

International law and capitalist logic of exploitation

On the political economy of corporate responsibility

Hannah Franzki

2020-06-19T09:00:02

The Corporation, Law and Capitalism: A Radical Perspective on the Role of Law in the Global Political Economy is a loud book. The author promises to “radically” change our view of the relationship between the economy, business, and the development of international law; to present new critique based, among other things, on previously unseen archive material. Perhaps such an announcement is needed to be heard in the deafening noise of the “Corporate Accountability” and “Business & Human Rights” discourse. That, at any rate, is the aim of the book. The central thesis is that a human rights commitment for corporations does not tame the capitalist accumulation process (and the violence that emanates from it), but rather helps corporations to establish themselves as legitimate actors in the international arena and thus stabilizes capitalist production relations in the long term (p. 2).

Baars’ decidedly Marxist perspective on the relationship between business and law seems at times somewhat deterministic. Central points of reference are the works of [Eugeny Paschukanis](#) and [China Mieville](#), while neo-materialist legal theories such as those of [Andrea Maihofer](#) or [Sonja Buckel](#) remain unnoticed. Nevertheless: it is precisely the Marxist perspective that allows the author to profitably combine the different strands of international law in a large arc. By drawing on international humanitarian law, transnational investment law and international criminal law, Baars highlights the economic-political dimension of precisely those areas of law that are usually discussed completely detached from it.

The Criminal Trials against German Industrialists as Victory Justice for Capitalists

This also and especially applies to international criminal law, which Baars examines in more detail in the third chapter. According to the author, in recent years, the call for the criminal responsibility of entrepreneurs and companies for human rights crimes has become increasingly louder. Against this background, many practitioners and scholars have become more and more interested in the Nuremberg Industrial Trials. Baars, too, is concentrating on these trials with the aim of pointing out two blind spots in the current debate. Contrary to what is often stated, the Industrial Trials are not a successful but a failed attempt to hold companies as representatives of monopoly capitalism accountable for their involvement in the war of aggression and the crimes committed in the process.

For their argument Baars follows in detail the decision-making process that led to the International Tribunal against the main war criminals and the proceedings

against economic actors. The book focuses on the development of the “economic case”, i.e. the Allies’ concern to show the contribution of the German economy to the war. According to the author, the trials had started as “*morality play*” and increasingly developed into a “theatre of the absurd” (p. 134). Baars reminds us that already in the main war crimes trial it had been the concern of the Allies to show that the economy had been an essential part of the German war machine (pg. 153). Unlike contemporary social debates, however, these proceedings had not investigated the fundamental connection between “fascism and capitalism” or attributed the war to imperialist tendencies of capitalist accumulation logic. Rather, Baars summarizes, the accusation focused on the greed of the entrepreneurs or blamed the war on the formation of cartels, i.e. the combination of state and economy, which was considered to be disastrous. As a *morality play*, the war crimes trials were initially intended to give the Allies moral authority and legitimize economic intervention (keyword: deindustrialization) after the war (p. 237). The follow-up trials against German industrialists, according to Baars’ reconstruction, were also based on this concern. However: the actual course of the proceedings – mild sentences, limping reasons for the verdicts and quickly following pardons – was then influenced by the emerging bloc confrontation and the fear of the Western allies to promote anti-capitalist resentments. In view of the overwhelming burden of proof and the sometimes contradictory arguments, Baars argues that the trials ultimately resembled a theatre of the absurd.

To what extent can this event now be understood as an expression of a “victorious justice of capitalism”, as Baars asks in the title of the chapter? According to the author, the proceedings have in any case helped to institutionalize the capitalist production order more strongly (p. 198). Contrary to what is often suggested in current observations of the proceedings, they have rather exculpated than condemned entrepreneurial participation in the war events. By withdrawing resources, issuing instructions and making personnel decisions, the US government had initiated a U-turn, thereby both protecting its own companies (Vietnam) and saving the face of German industrialists. Baars concludes that in the long term, the focus on political and military leaders had “spirited away” the economic reasons for the Second World War from the debate.

A little more precision: the relationship between law and capitalism

It is an important contribution of this chapter to reintroduce the debate on the relationship between military force and economic order into the history of these procedures and to recall that the latter took place in the context of a broader discussion on the connection between capitalism, imperialism and fascism. Thus, the International Military Tribunal was also a place where the lessons to be learned from the war were negotiated not only for world peace but also for the “right” economic order. This historical contextualization distinguishes Baars’ study from those who retroactively declare the trials of industrialists to be a first instance of “corporate accountability” and thus view them through a lens that no longer calls the economic system into question.

Nevertheless: at certain stages, I would have welcomed more analytical clarity, especially with regard to the relationship between capitalism and law. While on

the one hand the book reconstructs in detail the conflicting interests even within the US-American staff, Baars on the other hand summarizes the processes as an orchestrated coup by capitalists (p. 236 f.). Effect and intention are too often blurred in the analysis. The “capitalist” aspect of law seems to consist above all in the fact that it is used as an instrument of a US-American policy of interests, in that the latter can access it directly. Unfortunately, this observation is not referred back to the theoretical framework outlined in the first chapter. In particular, it remains undiscussed how it relates to the materialist approaches that constitute its specific capitalist form precisely in the relational autonomy ([Sonja Buckel](#)) of law. It also remains unconsidered in what way the separation of state and economy presupposed in bourgeois law shapes the legal argumentation and the outcome of the proceedings. Authors who have already presented analyses in this direction have unfortunately not taken Baars into account, despite the fact that the literature has otherwise been extensively reviewed (e.g. [Lustig 2014](#), [Priemel 2013](#)).

Irrespective of this, by juxtaposing extensive material in such a way as to reveal the very specific nature of the current academic and political debate on corporate responsibility, Baars presents a critical examination of the role of international law in the cementing of capitalist production and exploitation relations that is well worth reading. The concluding appeal that, given the complicity of the law, it is important to rely on alternative forms of being together in our social struggles seems all the more urgent (p. 379). Whether everyone can afford to strategically renounce the law in the meantime, as Baars demands, remains to be debated.

Grietje Baars, [The Corporation, Law and Capitalism: A Radical Perspective on the Role of Law in the Global Political Economy](#) (Brill 2019 & Haymarket 2020).

[Hannah Franzki](#) (franzki@uni-bremen.de) is a post-doc at the Faculty of Law at the University of Bremen.

This post has been translated from German. You can read the German version of the post [here](#).

Cite as: Hannah Franzki, “International law and capitalist logic of exploitation: on the political economy of corporate responsibility”, *Völkerrechtsblog*, 19 June 2020.

