

# BRATISLAVA LAW REVIEW

PUBLISHED BY  
COMENIUS UNIVERSITY IN BRATISLAVA  
FACULTY OF LAW

ISSN (print): 2585-7088  
ISSN (electronic): 2644-6359

## WHYTE, DAVID: ECOCIDE. KILL THE CORPORATION BEFORE IT KILLS US. MANCHESTER UNIVERSITY PRESS, 2020 / Nikolas Sabján

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### Suggested citation:

Sabján, N. (2021). Whyte, David: Ecocide. Kill The Corporation Before It Kills Us. Manchester University Press, 2020. *Bratislava Law Review*, 5(2), 123-128. <https://doi.org/10.46282/blr.2021.5.2.271>

Submitted : 06 December 2021

Published : 29 December 2021

Today's predicament is characterized by the "corporatisation" of every aspect of life: health, education, work, goods and services, in some states even incarceration (particularly in the US) and furthermore, even our private, most intimate relations are mediated by corporations (think about social media or dating apps). In other words, we are witnessing the privatisation of many aspects of our lives with which we have become heavily dependent upon corporations. By the same token, the power and influence of corporations have grown exponentially.

However, this "material force" of the corporate sphere is also complemented by stories, or rather, ideologies which serve to legitimise the corporation and its position in society. Of course, this is not a new phenomenon. At least in the context of the US, the entire PR industry emerged in the beginning of the 20<sup>th</sup> Century as a tool, among other things, to shed a positive light upon corporations and their activities as their power grew and its legitimacy was being questioned. Today, the ideological justification of corporate activity and power appears in many different forms: stories about its importance for trade and development, its "responsible" conduct (supposedly guaranteed by *soft law* instruments such as the UN Guiding Principles on Business and Human Rights), its "sustainable" character (whatever that means) and there is, moreover, an effort from corporations to present themselves with a "human face" by supporting different social justice causes (so-called "woke corporate capitalism").

Now, as Michel Foucault would have put it, "*where there is power, there is resistance*" (Foucault, 1990) and the corporate sphere is no exception in this regard. Social movements, activist-lawyers or trade unions are stepping up against the

environmentally and socially destructive character of these institutions. In addition, there are new initiatives emerging which demand the adoption of a binding international treaty to end the impunity of corporate actors though these initiatives have their own limitation (Baars, 2019). Be that as it may, the ideological hegemony of corporations is nevertheless being challenged.

In the academic field, it seems to be the case that new, critical approaches are being produced. Their aim is to critically assess the operation, functions and power of corporation and address the relation between capitalism, law and corporation (Baars and Spicer, 2017).

Professor David Whyte's new book, *Ecocide: Kill the Corporation before It Kills Us*, undoubtedly falls into this category. It provides a succinct and readable piece of critical analysis (those who are familiar with critical legal scholarship will certainly appreciate this) of the destructive nature of today's corporate capitalism by focusing upon one of its specific subjects – the Corporation. Essentially, to simplify it to the utmost, Whyte aims to show the nexus between capitalism, corporation and ecocide. The argument could be summarised as follows: "*the entity of the corporation has been specifically designed and adopted to ensure the fast and uninhibited reproduction of profit, with little regard for the environment and social costs.*" (Whyte, 2020, p. 21). Thus, the corporation is "*an invention that has accelerated the capacity for the destruction of the planet.*" (Whyte, 2020, p. 3).

The important point, however, is that this destructive and abusive nature of corporations should not be interpreted as an exception from the norm (a few "bad apples") but rather, as a structural feature of the corporation and capitalist socio-economic system more generally. This stems from what he calls the "structure of irresponsibility" – i.e. there are structural reasons and incentives for the corporation to act in an environmentally and socially destructive manner (more to that later).

The introductory chapter is a summary of "super-scary and staggering figures" to get the attention of the reader right from the beginning. It shows how corporation knowingly denied different forms of environmental degradation – for instance, firms had known for long time about the harms of tobacco or asbestos and moreover, oil companies were well aware, at least from the 1970s, about the way carbon dioxide affects the climate (this research was done by their own scientists). Yet the fossil industry did not shy away from fuelling climate denialism and scepticism and spent huge amounts of money on lobbying against necessary legislative changes in this sphere. The list goes on: Whyte lists a number of chemicals or materials (such as leaded petrol, Polychlorinated biphenyl, Bisphenol A, Polyvinyl chloride, Organophosphates or Glyphosate) produced by corporations with the knowledge about their harmful and even deadly effects. As to the amount of greenhouse gases emitted – Whyte refers to uncompromising numbers already known to those working in the field of ecology: since 1988, 100 corporations have collectively produced 71 % of all fossil fuel emissions; around 60 % of Coca-Cola's packaging is estimated to be single use plastic; corporations are in mostly responsible for the deadly chemicals in our water and air (such as pesticides and dioxins), etc etc. On the other hand, the influence of corporations is enormous: according to the Swiss Federal Institute of Technology in Zurich, 737 corporations control approximately 80 % of global wealth.

Subsequently, the first chapter starts with a brief discussion on the nature of corporation and the different theories about corporate personality (e.g. fictional/artificial entity or contractual/aggregate theory). A short discussion is devoted to the judicial practice of domestic (Supreme Court of US) and supranational courts (European Court of Human Rights) regarding the rights granted to corporate entities. Additionally, corporation gained favourable position within the architecture of international investment

law, giving them the possibility to sue governments within the ISDS system. States were brought to international arbitration for trying to adopt regulatory measures which, apparently, violated the "rights" of corporations. A relatively large part of this chapter is devoted to two aspects of the corporation – its longevity (even immortality), the separation of ownership and control within corporations and the issue of shareholder v. director primacy. Even if corporations committed crimes or contributed to environmental destruction in the past (and continued to do so), corporations tended to survive (often without assuming any responsibility). The clearest example is IG Farben or Volkswagen. Each of them employed during WWII hundreds of thousands of slave labourers, many of them from Auschwitz (IG Farben also knowingly manufactured Zyklon B which was used in the concentration camps for mass killings). Both corporations of course survived and are operating today (IG Farben was split into six corporations, including Bayer or Sanofi). Another example which is central in Whyte's book is Stora Kopparberg, the world's first known corporation founded in 1288. Today, it is known as Stora Enso, the second largest paper producer in the world (implicated in environmental destruction in Brazil and Uruguay).

Whyte also shows, following Zygmunt Bauman, how the separation of corporation as a legal entity from its shareholders and executives (together with limited liability, corporate veil, shareholder primacy and the profit motive) is the primary cause of the "structure of irresponsibility": *"Just like Zygmunt Bauman's description of the profoundly dehumanising character of the bureaucratic structures, the corporation allows its human constituents to remain indifferent to the social and human impact of the production processes and investment strategies."* (Whyte, 2020, p. 58). Simply put, the shareholder's interests are put above the interests of others and they can look away from the consequences of the corporation's actions and focus on profit. This is not a coincidence. As Whyte writes: *"The corporation developed in this way, not merely as a matter of historical coincidence, or a twist of faith. The corporation is structured in this way precisely to enable a system of investment that is dehumanised. It evolved as a mechanism that would allow investors to pursue their 'economic standpoint' above any other standpoint."* (Whyte, 2020, p. 59).

In the second chapter, Whyte describes the insatiable need of capital to expand and destroy and situates the corporation as the central actor in this process. He claims that the *"corporation was formative in the development of a colonial capitalism that was always ecocidal."* (Whyte, 2020, p. 69). Here we see a fourth aspect connected to the triad capitalism-corporation-ecocide: colonialism. First, the underlying principle is the priority of economic productiveness over other sustainable ways of organizing societies. Whyte relies on Karl Marx's explanation about the endless process of expansion of capital into new places and markets to extract natural resources and produce. This results in the shrinking of time and space as the main precondition for the reproduction of capital. The natural world, identically to time and space, is merely a limit to be overcome. As he succinctly puts it, capital *"cannot stand still"*. (Whyte, 2020, p. 76). The annihilation of space and time was, as Whyte states, one of the most important aspects of European colonialism. In this process, corporations played the essential role as an institution which ensures the mobility of capital. Corporations were, furthermore, a means to overcome natural barriers. Accordingly, corporations were used by colonial powers in this manner, and this led to the *"annihilation of nature and the annihilation of people on an unprecedented scale"* (Whyte, 2020, p. 76).

To support this, Whyte provides many examples from the late 1500s onwards (for instance, the activity of well-known East India Company, Royal African Company, Virginia Company, etc.). Whyte also provides examples from the 20<sup>th</sup> century – e.g. how

ChevronTexaco was implicated in the cultural genocide of Amazon tribes, the Tetetes and the Sansahuari. Similarly, he discusses how both Mussolini and Hitler were upheld by international capital (banks such as Barclays, Chase, Credit Suisse were implicated in the theft of Jewish property and General Motors, Standard Oil of New Jersey or IBM provided fuel, weapons, vehicles, etc. to the Nazi regime). In the second half of the 20<sup>th</sup> century, the racist regimes of South Africa and Rhodesia were maintained also by Western capital and there are well-documented cases of corporations being implicated in “disappearances” and assassinations in Latin America in this period.

Whyte offers some thoughts in the third chapter on the issue of regulation of corporate behaviour and its effectivity. Essentially, he argues that regulation not only controls but also enables environmentally destructive behaviour. The debate is an old one in Marxian legal circles and in a more general way, it concerns the question of reform *versus* revolution. The orthodox wing of Marxist legal theory tended to make the claim that the concessions provided to labour and the consensus between labour and capital after the WWII helped to legitimize the capitalist order and de-radicalised labour. The “reformist” strand deemed this development as genuinely progressive. For Whyte, this is a false dichotomy. He correctly asserts that regulations “license” corporations to kill within the limits set by the state. The problem is that this limit is not set in order to protect the planet but are determined according to economic efficiency. Whyte puts forward the standard Weberian argument – the aim of regulation in capitalist societies is to secure its growth and stability, i.e. to ensure the system of production, distribution, consumption, etc. Now, Whyte makes several arguments why regulation is insufficient to alter the ecocidal nature of corporations – reduction of funding for environmental agencies which have to deal with complex cases, lack of enforcement on national and international level for political or economic reasons, or the inadequacy of fines (if imposed) since these constitute only a fracture of their assets and so on. However, he is not dismissing regulations as a sort of “false consciousness”. He takes issue with a specific type of regulation prevalent today, the so-called “*end-point regulation*”. So, for example, the industrial processes are usually regulated at the end phase, controlling greenhouse gasses, waste or poisonous substances but not immediately at the start-point “*against investors, and therefore corporations*”. Start-point regulation would mean “*intervening to control the extraction of raw materials, intervening in chemical and other industrial manufacturing processes. And it [would] also mean intervening to control financing of corporate activities.*” (Whyte, 2020, p. 142). Consequently, Whyte is not against regulation *per se*, his argument is about the limited effectivity of the current type of regulatory processes.

Finally, in the fourth chapter, Whyte offers solutions to ensure the accountability of corporations and prevent further environmental destruction. As he correctly points out, what we are witnessing today is “green market fetishism” which wants to turn the current ecological crisis into another “business opportunity” and creates new possibilities for profits. This “green market” is full of greenwashing and false pledges from the fossil industry. Moreover, he criticizes the possibility to resolve, or at least mitigate the ecological crisis that we are facing today by individual, consumer solutions – a sort of “enlightened consumerism” that will apparently help to resolve climate change and other ecological problems. Whyte correctly argues that this is merely “*tinkering at the margins of an overheating world.*” (Whyte, 2020, p. 151). Even though changes in individual behaviour are also necessary, we need to undertake much more radical, systematic changes to avert the ecological crisis that we are facing. That’s what Whyte advocates for.

Namely, Whyte supports the idea of public control of assets of biggest carbon emitters. He further proposes a carbon tax and a tax on financial transactions on a global scale. Whyte is also sympathetic to the solutions proposed by "Green New Deal" programme (e.g. reconstruction of the financial system, nationalising the transport companies, creating new forms of recycle cooperatives and new modes of "slow" and local food productions, etc.).

With regard to the corporation, Whyte argues for the following measures: first, the corporate structure must be broken (meaning that we need to restrict the global scope of corporations by breaking the complex ownership structures and chains of subsidiaries); second, that impunity for investors and shareholders must end (meaning that the limited liability principle is unsustainable and that all actors with any type of ownership should be held liable for the harms caused by the activity of corporations); and finally, it is required to end the impunity of corporate executives (executives must be simply liable for criminal activities ensuring that the assets gained from environmentally destructive actions could be reclaimed).

Clearly, all this requires massive interventions by the state and also pressure from "below", i.e. action from popular movements. Now, the solutions proposed by Whyte might be sympathetic to some, but the last chapter is too vague and there is no further discussion on how to achieve these aims. Any discussion about how such changes would look like is also absent. This is partly understandable considering the length and objective of the book but nevertheless, a more in-depth discussion regarding these complex and relatively radical changes would certainly add to their persuasiveness. Even more critically, some of the suggestions are not particularly novel at least in some political and legal circles. Thus, in the end, these might be considered as mere platitudes. In any case, the book provides a good basis for anyone who's interested in more critical accounts about the functioning and power of corporations today.

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