumscribed by state decisions.

Given this situation, challenging Wilmar involved accessing other points of leverage outside of state law to bring Wilmar into negotiation with the affected communities. The appeal to the CAO brought in a different set of actors and changed the standing of affected communities, in turn changing the boundaries of the field, enabling limited redress. However, this leverage outside of Indonesia needed to be realized within Indonesia, specifically in Sumatra and West Kalimantan. This required connections between communities and NGOs and between communities and government officials that were sympathetic to their plight. Certainly, pressures shaped the response of actors depending on their structural location within the field, but at the same time there could be actors within different institutional spaces that were receptive to the demands of local communities.

The REDD+ project highlights other interactions of importance. First, that enacting requirements around free prior and informed consent is difficult but not impossible. In this case, there were significant efforts to protect both social and environmental goals and those goals were, in part, developed through an international process (UNFCCC) and brought into state law. Extensive local negotiation by communities and NGOs was an essential component too. But this was not sufficient for protection of the local communities involved. The eventual outcome demonstrates that, even with some hard law supporting communities, the likely outcome is that which maintains the political status quo. Despite local support for the project, the Provincial government refused to issue the

necessary licence. As with palm oil, state strength is seen in the REDD+ case through designation of forest as 'convertible production forest' and in the authority to withhold or issue licences.

In both cases, new opportunities for change emerged. One final strategy to shift the rules of the game across both cases within Indonesia was important, namely AMAN's success in gaining a favourable decision in the Constitutional Court. This provided a critical new grappling hook in challenging injustice across both cases.

Conclusion

This article demonstrates that understanding the dynamics of law that surround corporate crime requires understanding the relationship between state, law, law enforcement and business, reaffirming key literature in the area. The need to go beyond calling out weak enforcement of laws controlling business conduct is an important insight. However, understanding how corporate harm can be tackled ultimately requires grappling with all forms of law and complex state institutions. A field of struggle approach allows close attention to the relationship between rules, laws, actors and the boundaries of a field, helping to reveal the complexity of law and where, within a given field, change might be forthcoming. Law and law enforcement together and separately morph roles and functions: from constituting the rules of the game governing the field, and as such often an obstacle to be overcome, to being wielded as strategic tools to support the pursuit of redress or, by incorporating new laws that expand the field and enable different actors to engage in the struggle, providing new avenues for change. Struggle involves navigating this complexity by first understanding dynamics endogenous to the field.

The Indonesian examples above illustrate that this complexity encompasses the legacies of history. Endogeneity is critical to understand, but not sufficient. Progressive (and repressive) laws were overlaid with multiple competing legal regimes resulting in a mosaic of possible legal challenges and avenues for experiencing injustice and seeking justice. For communities adversely affected by business, then, there *may* be law that can assist their plight but there is the additional challenge of how to ensure the 'right' law is enforced or implemented. Engagement with challenging and progressive legal requirements could produce some good outcomes (REDD+) in building genuine support for a business that could supplement, but not replace, livelihoods. Sources of progressive change may be found within the regimes of permission tied to specific business activity. However, the multiple levels of permission required for the REDD+ project to come to fruition added to the probability that the status quo in terms of economic and political power would be retained. Yet, this is never settled as the recent Constitutional Court success demonstrates.

Regimes of permission to enable business activity, and regulation to control it, can be intertwined. This in turn shapes which forms of business activity are supported, and which resisted. In this context, licensing emerges as a key aspect of regimes of permission that needs more attention. Just as corporate law creates personhood out of a legal fiction, licences pertaining to land use create a fiction of the visceral connection between the fate of humanity and the fate of the planet we inhabit.

Ultimately, then, addressing corporate crime and harm is not simply an issue of enforcement or compliance. Neither is it one of digging deeper to find the ultimate root of the problem—the reproduction of power relations is nothing new to criminology. Understanding the direction of prevailing winds that shape business activity is important though in understanding where change is possible. Grappling with injustice is just that—looking for sources of influence ultimately requires going beyond blanket classifications of law—in all its forms—as either helpful or unhelpful, and understanding which law, from which place and used in which way within a field of struggle is important. Finding 'grappling points' to discipline business and hold multinational corporations to account ultimately involves close interrogation of which law, for what, involving which actors, in what field. This is not just mindless empiricism—but central to understanding struggles over corporate harm.

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Notes

1. The terms corporate crime and corporate harm are used interchangeably in this article to avoid the pitfalls of over-reading meaning attached to a single term rather than attending to the dynamic within a field of struggle. The same event (including the case studies in this article) can be identified as 'crime' or 'harm'. Criminological debates (extending more than 40 years) attempting definitions of corporate crime and classification of different categories of such harms risk reifying the dynamic behind categorization and definition (Haines, 2017). A priori definitions are unhelpful to the central concern of this article interrogating the '*how*', '*why*' and the *effect* of definitions of illegality and harm. Hence this interchangeability is preferred.
2. A treaty would also most likely utilize the authority and enforcement powers of home or host states; see Bilchitz (2016).
3. The scheme is referred to as REDD+. The closest full title (reducing emissions from deforestation and forest degradation) does not easily reduce to REDD+ and so we have kept the acronym throughout.
4. This term is used with caution. The Global South encompasses countries and regions with vastly different histories and experiences with colonization.
5. We would like to acknowledge the invaluable work of Samantha Balaton-Chrimes for her work on the Palm Oil Case and Imam Ardhianto, together with the research assistance of Iis Sabahudin, Sindhunata Hargyono and Hamid Asman, for work on the REDD+ case.
6. We have written more detailed accounts of both these cases elsewhere (Balaton-Chrimes and Haines, 2015; Balaton-Chrimes and Macdonald, 2016; Macdonald, 2017; Macdonald and Ardhianto, 2016; Macdonald and Macdonald, 2017) as both deserve significant individual attention. The purpose of this article is to bring together key theoretical insights.
7. Author interview, Jakarta, 22 February 2013.

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