

Criminogenic dynamics of the construction industry: a state-corporate crime perspective

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Abstract

Construction industries provide significant opportunities for criminal and harmful processes to occur, including fraud, tax evasion, poor health and safety, and underpayment of workers. Building on previous work from the state-corporate crime agenda, this article places industry at the forefront of discussion, by examining how 'criminogenic industry structures' emerge in construction work. The article refers to the key instances of worker blacklisting and 'umbrella company' tax fraud, situating them within broader discussions on systemic processes that enable state-corporate harm to develop. This paper contributes to the state-corporate crime agenda by demonstrating how discussions on criminogenic industry structures provide critical links between organisational processes and broader political-economic dynamics, which is crucial for developing a criminological discourse.

Introduction

Construction industries across numerous countries provide the setting, rationale, opportunity, and means for criminal and harmful activities to develop (Ganji, 2016; Lillie, 2012; Reeves-Latour and Morselli, 2017; van de Bunt, 2010). In the UK context, construction companies have recently been developing responses to threats associated with 'modern slavery' and workers' rights, including a focus on the complex make-up of supply chain structures (CIOB, 2015; Crates, 2018; FLEX, 2018). However, these accounts do not necessarily acknowledge the interrelationship between states and corporations, or between political and economic decision making, in encouraging these

structural vulnerabilities to thrive. Where these relationships are acknowledged, there is a tendency to present them as discreet or isolated examples of co-operation between states and corporations. The primary question that guides this paper is 'how does the UK construction industry develop criminogenic conditions associated with the harms of production processes?'. It frames answers to this question by discussing a range of vulnerabilities that have developed – some of which are common in numerous economic sectors, such as complex subcontracting; and others which are specific to construction, including dubious payment processes associated with the Construction Industry Scheme (CIS). To focus this argument, the lens of state-corporate crime will be adopted to critically consider the intersections of political and economic decision-making in the industry. Michalowski and Kramer's (2006) state-corporate crime framework provides the means to analyse interactional (micro), organisational (meso), and institutional/political economy (macro) processes. Building on this framework, Bernat and Whyte (2017) argue that many depictions of state-corporate crime tend to overly focus on 'moments of rupture', i.e. distinct events or incidents, at the expense of assessing deeper political economy or capital accumulation processes within which state-corporate symbiosis develops. However, Bradshaw's (2014) 'industry level' discussion, located between the organisational (meso) and political economy (macro) levels of analysis, arguably helps to bridge important gaps between potentially abstract depictions of macro production processes, and specific 'moments of rupture' often discussed at the micro/meso levels. This is done by situating micro/meso-level practices in a broader context, while simultaneously linking macro-level discussions on production and capital accumulation processes to a more tangible context.

Such a framing of state-corporate crime is distinct from other discussions on crime in the construction industry, where perpetrators are commonly depicted as minor rogues in an otherwise unproblematic industry. For example, the Chartered Institute of Building (CIOB, 2016) emphasises individual crimes such as theft between workers on building sites, and the role of organised criminal groups in infiltrating the industry; whereas the employer group Freelancer and Contractor Services Association (FCSA, 2017) acknowledges the problem of individual 'cowboy' builders and other industry actors. While these are important considerations, there is a wider range of 'crimes'

that are important to unpack from a more critical view of how states and corporations function and co-operate. Therefore, for the purpose of this paper, the intention is to situate two examples within the broader political-economic context of the construction industry, using Bradshaw's (2014) notion of criminogenic industry structures, hence contributing to existing work on the area of state-corporate crime. These examples are not intended to illustrate all possible aspects of state-corporate interaction within the industry, but they offer a snapshot of the symbiosis that has developed over time between state and corporate actors.

The paper is structured by critically reviewing recent discussions on the state-corporate crime nexus, which examines the notion of criminogenic industry structures (Bradshaw, 2014). This discussion is followed by an overview of key criminal and harmful practices in the construction industry, before the heart of the paper sets out how two examples, the Consulting Association (CA), and Quality Premier Services (QPS), are indicative of state-corporate symbiosis in the political-economic development of the industry.

Towards state-corporate crime at the 'criminogenic industries' level

The concept of state-corporate crime has developed in criminological discourse to explain the nexus of political-economic decision making by states and corporations, and how these actions (or omissions) can have socially injurious impacts on a range of groups. Michalowski and Kramer's (2006) work includes an integrated theoretical model of state-corporate crime, thereby providing analysis of the opportunity, motivations, and social controls related to government and corporate deviance at the interactional (micro), organisational (meso), and political-economic/institutional (macro) levels. Therefore, the inseparable relationships between politics and the economy, and the intersections between state and corporate harm, are brought together. For Kramer (2010: 120), organisations are the key focal point of analysis, rooted in an institutional and cultural environment within which individual actors operate.

Expanding on Michalowski and Kramer's (2006) work, Bradshaw (2014) argues that 'industry' is a neglected level of analysis found between the organisational and political-economic levels. On

this basis, Bradshaw's (2014) work on the US oil industry advocates a 'criminogenic industry structures' approach that locates the level of industry analysis between the organisational and political-economic levels contained in earlier state-corporate crime research (Michalowski and Kramer, 2006). 'Criminogenic' can be understood here as embedded dynamics of industry, such as complex supply networks, limited regulatory oversight, and collusion with external (state) institutions that shape conditions for systemic criminal and harmful activity to occur. Even if numerous industries are classified as 'criminogenic' as a standard part of the capitalist production process, in the long term the explanatory value of 'criminogenic' arguably lies in being able to compare harm across industries, which in turn contributes to a more systematic understanding of state-corporate deviance (Bradshaw, 2014: 391-392). For example, in a survey of 21 European countries (FRA, 2015), nine countries regarded construction as the most vulnerable industry to labour exploitation when compared to other sectors such as tourism, food processing, domestic work, and the cleaning sector. Although industry has received some attention from criminologists and policy makers, this is not necessarily framed from an explicit state-corporate crime angle, which arguably provides the means to examine key 'units' of Michalowski and Kramer's earlier work. Therefore, Bradshaw (2014) argues that giving further attention to industry is helpful because organisational actors pursue common goals within institutional contexts, whereby industry structures are shaped by local and national government policy that can hinder or enable harmful behaviour.

In parallel to studies of state-corporate crime, critical researchers argue that the state-corporate crime agenda provides only a partial analysis of crime and harm. For Bernat and Whyte (2017), while they regard case studies of state-corporate crime as helpful to illustrate its key facets, they argue that such discussions tend to overly focus on 'moments of rupture' in relation to the accumulation process of capital. Similarly, as Tombs (2012: 175) notes, Michalowski and Kramer's (2006) work emphasises 'particular moments' by pointing out that broader production systems such as capitalism are beyond the scope of their theoretical model. Therefore, Bernat and Whyte (2017) frame the notion of 'state-corporate symbiosis' to encourage a rigorous, deep-rooted analysis of the historical and political-economic connections between states and companies. The

argument is that such relationships have developed long-term, rather than merely on a set of conditions in space and time that come together to explain state-corporate crime (Tombs and Whyte, 2020). Simply put, such critical researchers argue that a stronger role for (capitalist) production systems and state-industrial-corporate relations would be helpful in explaining crime and harm, rather than a series of discreet actions that occasionally converge to facilitate crime.

Therefore, state-corporate crime in construction covers a range of harms that are either actively encouraged by state-corporate processes or facilitated through 'regimes of permission' that allow states and corporations to maintain limited standards within industry that expose various parties to social injury. In particular, Whyte (2014: 244) posits that corporations and their influence depend on these regimes of permission, whereby states provide the framework for key corporate functions. These functions include the ability for companies to trade as separate entities, to employ workers and purchase or sell products, part of which may include developing complex supply chains and unclear lines of corporate accountability, and to utilise future surplus value into capital on stock markets. Hence, focusing only on discreet 'moments' does not account for the pre-existing symbiosis between states and corporations, which serves to prioritise the profitability of businesses and closer collaboration between public and private institutions (Whyte, 2014: 239). It is these conditions that set a complex scene for crime and harm to develop, not just within companies, but in (neoliberal) capitalist democracies (Whyte, 2014).

Despite this critical strand of literature, there is space for discussion on capitalist modes of production to be grounded in the nuance of practical considerations (Tombs, 2012). On this basis, the industry level analysis proposed by Bradshaw (2014) would seem to have value both to Michalowski and Kramer's (2006) earlier integrated theoretical model, as well as later critical responses to it. This is because the industry level is arguably a fulcrum between production systems and organisational processes. These connections provide a broader context for organisational and industry practices, and allow for potentially abstract claims about state-corporate symbiosis to be grounded in market activities that relate to tangible processes. Along with these theoretical developments on state-corporate crime and harm, there remains a relative

lack of contemporary focus on industry within criminological discourse – especially in relation to employer-related crimes and harms such as labour exploitation and workplace safety. Some notable exceptions apply; for instance, Tombs and Whyte (2007) argue on a preliminary basis that the construction industry could be seen as criminogenic.

Contemporary challenges in construction industries

Approximately 7% of the global labour force work in the construction industry (von Elgg, 2016: 8). According to the International Labour Organization (ILO), of the US\$150 billion profit obtained annually around the world from forced economic exploitation, US\$34 billion (23%) is made in the construction, manufacturing, mining and utilities industries (ILO, 2014). Construction is well known for being vulnerable to criminal and harmful activities that are perpetrated by organised crime groups, states, and businesses. Widespread subcontracting, short-term projects, non-standard work, poor health and safety practices, complex payment and tax structures, and limited state oversight, all contribute to factors such as worker mistreatment, a loss of tax revenue, and the undercutting of other businesses (CIOB, 2015). For instance, Ganji (2016) links the development of new infrastructure for the Qatar 2022 FIFA World Cup to estimated thousands of migrant worker deaths due to poor safety practices. In other construction industries, there have been discussions on bid-rigging networks in Canada (Reeves-Latour and Morselli, 2017); environmental impacts in Hong Kong (Shen and Tam, 2002); within Europe, the role of organised crime groups in Italy (Savona, 2010); cartels and fraud scandals in the Netherlands (van de Bunt, 2010); false self-employment in Ireland (Wickham and Bobek, 2016); as well as economic crimes and the 'grey economy' in Finland (Kankaanranta and Muttilainen, 2010). At the supranational level, approaches such as the EU Posted Workers Directive have prompted concerns over labour standards and corporate accountability (Davies, forthcoming; Lillie, 2012). Therefore, opportunities for a range of physical, psychological, environmental, and financial/economic harms against groups such as workers are rife in construction industries.

The construction industry in the UK is no exception to these widespread processes and trends, where key activities include the construction of private and commercial buildings, civil

engineering/infrastructure including roads, bridges and tunnels, as well as specialised tasks such as roofing, plastering, electrical installations, and demolition. In 2018, the value of construction was £117bn to the UK economy, or 6% of the total, and provided 2.4 million jobs, or nearly 7% of national employment (Rhodes, 2019: 3). As of 2018 there are approximately 343,000 registered businesses operating in the construction industry (Rhodes, 2019: 4), whereby 99% of these are small and medium-sized enterprises (SMEs), commonly with only one or two people on the company payroll. The industry experienced a somewhat sluggish recovery since the 2008 financial/economic crisis but began to steadily grow each year since 2013. These figures suggest that construction is an important and diverse industry, yet there are numerous concerns associated with its core activities.

A long-term lack of government and employer investment in construction has resulted in numerous vulnerabilities for the industry, as highlighted by the 2016 Farmer Review of the labour model in UK construction (Farmer, 2016). This under-investment can be seen in that UK construction workers tend to be single-skilled, i.e., they specialise in only one activity such as painting or scaffolding, which contrasts with many European construction industries where workers are often multi-skilled (Chan et al., 2010: 26). Therefore, businesses see the appeal of employing readily trained migrant labour, which comprises an estimated 11% of the UK construction workforce, although this figure is closer to 50% in areas such as London (FLEX, 2018: 4). In relation to the short-term nature of many construction contracts, the industry is dominated by flexible labour practices such as self-employment, where approximately 710,000 workers are self-employed (ONS, 2020). Self-employment provides lower levels of employment protection, especially for those workers engaging in hazardous, low-wage occupations that carry risk of injury and death. Indeed, in the March 2020 'lockdown' during the COVID-19 crisis in the UK, construction workers were among the last group of 'non-essential' workers to stop working and the first to return, despite the stated health and safety risks of doing so (BBC News, 2020). The Construction Industry Scheme (CIS) represents a unique payment method whereby self-employed workers in the industry receive their salary – but without deductions, meaning that they have less protection under employment law for matters such as statutory sick pay. Therefore, the

construction workforce is especially vulnerable to mistreatment, sometimes in indirect and subtle ways.

The industry itself is dominated by private sector orders and contractors, although the public sector has significant input, especially over infrastructure projects (Rhodes, 2018). While the industry contains large multi-national contractors such as Balfour Beatty and Kier Group who lead projects, most work is broken down into specialised tasks across numerous smaller subcontractors, materials suppliers, component manufacturers, labour providers, and professional roles (e.g. engineering), which results in complex supply networks and potentially hundreds of companies involved in larger projects (CIOB, 2016). Self-employment is the norm in the industry, with many workers reporting that it is difficult to find work in any other capacity, since directly employed permanent roles are scarce. Using self-employed workers is less costly for employers, since they do not need to make employers' contributions to national insurance or pensions, and they save on other direct employment costs such as recruitment, training, holiday and sick pay (Seely, 2019).

Due to this potential for businesses to reduce employment costs, in recent years there have been concerns over false self-employment, whereby workers are claiming to work independently, but in practice are routinely told by (sub)contractors where and when they should be working in order to receive payment. In 2013, the UK government began to encourage construction firms to employ workers rather than allow them to register as self-employed. This apparent solution to the pitfalls of self-employment paved the way for 'umbrella companies' within the industry (Elliott, 2014). Simply put, umbrella companies represent a legal but complex pay structure to pass on employer costs such as national insurance to workers, who end up taking home less pay than their agreed hourly rate (Elliott, 2014).

As with many other sectors, oversight of the construction industry is limited. In the UK, there are numerous regulatory authorities that have some level of responsibility for overseeing different aspects of abusive labour practices, such as the Gangmasters and Labour Abuse Authority,

National Minimum Wage team, Employment Standards Agency, and Health and Safety Executive. There are well documented limitations associated with such state agencies, due to issues associated with lack of remit, as well as underfunding (FLEX, 2017). The Modern Slavery Act 2015 gave new momentum to the rhetoric on corporate social responsibility, by requiring large companies to publish an annual transparency statement, thereby outsourcing some of the blame for inaction against labour exploitation from governments onto companies (Barkay et al., forthcoming). Although trade unions are intended to counter the harmful excesses of employer and state control over workers, union membership in the UK has steadily declined since the late 1970s and is especially low in the construction industry (Crates, 2018). The structural vulnerabilities signposted above are indicative of the interplay between states and corporations, either in an active or indirect way to encourage a range of injurious processes to develop.

Political-economic dynamics of UK construction

Developments associated with capitalist production processes over time, as well as more recent interpretations of 'neoliberalism', have helped to foster criminogenic conditions in the construction industry that permit such issues to develop. The contemporary rise of neoliberalism is broadly associated with factors such as 'free market' entrepreneurialism, increasing privatisation, deteriorating work conditions, and fragmentation of regulatory oversight (LeBaron et al., 2018). Against this backdrop, construction workers that built and maintained the physical infrastructure of the post-World War II UK welfare state were directly employed on a permanent basis by local councils. In addition, until the late 1960s, directly employed construction workers were seen to produce higher quality and more cost-effective products than private (sub)contractors (Langford, 1982). Increasingly market-led employment practices from the 1960s onwards led to intensified subcontracting, which eroded labour protections and impeded trade unions (Harvey and Behling, 2008) - a process that culminated in efforts during the 1980s to outlaw unionisation, partly due to the marketisation of services/industries that were formerly owned by the state.

Hence, in the public construction sector especially, this marketisation signalled the end of unionised direct employment in local councils (Thiel, 2012: 13), which was gradually replaced with

competitive tendering and subcontracting practices associated with private sector construction. Such a process has led to broader questions around the procurement process and the costs attached to construction projects from their design phase through to completion and beyond. Indeed, as others have recently concluded (Tombs, 2020), the 2017 Grenfell Tower incident demonstrates systemic failings with regards to the quality of building design, organisation, construction, and renovation. Due to various structural problems often associated with neoliberalism and capitalist democracies (LeBaron et al., 2018; Tombs and Whyte, 2020), many companies have engaged in state-led measures such as 'transparency statements' to convey an image of social responsibility, despite the effectiveness of these initiatives being highly questionable (Crates, 2018). However, going through such 'motions' allows the state to claim it is 'doing something' to rein in the excesses of corporate influence, while simultaneously appearing business friendly by not punishing companies for non-compliance. The rest of this paper explores core themes that relate to state-corporate symbiosis as signposted towards the start of this discussion.

The examples outlined in this section do not stem from a research project involving empirical data collection, but instead was a theoretical endeavour to draw out some of the tensions and nuances in the areas of state-corporate crime and the construction industry. Following a literature search of academic databases, legal judgments, organisational and media reports, two examples were selected that demonstrate some level of state and corporate collusion in facilitating harm against construction workers. These were the Consulting Association (CA) blacklisting process, and the Quality Premier Services (QPS) umbrella services tax fraud. Both examples relate to, and have implications for, the broader construction industry and its long-term governance. They both contain a variety of socially injurious state-corporate actions and omissions related to working conditions, tax payments, and longer-term endemic challenges in the construction industry. Although there are numerous instances of harm in the UK construction industry that could be related to the state-corporate crime framing, the examples discussed here are intended to be illustrative only, rather than representative, and cannot claim to be 'case study research' in the traditional meaning of this method. The examples were selected primarily because, in the CA case,

it brings together an industry-wide tension between trade unions, construction companies, the state, and an industry body. The QPS example represents the UK's largest payroll fraud of its kind (Contractor UK, 2017), which reflects its importance in relation to the broader industry trend of umbrella companies. The examples were not especially high-profile when reported, which to some extent signifies the embedded and routinised nature of socially injurious practices in otherwise legitimate industries. However, as Bernat and Whyte (2017) argue, such a focus on state-corporate crime should not be viewed merely as 'moments of rupture' or exceptional examples, but instead as part of rooted, longer-term processes that benefit actors behind the accumulation of capital.

Hence, while the examples differ in terms of substance and implications, they are connected when discussed from a broader industry and institutional perspective, which according to Bradshaw (2014), is an important development from the earlier state-corporate crime analytical framework proposed by Kramer et al. (2002). Therefore, the following discussion will frame connections between institutional, industry, organisational, and interactional factors where appropriate. The presentation of these examples is not intended to reduce this analysis to merely a discussion of 'moments'. Instead, they are used as starting points to help facilitate a deeper understanding of construction industry vulnerabilities and the political-economic processes that create the conditions for such practices to occur. These examples do not represent the full range of socio-economic and financial harms occurring within the construction industry, but build on existing preliminary arguments of criminogenic industry structures (Tombs, 2012; Tombs and Whyte, 2007: 10-13).

The Consulting Association and trade union blacklisting

In 2016, over 250 construction workers were awarded an out-of-court settlement of £10m after some of the UK's largest construction firms blacklisted them (Macalister, 2016), including Balfour Beatty and Sir Robert McAlpine. This blacklist resulted in hundreds of workers losing employment and being unable to find new jobs, since they were labelled as 'troublemakers' in the process of highlighting legitimate workplace concerns, including work conditions and health and safety matters (Druker, 2016). The blacklist is understood to have been active for 30 years, whereby the

construction industry monitored over 3,000 construction workers through an industry-wide organisation called the 'Consulting Association' (CA), which eventually had its offices raided by the Information Commissioner's Office (ICO)¹. The secret files obtained by the ICO included disparaging references to workers such as "will cause trouble, strong TU (trade union)", "ex-shop steward, definite problems", and "Irish ex-army, bad egg" (Macalister, 2016)². Despite a settlement being agreed between the construction firms and the GMB union, the full extent of state-corporate collusion and wrongdoing during the blacklisting process is still not known, which begins to offer a role for a state-corporate crime framing. Therefore, although individual companies formed an important part of this example, many of their actions were enabled and facilitated through an industry-wide body that had significant control over the backlisting process (the CA).

At face value, industry wrongdoing in this example is evident from the Consulting Association compiling a secret database containing workers' personal information and defamatory remarks about them, whereby other construction companies then used this as a vetting service for their own purposes. As noted above, this had significant implications for many workers' employment opportunities, which is already highly casual in the construction industry (Chamberlain and Smith, 2017). However, this was not solely a group of companies acting together through an industry body. There was also evidence of active state collusion in this corporate activity. Firstly, information contained within workers' files could only have come from the security services, including references to 'security clearance'. In addition, Ian Kerr, the former Chief Officer of the CA, admitted in an interview that an officer from the National Extremism Tactical Co-ordination Unit (Netcu) had addressed a 2008 meeting of construction industry directors (Macalister, 2016). Based on this meeting, some information exchange began, which involved the use of codes to indicate who was of interest to Special Branch. Partly due to freedom of information requests being rejected, the true extent of the security services' involvement in the CA remains a key gap in fully understanding the blacklisting issue.

¹ In the UK context, the ICO's role is to improve the information rights practices of organisations, largely through concerns and complaints raised by the public.

² For a fuller account of blacklisting in UK construction, see Smith and Chamberlain (2017).

Secondly, in this example there were questions centred around state surveillance of construction workers. The infiltration of protest groups by state bodies such as the Special Demonstration Squad (SDS) had been occurring since 1968 when it was established. Members of the SDS had also spied on anti-racism campaigners, environmentalists, and the family of murdered black teenager Stephen Lawrence. The industrial arm of the SDS was there solely to infiltrate and/or spy on trade unions. The police unit Netcu was disbanded, and its responsibilities eventually transferred to the Metropolitan Police Counter Terrorism Command SO15 unit, which essentially means that state agencies spying on trade unionists is, in some respects, classed as counterterrorism. In 2012, a complaint was lodged on behalf of the Blacklist Support Group about the collusion between the police and CA, whereby Special Branches were involved in providing information about potential employees. A legacy issue of the CA issue is that many victims have not been traced, there are ongoing litigation trials, and minutes from CA meetings have largely gone missing. Referring to Kramer and Michalowski's (2006) distinction between active state collusion and facilitation in the state-corporate crime process, the CA example clearly falls under active state collusion.

What emerges from the CA example is that state agencies and the industry, including companies, each benefited and relied on the other at the levels of political and economic decision making, i.e. collusion between state agencies and corporate-industry bodies. From a governmental perspective, it is possible that blacklisting of union members could be framed under the cover of addressing counterterrorism and domestic subversion. However, blacklisting in construction is far from an isolated example – there is evidence of blacklisting in other sectors such as private security (Chamberlain, 2019). To some extent, there is a broader question of real government agendas being masked by 'security' concerns, in this case due to long-standing tensions between governments and trade unions in the UK. Despite this tension, state-corporate collusion in the construction industry has enabled significant control of trade unions and workers. Referring back to the 'regimes of permission' concept (Bernat and Whyte, 2017; Whyte, 2014), it is possible to see how collaboration between the state, CA, and industry companies developed not due to

deviation from a 'normal' social path, but from the standard conditions of doing business that had developed over time.

Quality Premier Services umbrella company tax fraud

Between 2009-2015, three directors of an umbrella company – Quality Premier Services (QPS) evaded paying over £45m in VAT (value-added tax), contrary to the Criminal Law Act 1997, where there was also intent to defraud and cheat the UK tax authority, HMRC (Her Majesty's Revenue and Customs) under the Value Added Tax Act 1994. In 2017 the QPS directors were imprisoned for a total of almost 30 years, in a case which has been described as the UK's largest payroll fraud of its kind (Contractor UK, 2017). As with other businesses, the QPS directors should have passed on VAT to HMRC rather than withholding it. The QPS directors used the withheld VAT to purchase luxury items including mansions, super-cars, luxury watches, and racehorses. Police were able to retrieve £16.6m but remain unsure where the rest of the funds are. Although this example initially relates to an organisational level of discussion, this is treated as a starting point only, and closely taps into broader industry issues.

At first glance, QPS may not seem like an obvious example to link with the concept of state-corporate crime. After all, it refers to the criminal conviction of three perpetrators who violated statutory law, which is surely the state asserting its authority against individual businesspeople who had committed illegal acts and were trying to benefit themselves and the company they managed. In addition, there is no evidence that state agencies or individuals within them were colluding with the QPS directors in assisting them to avoid paying VAT. However, as discussed above, specific examples form only part of the picture when compared to broader political-economic processes in explaining state-corporate crime and harm. While there are a number of factors that link the QPS example with state-corporate harm, it taps into broader themes which are of concern to researchers and practitioners. Unlike the Consulting Association (CA) above, in this case the influence of the state was more subtle and facilitative that arguably fostered a 'regime of permission' for the QPS directors to take the actions that they did.

The few media reports available on the QPS example focus on the individual perpetrators and their lavish lifestyles. Reports describe in great detail the type of cars and other luxury items purchased by the QPS directors (e.g. Spillett, 2018). This was largely reflected in the legal case and post-commentary available. In other words, referring back to Bradshaw's (2014) updated state-corporate crime framework, the main aspects of discussion were mostly focused on the interactional level and the actions of the QPS directors. There is almost no discussion on organisational cultures or processes, business models, industry practices, or the lack of state regulation to control these practices, that may have indirectly encouraged the perpetrators to take the actions that they did. This example is therefore presented as a 'moment of rupture' to the capital accumulation process, with clearly identifiable 'rogues' in an otherwise unproblematic context. However, the QPS directors were arguably not the cause, but a symptom of larger structural problems concerning umbrella companies and the way in which governments have encouraged them to operate in the construction industry.

At the organisational level, QPS had the opportunity to model their business practices for at least four years before being detected, which suggests a layer of secrecy to many umbrella companies in the construction industry. There have been longstanding concerns regarding poor oversight of VAT payments, which businesses should pass on directly to HMRC. More broadly, at the institutional level, the public purse has been deprived of funds, since not all the fraudulent money has been recovered. The financial arrangements of umbrella companies more broadly have arguably contributed to a culture of complexity, due to the way in which they manage workers' salaries and employer's tax contributions. Simply put, recruiters (e.g. a subcontractor) find a suitable worker and agree an hourly rate of pay with them. However, rather than permitting the worker to register as self-employed, they instead refer them to a 'trusted' umbrella company, which serves as the worker's legal employer. The primary benefits to the recruiter here are that they can hire labour without bearing the full costs of employment, and therefore increase their own chances of being hired by larger contractors, who may prefer to hire subcontractors with lower labour costs. Umbrella companies recover their own costs (i.e. employer contributions to tax and pensions) from the worker's salary that they receive from the recruiter, as well as charging

an administration fee. This effectively means that workers are not being paid the full hourly rate agreed with the recruiter, and so their take-home pay is reduced.

In the short-term, this can result in work-related stress concerning underpayment and complexity of understanding payslips and employment relationships. In the long-term, however, since workers are taking home less pay, this results in less tax that can be used for other public services – the former trade union group UCATT (2012) estimates that up to £2bn each year is lost because of false self-employment, a large part of which now includes the activities of umbrella companies. When workers later retire, the lack of a workplace pension or reduced contributions due to umbrella companies could create an extra burden on the state to provide extra resources.

While discussions on the lack of regulation is not new in political-economic systems frequently characterised as ‘neoliberal’ such as the UK, it is somewhat ironic that governmental efforts intended to address false self-employment led to the development of umbrella companies and arguably made matters worse. This problem is broadly symptomatic of reactive, haphazard changes made to sectors in terms of their regulation and governance, as opposed to more proactive and structural approaches that would be more likely to address industry-wide problems, such as factors associated with casual employment practices. In the UK, sectors such as agriculture and food are subject to a full licensing and inspection regime under the remit of the Gangmasters and Labour Abuse Authority (GLAA)³. However, this licensing scheme does not extend into the construction industry, despite long-standing calls for construction (and indeed other sectors) to be covered by such a remit (Crates, 2018). In broader terms, governments may be reluctant to over-regulate private enterprise due to fears of stifling growth and innovation, but there may be shared ideological political-economic goals in maximising profits at the expense of a wider range of regulatory protections. This example strongly relates to Bernat and Whyte’s (2017: 77) point that it is essential to consider a range of social relationships and practices that exist prior to immediately observable conditions that result in the criminal event. For example, companies being

³ The GLAA can respond to concerns raised in the construction industry, and supports efforts to tackle modern slavery and exploitation in the industry, but these measures fall short of a full licensing remit.

permitted to set up complex supply chains where business operations are spread across different companies (Bernat and Whyte, 2017; Whyte, 2014), arguably helps to explain how umbrella companies emerged in the first place from a more general set of social relationships between the state and corporations.

The QPS example demonstrates broader, long-standing vulnerabilities in the construction industry that interlink with complex supply networks, competitive market structures, and a lack of oversight. Umbrella companies emerged from these systemic issues, and by all accounts have thrived as a business model, whereby governments and key industry actors such as the employer group 'The Freelancer & Contractor Services Association' (FCSA) remain broadly supportive of them. For instance, after the QPS conviction, the FCSA (2017) urged its members to work with 'compliant' umbrella companies, but did not question the concept or dynamics of umbrella companies as providing opportunities for harm, instead dismissing the QPS example as 'bad practice among a minority of businesses', and stating their intention to 'rid the industry of such cowboys'. In terms of Michalowski and Kramer's (2006) earlier state-corporate crime framework, the QPS example forms part of the state failure to regulate business and industry activities, so unlike the Consulting Association (CA), this is more closely linked with the state acting as a facilitator, rather than an active colluder. However, as noted towards the start of this paper, in order to develop a criminogenic analysis, it is important not just to discuss these issues in isolation from each other, but to consider how the state and corporations have developed together through various long-term political-economic processes.

This discussion on industry issues demonstrates how links between the state and corporations in construction have developed and co-existed over time, especially regarding the legal framework that first allowed entrepreneur contractors to establish themselves, and especially from the late 20th century onwards, to flourish. Despite the obvious differences between the Consulting Association and Quality Premier Services examples, they both have political-economic symbiosis between the state and corporations at their core. With the Consulting Association, the state principally benefited from this arrangement by obtaining real time intelligence on the activities of

unionised construction workers for its security services, whereas the Consulting Association and construction industry was able to filter perceived ‘trouble-makers’ from the industry in order to ensure a more compliant workforce and enhance profits. Combined with a broader pattern of low unionisation rates, the state can ensure a pliable industry that is less likely to disrupt the capital accumulation process and so enhance the prospect of outside investment. In the QPS example, the state over time had encouraged the conditions necessary for the financial and work-related harms that emerged from umbrella companies. For instance, the gradual erosion of labour conditions and the unintended consequences of tackling false self-employment, whose activities remain elusive and allow such companies within the industry to make large profits at the expense of workers.

Concluding thoughts

The purpose of this paper has been to assess the ways in which criminogenic industry structures function in the UK construction industry. It has developed this discussion through the lens of state-corporate crime, and in particular, by situating two examples within the broader political-economic framework wherein criminogenic industry structures develop. While it has not been possible to examine every type of criminal and harmful activity taking place in the construction industry, key issues concerning the state’s role in corporate activity have been discussed, both in terms of active collusion and more ‘passive’ facilitation. However, these examples in themselves are insufficient to account for the full scale of state-corporate symbiosis – there is a rich tradition of political and economic interdependence between states and corporations in this industry. Importantly, what brings these examples together, and the paper’s central thrust more generally, is the systematic mistreatment of workers that has developed over time. In this respect, individual examples are less important than the processes behind them that make these events possible (Tombs and Whyte, 2020). Many industries could surely be framed as ‘criminogenic’, or as containing structurally embedded factors that lead to crime and harm as part of standard production processes. However, in the long term, the value of ‘criminogenic’ discussions is arguably found in being able to compare different industries and identify vulnerability factors

(such as self-employment, tax avoidance or evasion practices, levels of subcontracting) that stand out in some areas but not others.

Nevertheless, the recent development of umbrella companies in particular is of fundamental concern. There is strong terminology on different sides of an increasingly polarised argument, with UCATT referring to umbrella companies as a 'con trick' that should be completely abolished (Elliott, 2014), while the FCSA has retorted that unions are disseminating 'false propaganda' and that umbrellas are advantageous to all parties (FCSA, 2016). In terms of reforming umbrella companies, recommendations vary from the maximalist position of outright abolition, to stronger regulatory protections, to the more legalistic view of providing clarity on the legal status of umbrella companies via statutory legislation. At face value, abolishing umbrella companies may appear to be the better option in terms of workers' interests and addressing tax evasion. However, in the absence of significant political support, this is unlikely to occur in the foreseeable future. It is possible that umbrella companies will be subject to further regulation in coming years, but as previous interventions with false self-employment have shown, such piecemeal changes can make matters worse. Therefore, attempts to regulate construction and umbrella companies are paradoxical to addressing financial and social harms that occur in the industry, especially in the absence of systemic market and industry reform. In conjunction with industry actors, the role of the state in permitting such processes to develop is essential to understand, and cannot be exclusively blamed on individual umbrella companies or their directors – as happened with Quality Premier Services.

While improving labour conditions and workers' rights (including within umbrella companies) is more likely with strong trade unions and collective bargaining processes, the Consulting Association example demonstrated that the state, following long-standing hostilities during the 1980s in particular, is only too willing to undermine unions by colluding with industry and corporate bodies. Unfortunately, the CA example is not an isolated one, and the Trade Union Act 2016 demonstrates a continuing trend for the UK government in attempting to weaken trade union influence, which provides opportunities for businesses to enhance workplace control. In

addition, some stakeholders have raised concerns over labour rights and economic activity following the UK's withdrawal from the European Union (Malik et al., 2019). The COVID-19 crisis has overshadowed (but not eliminated) these concerns, which presents challenges to the construction industry such as providing financial support to self-employed and other casual workers. Indeed, there may be a significant increase in attention dedicated to state-related harms regarding the treatment of (construction) workers during COVID-19. Ultimately, the dynamics of the UK construction industry provide the 'regime of permission' (Whyte, 2014) needed for state-corporate harms to develop, which suggests a continuing 'race to the bottom' of working conditions and further patterns of state-corporate symbiosis.

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References

BBC News (2017) MPs to investigate 'umbrella companies' after worker complaints. Available at: <https://www.bbc.com/news/uk-england-39058166> (accessed 30 April 2020).

BBC News (2019) Construction workers in fresh 'blacklisting' action. Available at: <https://www.bbc.com/news/business-47349008> (accessed 08 May 2020).

BBC News (2020) 'Coronavirus: construction workers fear for their safety' [online], 24th March. Available at: <https://www.bbc.co.uk/news/business-52017520> [accessed 13th January 2021].

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

Bradshaw (2014) "Obviously, we're all oil industry": the criminogenic structure of the offshore oil industry'. *Theoretical Criminology* 19(3): 376-395.

Chamberlain, P. (2019) 'Police and the private security industry are too cosy for comfort' [online], The Guardian, 31st July. Available from:

<https://www.theguardian.com/commentisfree/2019/jul/31/police-private-security-industry-crossrail-extinction-rebellion> [accessed 16th January 2021].

Chamberlain, P., Smith, D. (2017) *Blacklisted: The Secret War between Big Business and Union Activists*. Oxford: New Internationalist Publications Ltd.

Chan, P., Clarke, L., Dainty, A. (2010) 'The dynamics of migrant employment in construction: can supply of skilled labour ever match demand?'. In Ruhs, M., Anderson, B. (eds.) *Who Needs Migrant Workers?: Labour Shortages, Immigration, and Public Policy*. Oxford: Oxford University Press, pp.225-255.

CIOB (2015) *Modern slavery: the dark side of construction*. London: CIOB.

CIOB (2016) *Crime in the construction industry*. London: CIOB.

~~Cooney (1955) Origin of the Victorian master builders. *Economic History Review* 8: 167-76.~~

Contractor UK (2017) 'Umbrella bosses jailed for £45m PAYE swindle' [online] available from: https://www.contractoruk.com/news/0013059umbrella_bosses_jailed_45m_paye_swindle.html [accessed 16th January 2021].

Crates, E. (2016) *Building a fairer system: tackling modern slavery in construction supply chains*. London: CIOB.

Crates, E. (2018) *Construction and the Modern Slavery Act: tackling exploitation in the UK*. London: CIOB.

Davies, J. (forthcoming) 'Labour exploitation in the European construction industry'. In Lord, N., Inzelt, E., Huisman, W., and Faria, R. (eds.) *European White Collar Crime: Exploring the Nature of European Realities*. Bristol: Bristol University Press.

Downes, S., Collinson, P. (2016) Umbrella companies: the latest way to exploit Britain's temporary workers. Available at: <https://www.theguardian.com/money/2016/oct/21/temporary-workers-umbrella-companies-extra-costs-dodging-ni-cutting-rights-supply-teachers> (accessed 01 May 2020).

Druker, J. (2016) 'Blacklisting and its legacy in the UK construction industry: employment relations in the aftermath of exposure of the Consulting Association'. *Industrial Relations Journal* 47(3): 220-237.

Elliott, J. (2014) *The umbrella company con-trick*. London: UCATT.

Farmer, M. (2016) *The Farmer Review of the UK construction labour model*. London: Construction Leadership Council.

FCSA (2017) 'Recruiters urged to choose compliant umbrella companies following exposure of £45m fraud case.' Available at: <https://www.fcsa.org.uk/recruiters-urged-to-choose-compliant-umbrella-companies-following-exposure-of-45m-fraud-case/> [accessed 02 November 2020].

FCSA (2016) 'FCSA sets record straight as UCATT takes another swipe at umbrella companies.' Available at: <https://www.fcsa.org.uk/fcsa-sets-record-straight-as-ucatt-takes-another-swipe-at-umbrella-companies/> [accessed 16th January 2021].

FLEX (2017) *Risky business: tackling exploitation in the UK labour market*. London: FLEX.

FLEX (2018) *Shaky foundations: labour exploitation in London's construction sector*. London: FLEX.

FRA (2015) *Severe labour exploitation: workers moving within or into the European Union*. Vienna: European Union Agency for Fundamental Rights.

Ganji, S.K. (2016) Leveraging the World Cup: mega sporting events, human rights risk, and worker welfare reform in Qatar. *Journal on Migration and Human Security* 4(4): 221-259.

Harvey, M., Behling, F. (2008) *Illegal labour markets and the evasion economy in the UK construction industry*. London: Union of Construction, Allied Trades and Technicians.

ILO (2014) *Profits and poverty: the economics of forced labour*. Geneva: International Labour Office.

Kankaanranta, T., Mutilainen, V. (2010) 'Economic crimes in the construction industry: case of Finland'. *Journal of Financial Crime* 17(4): 417-429.

Kramer, R. (2010) 'From Guernica to Hiroshima to Baghdad: the normalization of the terror-bombing of civilians. In Chambliss, W., Michalowski, R., Kramer, R. (eds.) *State Crime in the Global Age*. Portland: Willan, pp.118-133.

Kramer, R.C., Michalowski, R.J., Kauzlarich, D. (2002) 'The origins and development of the

concept and theory of state-corporate crime'. *Crime & Delinquency* 48(2): 263-282.

Langford, D. (1982) *Direct Labour Organisations in the Construction Industry*. Farnham: Gower Publications Ltd.

LeBaron, G., Howard, N., Thibos, C., and Kyritsis, P. (2018) *Confronting root causes: forced labour in global supply chains*. Sheffield: SPERI.

Lillie, N. (2012) Subcontracting, posted migrants and labour market segmentation in Finland. *British Journal of Industrial Relations* 50(1): 148-167.

Macalister, T. (2016) 'Blacklisted workers win £10m payout from construction firms'. *The Guardian*, 09 May [online]. Available from:

<https://www.theguardian.com/business/2016/may/09/blacklisted-workers-win-10m-payout-from-construction-firms> [accessed 28 August 2020].

Malik, A., Adekoya, O.D., Ajonbadi, H.A., Jimoh, I. (2019) 'Investigating the potential economic impact of Brexit decisions on business performance in the United Kingdom: a case study of the UK construction industry'. *International Journal of Management, Accounting and Economics* 6(4): 347-367.

Michalowski, R.J., Kramer, R.C. (2006) *State-Corporate Crime: Wrongdoing at the Intersection of Business & Government*. New Brunswick: Rutgers University Press.

ONS (2020) 'Self-employment jobs by industry' [online] available from:

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployee-types/datasets/selfemploymentjobsbyindustryjobs04> [accessed 16th January 2021].

Reeves-Latour, M., Morselli, C. (2017) 'Bid-rigging networks and state-corporate crime in the construction industry'. *Social Networks* 51: 158-170.

Rhodes, C. (2019) *Construction industry: statistics and policy. Briefing paper number 01432, 16 December 2019*. London: House of Commons Library.

Savona, E.U. (2010) 'Infiltration of the public construction industry by Italian organised crime'. In Bullock, K., Clarke, R.V., and Tilley, N. (eds), *Situational Prevention of Organised Crimes*. Cullompton: Willan Publishing, pp. 130-150.

Seely, A. (2019) *Self-employment in the construction industry. Briefing paper number 196*, 23 August 2019. London: House of Commons Library.

Shen, L.Y., Tam, V.W.Y. (2002) 'Implementation of environmental management in the Hong Kong construction industry'. *International Journal of Project Management* 20(7): 535-43.

Smith, D., Chamberlain, P. (2017) *Blacklisted: The Secret War between Big Business and Union Activists*. 2nd edn. Oxford: New Internationalist Publications Ltd.

Spillett, R. (2018) 'Police launch hunt for fraud family's missing £30m' [online], *Daily Mail*, 20th December. Available from: <https://www.dailymail.co.uk/news/article-6515683/Police-hunt-London-fraud-familys-missing-30m.html> [accessed 13th January 2021].

Thiel, D. (2012) *Builders – Class, Gender and Ethnicity in the Construction Industry*. Abingdon: Routledge.

Tombs, S. (2020) 'Home as a site of state-corporate violence: Grenfell Tower, aetiologies and aftermaths'. *The Howard Journal* 59(2): 120-142.

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

Tombs, S., Whyte, D. (2007) *Safety Crimes*. Cullompton: Willan Publishing.

Tombs, S., Whyte, D. (2020) 'The shifting imaginaries of corporate crime'. *Journal of White Collar and Corporate Crime* 1(1): 16-23.

UCATT (2012) *Briefing ... bogus self-employment*. London: UCATT.

van de Bunt, H. (2010) 'Walls of secrecy and silence: the Madoff case and cartels in the construction industry'. *Criminology & Public Policy* 9(3): 435-453.

von Elgg, J.W. (2016) 'Hidden in plain sight: modern slavery in the construction industry'. New York City, NY: LexisNexis.

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

Wickham, J., Bobek, A. (2016) *Bogus self-employment in the Irish construction industry*. Dublin: TASC.