

# Global Social Fascism *Violence, Law and Twenty-First Century Plunder*

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## **Global Social Fascism**

### ***Violence, Law and Twenty-First Century Plunder***

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## GLOBAL SOCIAL FASCISM

### *Violence, Law and Twenty-First Century Plunder*<sup>1</sup>

LARA MONTESINOS COLEMAN

#### Summary

The intellectual authors of neoliberalism were aware of the lethal implications of what they advocated. For 'the market' to work, the state was to refuse protection to those unable to secure their subsistence, while dissidents were to be repressed. What has received less attention is how deadly neoliberal reforms increasing come wrapped in social, legal and humanistic rhetoric. We see this not only in 'social' and 'legal' rationales for tearing away safety nets in Europe's former social democratic heartlands, but also in the 'pro-poor' emphasis of contemporary development discourse. This includes contexts where colonial legacies have facilitated extreme armed violence in service of corporate plunder. To expose these dynamics, I juxtapose the everyday violence of austerity in Britain with neoliberal restructuring in Colombia. The latter is instructive precisely because, in tandem with widespread state-backed terror, Colombia has held fast to the language and institutions of liberal democracy. It has, as a result, prefigured the subtle authoritarian tendencies now increasingly prominent in European states.

The reconceptualization of law, rights and social policy that has accompanied neoliberal globalization is deeply fascistic. Authoritarian state power is harnessed to the power of transnational capital, often accompanied by nationalistic and racist ideologies that legitimize refusal of protection and repression, enabling spiraling inequality. Nevertheless, extending Boaventura de Sousa Santos's discussion of 'social fascism', I suggest that widespread appeal to the 'social' benefits and 'legal necessity' of lethal economic policies marks a significant and Orwellian shift. Not only are democratic forces suppressed: the very meanings of democracy, rights, law and ethics are being reshaped, drastically inhibiting means of challenging corporate power.

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<sup>1</sup> This Working Paper is a draft chapter of the Lara Coleman's forthcoming book, *Social Fascism and Human Rights*.

Perseus wore a magic cap so that the monsters he hunted down might not see him. We draw the cap down over our eyes and ears so to deny that there are any monsters.

Karl Marx, *Capital*

June 2017. I am writing in the British Library in London. I came here to finish a book on corporate plunder in Colombia, but I feel I should leave and join the demonstration taking place a couple of miles away in Westminster. In the small hours of Thursday morning, a fire began in Grenfell Tower, a high-rise tower block housing more than six hundred people. Within hours, the entire building was in flames. Official figures put the death toll at six... thirty... fifty-eight... seventy-nine. They say many of those killed will be undocumented migrants and illegal sub-tenants who have simply 'disappeared' after the blaze.

The Grenfell catastrophe had long been foreseen by campaigners. It was the predictable consequence of years of disinvestment in social housing. The building had been covered in cheap, flammable cladding to prevent an eyesore for wealthier inhabitants of the Royal Borough of Kensington and Chelsea. Residents had been complaining for years about the absence of fire extinguishers. They had repeatedly raised concerns about the use of hazardous materials.<sup>2</sup> Cuts to legal aid had meant that they were unable to afford advice from lawyers. Instead, the building's tenant management organisation threatened campaigners with legal action for questioning fire safety.<sup>3</sup> In 2016, the government voted against legislation demanding that landlords make properties 'fit for human habitation'.<sup>4</sup> 'Red tape' isn't good for profit. Campaigners are demanding an inquest. The government wants an inquiry that may take years.<sup>5</sup>

Commentators spout disbelief that these things are happening in Britain, in 2017. 'Are we being thrown back to the levels of inequality characteristic of Victorian England?', they ask repeatedly. In the nineteenth century, those without the means to secure their lives were expected to meet an early and unnatural death, be it in factories and slums, or cast off to die in the poorhouse. In *The Condition of the Working Class in England*, Friedrich Engels coined the term 'social murder' to describe these routine and systematic deaths for which no individual could be held accountable.<sup>6</sup> Just days after I wrote this, Labour Shadow Chancellor John McDonnell evoked Engels to describe the Grenfell deaths as 'social murder'. He was denounced, not only by the Right, but by much of the so-called 'Left'.<sup>7</sup>

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<sup>2</sup> Radical Housing Network, 'Justice for Grenfell Tower', <http://radicalhousingnetwork.org/grenfell-fire-warnings-fell-on-deaf-ears/>. [19 June 2017].

<sup>3</sup> Samuel Osborne, 'Two women feared dead in Grenfell Tower were "threatened with legal action" for questioning fire safety', *The Independent*, 19 June 2017.

<sup>4</sup> Frances Perraudin, 'Tories reject move to ensure rented homes fit for human habitation', *The Guardian*, 12 January 2016.

<sup>5</sup> Jon Sharman, 'Grenfell Tower fire: Lawyer calls for inquest instead of public inquiry, asking "What needs to be hidden?"', *The Guardian*, 16 June 2017.

<sup>6</sup> Friedrich Engels, *The Condition of the Working Class in England in 1844*. Trans. Florence Kelley Wischnewetzky. Coismo: New York, 2008 (1892). 95-6, 109.

<sup>7</sup> James Tapsfield, 'John McDonnell says Grenfell deaths were "social murder" as he uses Marxist phrase describing how rich oppress proletariat', *The Daily Mail*, 16 June 2017.

Today, the mythology of progress diverts attention from the more than million destitute people in the UK who go without food, toiletries and even beds, or the ten thousand disabled people who have died after being assessed as 'fit to work' following recent welfare reforms.<sup>8</sup>

The expressions of disbelief in the face of the Grenfell tragedy are indicative of a refusal to recognise what has long been apparent in the Global South: that capitalism kills as a matter of routine. The residents of Grenfell knew it when they campaigned against the neglect of their building.<sup>9</sup> The placards and signs near the blackened ruins of the tower grasp the truth: 'Corporate Murder', 'People's Lives Don't Matter Under Capitalism'.<sup>10</sup> Especially if you are situated on the wrong side of the colour line, racialized as black or brown, undocumented, non-citizen or not-quite-citizen. Especially if you are female. Especially if you are sick or disabled and thus unable to work to sustain your existence.<sup>11</sup>

In Colombia, 'corporate murder' is a familiar concept. Colonial history has facilitated direct assassinations and massacres of those threatening corporate interests. Nevertheless, as I soon learnt when I began working with Colombian trade union, peasant and indigenous organisations more than a decade ago: if we are to contend with the deeper dynamics of capitalist violence, we must grapple with forms of harm and violence that go under the guise of normality and 'business as usual'.<sup>12</sup> This is Engels' 'social murder': the routine, merely-technical, legalised atrocities that masquerade beneath the legal myths of freedom of contract, corporate personhood and the pursuit of 'efficiency'. The results of Colombia's 'economic opening' in the 1990s followed a pattern already familiar across the post-colonial world as a result of neoliberal reforms forced upon governments by the IMF and World Bank as a condition of aid from the 1980s.<sup>13</sup> They include numerous phenomena that have, in practice, meant largescale premature death: expulsion of peasants from previously common land; denial of access to social insurance as a result of the privatisation of public services; lay-offs; unemployment and deteriorating labour conditions, alongside increasingly authoritarian government.

Since the 2008 financial crisis, Britain has been in the grip of 'austerity', a euphemism for drastic cuts to state social provision on the supposed basis that private consumption and investment will 'stimulate 'the economy'. The intensification of neoliberal policies that

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<sup>8</sup> Patrick Butler, 'Destitution is back. And we can't just ignore it', *The Guardian*, 3 July 2017; John Pring, 'Welfare Reform and the Attack on Disabled People', in Vickie Cooper and David Whyte (eds.), *The Violence of Austerity*. London: Pluto Press, 2017, 53.

<sup>9</sup> See e.g. Pilgrim Tucker, 'The Grenfell Tower fire was the end result of a disdainful housing policy', *The Guardian*, 20 June 2017.

<sup>10</sup> Aditya Chakraborty, 'Over 170 years after Engels, Britain is still a country that murders its poor', *The Guardian*, 20 June 2017

<sup>11</sup> See, *inter alia*, Vickie Cooper and David Whyte, 'Introduction: The Violence of Austerity', in Cooper and Whyte (eds.), *The Violence of Austerity*, 11-15; Victoria Canning, 'The Multiple Forms of Violence in the Asylum System', in Cooper and Whyte (eds.), *The Violence of Austerity*, 67-74; Akwugo Emejulu and Leah Bassel, 'Women of Colour's Anti-Austerity Activism', in Cooper and Whyte (eds.), *The Violence of Austerity*, 117-122; Pring, 'Welfare Reform and the Attack on Disabled People', 51-58; Daniela Tepe-Belfrage, 'The intersectional consequences of austerity', Political Economy Research Centre blog, 27 April 2015. [http://www.perc.org.uk/project\\_posts/the-intersectional-consequences-of-austerity/](http://www.perc.org.uk/project_posts/the-intersectional-consequences-of-austerity/) [3 July 2017].

<sup>12</sup> For a discussion of the ethnographic approach to critique through engagement in struggle that underlies this article, see Lara Montesinos Coleman, 'Ethnography, Commitment and Critique: Departing from Activist Scholarship', *International Political Sociology* 9:2 (2015) 263-280.

<sup>13</sup> Other governments voluntarily adopted these policies, notably the authoritarian regimes in countries such as Chile in the 1970s, Guatemala in the 1980s and - in the early 1990s - Colombia (albeit under considerable pressure and influence from the World Bank). See Consuelo Ahumada Beltrán, *El modelo neoliberal y su impacto en la sociedad colombiana* Bogotá: El Ancora, 2001.

entrench and exacerbate social inequality and the attacks on the social safety nets once designed to protect people have had profoundly violent consequences.<sup>14</sup> Corporate and political elites have vastly increased their wealth. They have benefitted from generous tax cuts for corporations and the wealthy, alongside the incremental transfer of lucrative contracts for running once-public services.<sup>15</sup> Meanwhile, as Vickie Cooper and David Whyte underscore in their recent edited volume, *The Violence of Austerity*, the 'people most affected by austerity cuts are not only struggling under the financial strain but are becoming ill, physically and emotionally, and many are dying'.<sup>16</sup>

The intellectual authors of neoliberalism were aware of the lethal implications of what they advocated. They knew that it meant stripping all protection from those who could not secure their own subsistence, alongside repression of those who stood in the way.<sup>17</sup> By the turn of this century, the effects of neoliberalism in practice were sufficiently pronounced that socio-legal scholar Boaventura de Sousa Santos was highlighting a worldwide crisis in the modern idea of a social contract between state and citizens.<sup>18</sup> Citizenship rights have been usurped by a host of private contracts between the users and providers of once-public services, or the contracts between companies and precarious employees or sub-contracted workers. Even in once social democratic Europe, responsibility for welfare is increasingly passed from governments to individuals, while neoliberal governments have become increasingly authoritarian.<sup>19</sup>

What has received less attention is the extent to which lethal economic policies have been accompanied by social, legal and humanistic rhetoric. As Ian Bruff notes in his important work on authoritarian neoliberalism "[l]eft" politics has frequently been guilty of taking the law and the 'social' institutions within capitalism to be somehow neutral, ignoring in the process how "non-market" social forms have often been central to, not resistant against, the rise of neoliberalism'.<sup>20</sup> Deadly decisions are passed off as mere technical fixes by appeal to social necessity and the rule of law. It is only by considering the life-denying and life-promoting faces of policy together that we can begin to grasp their deadly synergy. This is what I seek to do by juxtaposing Britain and Colombia.

This juxtaposition may sound counter-intuitive and I certainly do not seek to underplay the profound differences between these two contexts. Colonial legacies shape patterns of violence and exclusion in North and South in very different ways. From the time of the Conquest, colonised peoples, conceived as 'savage races' or as slaves 'by nature', could be sacrificed to European economic interests and the ideology of modernity.<sup>21</sup> The racism and economic power relations that the Conquest installed continue to shape contemporary plunder

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<sup>14</sup> Cooper and Whyte, 'Introduction', 3.

<sup>15</sup> Ibid., 18-19.

<sup>16</sup> Ibid, 2.

<sup>17</sup> Warren Montag, 'War and the Market: The Place of the Global South in the Origins of Neo-liberalism', *The Global South* 3:1 (2009), 126-138.

<sup>18</sup> Boaventura de Sousa Santos, *Towards a New Legal Common Sense: Law, Globalization and Emancipation* (London: Butterworth LexisNexis, 2002), 456ff.

<sup>19</sup> Ian Bruff, 'Neoliberalism and authoritarianism', in Simon Springer, Kean Birch & Julie MacLeavy (eds), *Handbook of Neoliberalism*. Routledge: New York, 2016.

<sup>20</sup> Ibid. 115.

<sup>21</sup> See, inter alia, Franz Fanon, *The Wretched of the Earth*. New York: Grove Books, 1963; Enrique Dussel, *The Underside of Modernity: Apel, Ricoeur, Rorty, Taylor and the Philosophy of Liberation*, translated and edited by Enrique Mendieta. Humanity Books, 1996; Julia Suárez-Krabbe, *Race, Rights and Rebels*. London: Rowman and Littlefield International, 2015.

of territories and resources. For instance, the expansion of the extractive-export model through mineral extraction and large-scale agribusiness has visited multiple forms of violence upon indigenous peoples, peasants and populations of African descent in Latin America, who are displaced from their territories, cut off from their ties to the land, forced into precarious buy-sell agreements with corporations or left sick, poisoned, hungry or thirsty to the point of death. The impunity with which this takes place evokes the old colonial principle of *terra nullius*: these lands are occupied by unpeoples, empty of anyone who counts as human.<sup>22</sup> Nevertheless, the juxtaposition is illuminating precisely because, despite these differences, both Britain and Colombia illustrate Santos' point about a crisis in ideas of a social contract driven by neoliberalism. Both countries shed light upon the contradictions between the formal recognition of citizenship rights and the crafting of a legal regime that undermines those rights. Indeed, Colombia typifies these dynamics to such an extent Santos himself has referred to the country as 'the reverse of modernity's social contract'.<sup>23</sup>

Intersections of law and violence in Colombia are instructive precisely because of the extent to which the country has held fast to the language and institutions of liberal democracy. Democracy has not been so blatantly sacrificed to the demands of capitalism as it was in the Southern Cone dictatorships of previous decades. It is not simply that democratic forces are suppressed. Democracy is hollowed-out and trivialised, placing drastic restrictions on the possibility of challenging corporate power. It is, as a result, 'no longer necessary, or even convenient, to sacrifice [formal] democracy in order to promote capitalism'.<sup>24</sup> Here, Colombia is an extreme example, rather than a special case. Even in Europe, neoliberal states have become increasingly authoritarian. Rights are stripped away and devastating political decisions are insulated from democratic influence. Meanwhile, supposed means of promoting people's welfare are reformulated as instruments of stealth corporate murder.

The theorists of today's economic orthodoxy anticipated a role for law along these lines, as well the authoritarian reconfiguration of state power it implied. The crisis in the idea of a social contract is underpinned by a specific vision of 'rule of law' that has nothing to do with the rights of citizenship and everything to do with property rights and the protection of private contracts. What is striking about the current juncture, however, is the extent to which authoritarianism is disguised by the redefinition of law as a 'neutral', merely 'technical' means of securing prosperity for all. As we shall see, both the World Bank/IMF recipes for 'good governance' and present prescriptions for austerity in Europe have been based upon supposedly 'neutral' legal obligations. Appealing to law sounds softer and more liberal than appealing to economic necessity, but it masks the differences between highly divergent notions of law. By declaring themselves subject to 'the law', governments may protect the fundamental rights of their citizens, but they may just as easily entrench the tyranny of systemic violence.

This appeal to legality is a counterpart of the increasingly social and humanitarian rhetoric through which deadly economic policies are authorised. At the extreme end of this, even

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<sup>22</sup> Gustavo Rojas-Páez, 'Understanding Environmental Harm and Justice Claims in the Global South: Crimes of the Powerful and People's Resistance', in David Rodríguez Goyes, Hanneke Mol, Avi Brisman and Nigel South. eds. *Environmental Crime in Latin America: The Theft of Nature and the Poisoning of the Land*. London: Palgrave Macmillan, 2017

<sup>23</sup> Boaventura de Sousa Santos and Mauricio García Villegas, 'Colombia: El Revés del Contrato Social de la Modernidad', in Boaventura de Sousa Santos and Mauricio García Villegas (eds.), *El Caleidoscopio de las Justicias en Colombia*, Volume 1. Bogotá. Siglo de Hombres Editores, 2001, 11-83.

<sup>24</sup> *Ibid.*, 45, 30.



massacres and forced displacement in the service of corporate plunder in Colombia have been accompanied by a discourse of development, conservation and rights perpetuated by international and state institutions and NGOs. However, this logic, which Colombian authors Humberto Cárdenas and Álvaro Marín have denoted a logic of 'defending life by sowing death',<sup>25</sup> is mirrored not only in the pro-poor discourse of the post-Washington development consensus but also in the 'social' rationales for tearing away social safety nets in Europe. The result is an increasingly prevalent ethical newspeak entirely consistent with violent corporate plunder.

## *Corporate Murder*

Not all modes of corporate murder are the same. In places more deeply marked by colonial histories, people are not simply abandoned to the point of death, but actively killed as a matter of routine. Colonial discipline often involved armed groups funded by extractive companies, as the then British diplomat and later Irish revolutionary, Roger Casement, documented in the Congo and Amazon of the 1800s. In what is now the Putumayo region of Colombia, for instance, the extraction of rubber was accompanied by the shooting and mutilation of 'inefficient' enslaved rubber collectors.<sup>26</sup>

Similar dynamics continued in Colombia after independence. The 'massacre of the banana workers', commemorated in Gabriel García Márquez's *One Hundred Years of Solitude*, is an infamous case in point. In 1928, long before left-wing guerrilla groups were formed and counter-insurgency became the rationale for repression of protest, the Colombian army killed around 1,000 striking banana workers. The United States had threatened to invade with Marine Corps if action was not taken to protect the interests of the United Fruit Company. By the mid twentieth century, anti-communism had reached a 'genocidal pitch'.<sup>27</sup> Left-wing insurgencies were formed amidst the repression, and from the 1960s, Colombia's enthusiastic adoption of US counter-insurgency recommendations saw armed civilians routinely incorporated into military strategy. By the second part of the following decade, a 'dirty war' was being waged against rural populations by state forces and paramilitaries, with the aim of eliminating insurgents' potential supporters.<sup>28</sup> Larger paramilitary groups were subsequently trained by the Colombian armed forces, with the support of US military aid, businesspeople and drug-traffickers. These paramilitaries went on to perpetrate over 12,800 political killings over the course of the 1980s.<sup>29</sup> By the end of that decade, massacres were commonplace.<sup>30</sup>

Colombia's 'economic opening' in the early 1990s set the scene for an upsurge of corporate-backed armed violence. Successive governments adopted and entrenched neoliberal economic policies, in pursuit of foreign direct investment in natural resource extraction, alongside 'flexible' and 'competitive' labour markets. Massacres and selective killings at the

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<sup>25</sup> Humberto Cárdenas and Álvaro Marín, *La Biodiversidad es la Cabalgadura de la Muerte*. Bogotá: Travesía Ediciones, 2006.11.

<sup>26</sup> Rojas-Páez, 'Understanding Environmental Harm and Justice Claims in the Global South'.

<sup>27</sup> Forrest Hylton, 'An Evil Hour: Uribe's Colombia in Historical Perspective', *New Left Review* 23 (2003), 67.

<sup>28</sup> Mauricio García Villegas, 'Constitucionalismo perverso: normalidad y anormalidad constitucional en Colombia: 1957-1997', in Santos and García Villegas (eds.), *El Caleidoscopio de las Justicias en Colombia*, 221-2.

<sup>29</sup> Human Rights Watch, *Colombia's Killer Networks: The Military-Paramilitary Partnership and the United States* (New York: Human Rights Watch, 1996).

<sup>30</sup> García Villegas, 'Constitucionalismo perverso', 326.

hands of paramilitary death squads were central to this process. Right-wing paramilitaries had been so closely integrated into official military strategy, with the support of ongoing US military aid, that they became known as the 'sixth division' of the Colombian army.<sup>31</sup> As workers were stripped of hard-won rights, trade unionists were subject to repression so widespread and brutal that historian Renan Vega coined the term '*sindicalicidio*' - or trade union genocide - to make sense of it.<sup>32</sup> Chainsaws in hand, paramilitaries began to take over entire regions from the mid-1990s. Those deemed subversive or surplus to requirements were displaced or 'disappeared'. Landholdings were concentrated and an authoritarian social order imposed. Afterwards, state institutions would add a veneer of legality to the process.<sup>33</sup>

In this way, vast swathes of Colombia's national territory were handed over to transnational corporate interests. Numerous companies have been directly implicated in massacres and selective killings. The contemporary incarnation of the United Fruit Company, Chiquita Brands, even admitted having paid 1.7 million US dollars to state-linked paramilitaries in the Urabá region of Colombia between 1997 and 2004, as well as to supplying paramilitaries with weapons. According to Colombia's Attorney General, these payments led to the murder of 4000 civilians in the banana region of Colombia, as well as contributing to the expansion of paramilitary groups throughout the country.<sup>34</sup> In 1999, seventeen civilians were killed when the village of Santo Domingo in the neighbouring Department of Arauca was bombed. Compelling evidence suggests not only that the bombing was planned by Occidental Petroleum and the Colombian Air Force in the company's offices, but that aerial surveillance for the mission was carried out by US security contractor Airscan, using a Skymaster plane supplied by the oil company. Witnesses were later killed by paramilitaries.<sup>35</sup>

In 2002, a friend of mine, Gilberto Torres, was kidnapped in a van belonging to BP's oil pipeline company, Ocesa. His activities as a leader of the Oilworkers Union (USO) had made him - as he puts it - a 'thorn in the company's side'. Torres was tortured and held for forty-two days. As a result of a high-profile campaign for his release, he became one of only two trade unionists to survive abduction by paramilitaries. In a trial in Colombia, Torres' kidnappers said they took direct orders from Ocesa and that the company had paid them an extra forty thousand US dollars for the job.<sup>36</sup> BP has also been implicated in the deaths of numerous peasant activists in the area around its Colombian oilfields. Torres' kidnapping came just a few years after an international media outcry over BP's links with the Colombian army and private security contractor Defence Systems Limited.<sup>37</sup>

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<sup>31</sup> Human Rights Watch, *The 'Sixth Division': Military-paramilitary Ties and US Policy in Colombia* (New York, Washington, London & Brussels: Human Rights Watch, 2001).

<sup>32</sup> Renán Vega Cantor, *¡Sindicalicidio! Un cuento (poco imaginativo) del terrorismo laboral*, Bogotá, 25 February 2012. <http://www.rebellion.org/docs/147552.pdf> [27 June 2016].

<sup>33</sup> The most detailed, ethnographic study of paramilitary strategy available is Gearóid Ó Loingsigh's *La Estrategia Integral de los Paramilitares en el Magdalena Medio*, 2<sup>nd</sup> Edn. Bogotá: Anon, 2004.

<sup>34</sup> Sibylla Brodzinsky 'Terrorism and Bananas in Colombia', *Time Magazine*, 2 September 2007. <http://content.time.com/time/world/article/0,8599,1616991,00.html> [20 April 2016]; Daniel Kovalik 'Lawyer for Chiquita in Colombia Death Squad Case May Be Next US Attorney General', *The Huffington Post*, 6 November 2008. [http://www.huffingtonpost.com/dan-kovalik/lawyer-for-chiquita-in-co\\_b\\_141919.html](http://www.huffingtonpost.com/dan-kovalik/lawyer-for-chiquita-in-co_b_141919.html) [20 April 2009]

<sup>35</sup> Amnesty International *A Laboratory of War*, 6.

<sup>36</sup> See Mary Carson, Adrian Gatten, Rodrigo Vázquez and Maggie O'Kane, 'Gilberto Torres survived Colombia's death squads. Now he wants justice', *The Guardian*, 22 May 2015, Lara Montesinos Coleman, 'Big oil's ethical violence', *Le Monde Diplomatique* blog, 10 June 2015. Online at: <http://mondediplo.com/outsidein/big-oil-s-ethical-violence>. [15 June 2016].

<sup>37</sup> See, for example, Michael Gillard, Ignacio Gómez and Melissa Jones, BP hands 'tarred in pipeline dirty war', *The Guardian* 17 October 1997.

Between 1994 and 2002, eight unionised Coca-Cola workers were killed by paramilitaries. Four of them were workers at the same bottling plant, in the north-western city of Carepa, Urabá. After three leaders of the Colombian Foodworkers' Union<sup>38</sup> had been killed in the run up to negotiations with the Carepa bottling plant management, paramilitaries killed the local branch's General Secretary, set fire to the union's offices and then assembled workers and told them that if they did not resign from the union they would be killed. Witnesses said the resignation letters were prepared on company computers and collected by plant management.<sup>39</sup> In 2002, Adolfo Múnera, a leader of the same union, was shot dead after his return to Barranquilla on the Caribbean coast, after having spent some time in exile following his role in a successful strike. There was abundant evidence of collusion between bottling plant management, state forces and paramilitaries in bringing about Múnera's murder. Months later, paramilitaries publicly announced plans to kill more members of the union because they were interfering with Coca-Cola's business.<sup>40</sup>

Fourteen members of the Colombian Foodworkers' Union working at Nestlé have also been killed.<sup>41</sup> I accompanied the union in April 2006, during negotiations with Nestlé in Bugalagrande, southwestern Colombia. Before the negotiations had even begun, negotiating committee members reported being followed by cars with blacked out windows. One of the union members I got to know during that visit was Oscar López. In 2013, López was shot dead during a hunger strike. The day before his murder, several union activists had received text messages from a paramilitary group, threatening them with their deaths for 'bothering Nestlé'.<sup>42</sup>

In the wake of horrors such as these, our gaze is automatically directed to acts most clearly recognizable as violence: those direct acts carried out by identifiable agents. Yet it is clear to the victims themselves that the violence penetrates far deeper. On their online list of twenty-nine members killed since the union was founded, the Foodworkers' include Guillermo Gómez, whose desperation at the closure of the Coca-Cola bottling plant where he worked led him to take his own life in 1998. Also listed is Walter Rengifo, who died from a brain aneurism 'caused by the constant repression, persecution and permanent labour conflicts' with Nestlé.<sup>43</sup> Selective assassinations are just one part of a continuum of ways in which capitalism authorises death – through hunger, inhuman living and working conditions and the precarity that generates the 'total crisis' Gómez described in his suicide note. The union denounce 'inhuman' labour conditions on Coca-Cola bottling plants that would not sound unfamiliar to the approximately one million workers on casual, 'zero hours' contracts in Britain today. Workers labour from five in the morning until eleven or twelve at night for

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<sup>38</sup> *Sindicato Nacional de Trabajadores de la Industria de Alimentos* (Sinaltrainal) - literally, National Union of Food Industry Workers but hereafter abbreviated to the 'Colombian Foodworkers' Union'.

<sup>39</sup> Sinaltrainal, submissions to the Food and Agriculture Hearing of the People's Permanent Tribunal Colombia Session, 1-2 April 2006; conversations with displaced members of the union, April 2006.

<sup>40</sup> Interviews with union leaders Baranquilla, September 2006; Terry Collingsworth, William J. Wichmann and Daniel M. Kovalik. 2006. Complaint submitted to the United State District Court Southern District of Florida of behalf of Gladys Cecilia Rincón de Múnera, on behalf of herself individually and as Representative of the Estate of Adolfo Jesus de Múnera López; and Sinaltrainal, 2 June 2006.

<sup>41</sup> Sinaltrainal, report to UN Special Rapporteur on the rights to freedom of peaceful assembly and of association and UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, 2 September 2014.

<sup>42</sup> Philipp Zwehl, 'Nestle worker and union activist killed by paramilitary', *Colombia Reports*, 12 November 2013. Available at: <https://colombiareports.com/nestle-worker-union-activist-killed-receiving-threats-paramilitary-western-colombia/>. [5 July 2017].

<sup>43</sup> See the union's list of 'martyrs' on their website <http://www.sinaltrainal.org/index.php/home/martires>. [27 July 2016].

wages that barely cover the cost of food and rent. They undertake long and exhausting treks into work because deregulated housing 'markets' have pushed the cost of local accommodation beyond workers' reach. Extensive sub-contracting means most have to cover the costs of their own tools and uniforms, healthcare and social security.<sup>44</sup> In the union's discourse, these violences too are crimes against humanity. So is the widespread hunger generated by a food and agriculture industry designed for corporate profit rather than the wellbeing of the population.<sup>45</sup>

For precarious workers, the unemployed and those participating in the informal economy, the cost of comprehensive health insurance is prohibitive. Public hospitals are limited in number, drastically under-resourced and medical care is out of the reach of many rural populations.<sup>46</sup> In September 2006, I spent a week with the Foodworkers' Union in Barranquilla, where members of the National Association of Hospital and Clinic Workers (ANTHOC) talked about further violences visited upon the population by the denial of treatment, and the transformation of healthcare from a right into a business.<sup>47</sup> I was invited to visit a public hospital, where patients in many wards were two to a bed. ANTHOC too had experienced high levels of armed repression for their activism in defence of public healthcare. Yet it was the systematic violence at work the plunder of public services that my companion wanted to talk about. He took me to the morgue and explained how the young man whose body was lying there would have been saved had the hospital had the basic resuscitation equipment available to those who could afford health insurance.<sup>48</sup>

I thought of his words again, recently, when I read that researchers have attributed thirty thousand 'excess deaths' to healthcare cuts in England over the course of 2015 alone.<sup>49</sup> Two decades of stealth National Health Service privatisation is now reaching a peak under the Conservative government.<sup>50</sup> The result has been rationing of treatment for critically ill patients, suspension of 'non-urgent' surgery and assorted other proposals entailing denial of care.<sup>51</sup> By the beginning of 2017, the Red Cross was proclaiming the National Health Service in a state of 'humanitarian crisis'.<sup>52</sup>

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<sup>44</sup> Interviews and conversations with leaders of the Foodworkers union in Bogotá, April and September 2006, Barranquilla, September 2006, Bucaramanga, December 2007.

<sup>45</sup> Sinaltrainal, 'El hambre: un crimen de lesa humanidad', *La Red Voltaire*, 15 October 2004. <http://www.voltairenet.org/article122608.html> [16 July 2017].

<sup>46</sup> See, for example, Plataforma Colombiana de Derechos Humanos, Democracia y Desarrollo, 'Resumen ejecutivo del IV informe alterno de la sociedad civil al del Pacto Internacional de Derechos Económicos, Sociales y Culturales PIDESC, 5-6.

<sup>47</sup> *Asociación Nacional de Trabajadores Hospitalarios y de Clínicas*, ANTHOC (subsequently renamed *Asociación Nacional Sindical de Trabajadores y Servidores Públicos de la Salud y Seguridad Social Integral y Servicios Complementarios de Colombia* (National Trade Union Association of Workers and Public Servants in Health and Social Security and Supplementary Services), still abbreviated as ANTHOC. From the 1990's The World Bank, alongside other institutions such as the Inter-American Development Bank, has supported US style 'managed care' initiatives transforming public health care institutions and social security into privately-managed or privately-owned programmes. As in Britain and in Europe more widely (see below), the influence of health multinationals on World Bank policy has been substantial. Karen Stocker, Howard Waitzkin and Celia Iriart, 'The Exportation of Managed Care to Latin America', *New England Journal of Medicine*, 340:15 (1999), 1131-6.

<sup>48</sup> Conversation with member of ANTHOC, Barranquilla, September 2006.

<sup>49</sup> Katie Forster, 'NHS cuts blamed for 30,000 deaths in new study', *The Independent*, 17 February 2017.

<sup>50</sup> Youssef El-Gingihy, *How to Dismantle the NHS in 10 Easy Steps*. London: Zero Books, 2015; Allyson Pollock, *NHS plc*, London: Verso, 2004.

<sup>51</sup> See, *inter alia*, Rowena Mason, 'Charities call for NHS to stop rationing critical care', *The Guardian*, 18 February 2017; Denis Campbell, 'NHS cash crisis in Kent halts non-urgent surgery until April', *The Guardian*,

From the slow deaths of workers through sickness and exhaustion, deaths from hunger or the denial of healthcare, to the tragedy of Grenfell Tower, premature death is a normal, predictable and often entirely legal outcome of the capitalist organization of production and exchange. Reading Marx through a lens of violence and visibility, Amedeo Policante has suggested that, from the preface to the first German edition of *Capital*, Marx framed his endeavour as an effort to uncover the quotidian, slow-grinding, systemic violence at work beneath the 'civil peace' of nineteenth-century liberal society. '[B]ehind the comfortable darkness of our induced blindness, there dwell the monsters. And these are *real monsters*, endowed with a body and the capacity to mutilate and destroy, which cannot be dispelled by reason alone'.<sup>53</sup> For all the horror of land dispossession, for all the brutality of laws that criminalized the dispossessed, for all the 'extirpation, enslavement, and entombment in mines' of colonized peoples, there is another, less spectacular form of horror inherent within capitalism: the constant sucking of life from the working class, 'the vampire thirst for the living blood of labour'.<sup>54</sup>

In his 'sideways reflections' on violence, Slavoj Žižek cautions us 'to disentangle ourselves from the fascinating lure' of the immediately visible sort of violence carried out by identifiable agents, such as members of the security forces or police. We must step back to perceive what lies behind it: the real, but unseen 'objective violence' that 'sustains the very zero-level standard against which we perceive something as subjectively violent'. The violence engrained in societal structures and dominant ideologies is not visible as violence, because we take it for granted as 'normal'. It is, in Žižek's words, the 'spontaneously accepted background' against which we register more visible horrors, such as (legally defined) violations of human rights or acts of negligence where individuals can clearly be found to be at fault. As Marx indicates in the epigraph to this chapter, 'we draw the cap down over our own eyes and ears so as to deny that there are any monsters'.<sup>55</sup>

## *Necro-Economics*

The myth of a neutral, natural civil order has generated a sort of cognitive dissonance on the part of liberal thinkers. As Marx himself observed, more than twenty years before he published *Capital*, the liberal principles of freedom and equality embody a completely different vision of humanity and completely different moral reference points to the capitalist order within which they are asserted.<sup>56</sup> Liberal philosophers have – in different ways and to different degrees - tried to get around the problem by drawing distinctions between the

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2 February 2017; Ross Lydall, 'Smokers and obese Londoners could be refused surgery in bid to save NHS cash', *Evening Standard*, 10 January 2017.

<sup>52</sup> Denis Campbell, Steven Morris and Sarah Marsh, 'NHS faces "humanitarian crisis" as demand rises, British Red Cross warns', *The Guardian*, 6 January 2017.

<sup>53</sup> Amedeo Policante, 'Of Cameras and Balaclavas: Violence, Myth and the Convulsive Kettle', in Lara Montesinos Coleman and Karen Tucker (eds.), *Situating Global Resistance: Between Discipline and Dissent*. London and New York: Routledge, 2012).

<sup>54</sup> Marx, *Capital: A Critique of Political Economy*, Volume 1, London: Penguin, 1990, 915, 342, 367.

<sup>55</sup> Karl Marx, 'Preface to the First Edition', in *Capital*, Volume 1. London: Penguin, 1990, 91. For a discussion of this point in relation to how critical studies of security reproduce liberal ideology and obscure this violence, see Lara Montesinos Coleman and Doerthe Rosenow, 'Security (Studies) and the Limits of Critique: Why We should Think Through Struggle', *Critical Studies on Security* 4:2 (2016), 202-220.

<sup>56</sup> Karl Marx, 'On the Jewish Question', *Early Texts*. Edited and translated by David McLellan, Oxford: Blackwell, 1971, 85–114.

criteria for moral action and criteria for economic action.<sup>57</sup> Adam Smith's moral philosophy, for example, was worked out in perpetual tension with his political economy. In *The Wealth of Nations*, Smith made clear that societies must not only exercise the right to kill in order to generate terror of punishment for crimes against property, but also that 'the market ... must necessarily at certain precise moments, "let die"'. Smith's metaphor of the market's 'invisible hand', which steers the natural order of things in accordance with providence, was an attempt to reconcile morality with a commercial society based upon selfishness and greed. That some must be abandoned, even to death, is covertly set out by Smith as the basis of social harmony.<sup>58</sup>

The intellectual authors of neoliberalism acknowledged implicitly that the free market ideal demanded 'the courage to turn away from the imploring hand of famine or to strike it down if it should violate the laws of property and the rationality of the market'. (If only from time to time and only in relation to a minority of world's population).<sup>59</sup> Warren Montag has explored this at length in relation to the work of Ludwig Von Mises, who was clear that there could be no such thing as 'an enforceable human right to subsistence', nor even a right to existence. Whereas, for Marx, 'the capitalist class was unfit to rule because it could not assure the existence of its own laborers; for Von Mises it is fit to rule only if it knows enough to refuse any such assurance on principle'.<sup>60</sup> Respecting the natural laws of the market is the only way to secure the continuation of society itself, and market necessity demands that the right of private property always be granted priority over the right to subsistence. Thus, for von Mises, while charity is usually (but not always) harmless,

those who cannot secure their own subsistence (or that of their children) have no enforceable claim on those who can, even if the latter have a surplus beyond what is "necessary" to their existence.... A right to existence, enforced by the state, through price and wage controls, housing subsidies, or at the extreme, the distribution of the necessities of life, will undermine private property and distort market mechanisms to such a degree that the continuation of society itself is endangered.<sup>61</sup>

Neoliberalism is often talked about as if it involved the 'retreat' of the state: a passive stance on the part of government. Von Mises, however, was candid that what was demanded was the active decision on the part of those in power to abandon those who cannot secure their own subsistence, even to the point of death. And, while neoliberal ideology does not consider it legitimate for the state to actively kill those who lack access to food, housing or medicine, it requires willingness to use armed force to repress those who demand things be otherwise or try to take what is not theirs.<sup>62</sup> Von Mises was also explicit that the same armed force of the state must be applied in the Global South where governments or populations 'resist the freeing up and development of the natural wealth with which they merely co-exist and

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<sup>57</sup> E.g. Albert O. Hirshman, *The Passions and the Interests*. Princeton: Princeton University Press, 1977; David Hume, *A Treatise of Human Nature*. Darmstadt; Scientia Verlag Aalen, 1964, Vol 2, Book II, Part 1, Section 1; Milton L. Myers, *The Soul of Modern Economic Man: Ideas of Self-Interest from Thomas Hobbes to Adam Smith*. Chicago: Chicago University Press, 1983. J. G. A. Pocock, 'The myth of John Locke and the obsession with liberalism', in J. G. A. Pocock and Richard Ashcraft (eds.), *John Locke*. Los Angeles, William Andrews Memorial Library, 1980. Pp. 3-21; Adam Smith, *The Theory of Moral Sentiments*. New York: Augustus N. Kelley, 1966.

<sup>58</sup> Warren Montag, Necro-economics: Adam Smith and death in the life of the universal, *Radical Philosophy* 134, 2005, 12-13.

<sup>59</sup> Warren Montag, 'War and the Market', 127.

<sup>60</sup> Ibid., 127

<sup>61</sup> Ibid, 135-7

<sup>62</sup> Ibid., 127.

therefore the natural necessity of the market out of fear of the destitution that such development brings'. Ideas of inviolable national sovereignty or the rights of indigenous peoples to collective territories are 'utterly without force or effect' in the face of global economic necessity. No covenant or charter could have prevented the Conquest of the Americas. War and Conquest are the only alternatives to the freedom of foreign investment.<sup>63</sup> For Von Mises, as for classical political economists, the laws that govern social reality are indifferent to human conceptions of justice. Human rights and substantive ideas of justice have no place in any understanding of the market.<sup>64</sup>

Even when legal rights are formally recognized, the ability to enforce these rights always depends upon the capacity to resolve the contradictions between formal rights and economic force. As David Whyte has highlighted in relation to deaths at work, law itself often undermines formal rights. This role is accomplished in part by legal fictions such as workers' 'freedom' of contract with employers on whom they depend for their very subsistence, or the corporate 'person' and associated ideas of employers' limited liability for deaths and injury of employees. Economic power is also persistently redefining the boundaries of law, creating a sort of state of exception in which formal rights can be lawfully violated. In the fast-disappearing social democracies of the West, regulatory agencies have tended to intervene more consistently in the face of these contradictions, rendering those who lack access to the means of securing their subsistence less exposed to the brutality of economic force than they are in the Global South. Yet the neoliberal assault on the welfare state has eroded much of this regulation, as well as other forms of social protection like welfare benefits and comprehensive healthcare. In Britain, for example, the Health and Safety Executive made such drastic cuts that some local authorities no longer have any role in protecting or inspecting workplaces. As a result, death at work can occur with widespread corporate impunity. Workers are completely exposed in the face of economic force. They are excluded from the protection of law despite the existence of formal rights.<sup>65</sup>

These contradictions between the formal recognition of rights and the laws given shape by economic force are not unique to the Global North. In much of the South, neoliberal policies demanding the sacrifice and suffering of those unable to secure their own subsistence have been accompanied, not only with a rhetorical emphasis on the 'rule of law', but also with an emphasis upon 'rights'. Colombia is a pertinent case in point. The country's 'economic opening' was marked, in 1991, by a new National Constitution, said to include a wider array of citizenship rights than any in the world, including an assortment of labour rights and the territorial rights of indigenous and Afro-Colombian populations.<sup>66</sup> Enshrined within the constitution was the principle of the Social Rule of Law (*Estado Social de Derecho*), a legal order 'with the citizen at the centre, and in which the social is the reason for the existence of political powers'.<sup>67</sup> The Social Rule of Law came into force the same year that a military

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<sup>63</sup> Ibid., 138, 133.

<sup>64</sup> Ibid., 134-6.

<sup>65</sup> David Whyte, 'Naked Labour: Putting Agamben to Work', *The Australian Feminist Law Journal* 31 (2009), 57-76.

<sup>66</sup> The 1991 National Constitution was drawn up by a Constituent Assembly, in which opposition groups participated alongside traditional political parties. This was part of a peace deal with guerrilla groups, although the process itself was a government initiative. See De Sousa Santos and García Villegas, 'Colombia: El revers del contrato social', 329.

<sup>67</sup> Consuelo Corredor Martínez 'El problema del desarrollo' in Dario I. Restrepo Botero (ed.), *La Falacia Neoliberal: Crítica y Alternativas*. Bogotá: Universidad Nacional de Colombia, 2003 p 73-4. *Estado Social de Derecho* cannot be rendered fully in English. "Derecho" in Spanish translates literally as "droit" in French and connotes both law and right(s). "Estado de derecho" is normally translated as "rule of law", but *particular*

intelligence reorganisation plan placed paramilitary death squads directly under the orders of the military high command.<sup>68</sup> It was also accompanied by a series of legal reforms that precluded access to the rights formally recognised in the Constitution.

Take labour law. The 1991 Constitution recognized a series of rights that, if made effective, would have made labour precarity impossible. It incorporated ILO conventions on freedom of association, the right to organize and collective bargaining.<sup>69</sup> It also committed Congress to producing a labour statute that would protect minimum fundamental principles, such as stability of employment, social security and adequate rest for workers.<sup>70</sup> In practice, however, the power of economic force to define legality makes access to these rights impossible. The Constitution came into force almost simultaneously with an array of laws designed to generate 'flexible' labour markets and attract foreign investment. For example, Law 10 of 1989 created 'associated work cooperatives', through which former employees are forced to bid for contracts, covering the costs of their own materials and social security. This was a policy promoted with the support of the World Bank as well as paramilitary organisations. It has become central to corporations' cost reduction strategies.<sup>71</sup> Subsequent laws have lengthened the working day, cut overtime payments, facilitated mass staff layoffs and generated extensive subcontracting of labour that obliterates the possibility of stable employment and social security.<sup>72</sup>

The result has been working conditions such as those described by the leaders of the Foodworkers' union in the case of Coca-Cola. Permanent, generally unionised employees were replaced by temps sub-contracted through agencies and by ad-hoc employment of the reserve army of former workers I met waiting outside bottling plant gates in hope of a few hours' employment. Delivery lorries were handed over to 'cooperatives' composed primarily of former employees who became responsible for the maintenance of lorries and their own salaries. Those who were re-employed and new, casual workers, received wages that were approximately thirty-five percent less than those of workers on direct contracts, while the wages of those contracted through cooperatives were reduced by three quarters in real terms.<sup>73</sup>

Economic force not only has the capacity to shape unconstitutional – and so effectively illegal – legislation. It is also able to act outside the law in the name of economic necessity. For example, the Ministry of Social Protection has repeatedly complied with bottling

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"laws" themselves are translated as "leyes". A right, or a set of rights is translated as "derecho" or "derechos". The underpinning of the idea in contractualist theories is thus far more obvious in Spanish than in the English translation

<sup>68</sup> Order 200-05/91 (written by the Colombian military with a US Defense Department and CIA team). See Human Rights Watch, *Colombia's Killer Networks*.

<sup>69</sup> Constitución Nacional de Colombia 1991, Articles 39, 53, 55.

<sup>70</sup> ILO conventions 87 and 98. Both ratified by Colombia in 1974.

<sup>71</sup> Ó'Loingsigh, *La Estrategia Integral*, 4. and 'Peace Laboratories: Europe's Plan Colombia', 96

<sup>72</sup> In 1990, under the rationale of needing to foster flexible labour markets, Law 50 created the service-provision contract. This legislation has generated extensive sub-contracting of labour. Law 50 further limited the right to stable work by facilitating mass sackings of permanent employees. Then in 2002, Law 189 further dispossessed workers of the right to adequate rest by lengthening the working day and cutting remuneration for night work. The same law made apprenticeships a form of non-labour contract, meaning that apprentices were stripped of labour rights - including the right to a salary - and companies were motivated to sack more employees in favour of a trainee workforce who could just be paid a nominal 'economic compensation'. I am grateful to Alejandro García for his detailed exposition of Colombian labor law.

<sup>73</sup> Asociación de Abogados Laboralistas de Trabajadores, submission to the Food and Agriculture Hearing of the People's Permanent Tribunal Colombia Session, April 2006.



companies' requests to refuse to recognise local union committees. This is despite the Ministry's lack of jurisdiction over trade unions' internal affairs and despite Colombia's ratification of international labour conventions that grant unions autonomy to decide their own rules and elect their own representatives.<sup>74</sup> In 2003, when Coca-Cola FEMSA closed eleven out of sixteen Colombian bottling plants as part of the Coca-Cola Company's drive to achieve a more 'efficient' global franchise system, the company simply ignored legislation barring companies from closing factories or branches without authorisation from the Ministry of Social Protection. Over three thousand workers were laid off, with mass resignations achieved by forcibly detaining workers in the presence of armed security guards. The workers were blackmailed into resigning their contracts for financial compensation, under threat of otherwise being fired, and they were not allowed to leave until they had done so.<sup>75</sup> The Ministry, for its part, retrospectively authorised the closures, alongside the laying-off of those workers who had refused to resign. Most of those laid off were forced into destitution. Many had worked for the company for over twenty years, in a context where new jobs for the over thirty-fives are almost unheard of (especially when that person has a history of being a union member).

Similar dynamics exist around the Constitution's recognition of territorial rights. These rights are likewise undermined by a combination of law and extra-legal action. For example, Transitory Article 55 gave rise to Law 70 of 1993, intended to protect Afro-Colombian communities' cultural and territorial rights. These communities were given land on the Pacific Coast, but their attempts to return to land from which they had been displaced in the Inter-Andean valleys were rejected. This land was in the hands of Colombia's oligarchic families who, like transnational corporations, have long benefitted from the ability to act outside the law when it suits them. On top of that, other legislation – such as that granting concessions to mining companies - has undermined recognised territorial rights. Even the right to prior consultation in accordance with ILO Convention 169 on indigenous and tribal peoples has had limited effect. The government draw a line between 'prior consultation' and the right of communities to veto projects on their lands.<sup>76</sup>

In Colombia, this has been accompanied by exceptionally high levels of armed repression. Yet, here too, Colombia is a pronounced example rather than a special case. Neoliberal reforms worldwide have come with strengthened security apparatuses, authoritarian rule and the repression of resistance via exceptional measures that allow normal legality to be suspended in the name of emergency. Legacies of colonialism have facilitated this in contexts such as Colombia or the Southern Cone dictatorships of the 1970s (praised by the World Bank as the forerunners of the structural adjustment programmes subsequently imposed across the Global South).<sup>77</sup> However, authoritarian tendencies were also evident in Thatcher and Reagan's deliberate exaggeration of the Soviet threat during the early days of neoliberal reforms in the US and UK, which facilitated the transfer of resources from welfare

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<sup>74</sup> Sinaltrainal. 'Queja contra el gobierno de Colombia por violación a la Libertad Sindical del Sindicato Nacional de Trabajadores de la Industria de Alimentos'. Complaint to the ILO against the Colombian government for violation of Sinaltrainal's rights of trade union freedom. Bogotá, 18 September 2007, 10ff; interview with labour lawyer, May 2008.

<sup>75</sup> Sinaltrainal, 'Queja contra el gobierno', 8, 13, 6; oral testimonies to Peoples' Permanent Tribunal Colombia Session 2 April 2006.

<sup>76</sup> Gearóid Ó Loingsigh, *La reconquista del pacífico: Invasión, Inversión, Impunidad*. Bogotá: CNA & PCN, 2013; interview with lawyer specialising in collective territorial rights, Bogotá, December 2014.

<sup>77</sup> See Henry Veltmeyer, James Petras and Steve Vieux, *Neoliberalism and Class Conflict in Latin America*. London: Macmillan Press 1997, Chapter 3.

to the repressive machinery of the state.<sup>78</sup> Today, these tendencies are clearer still, even in the European heartlands of twentieth century social democracy. The 2008 financial crisis was met with a dramatic intensification of neoliberal reforms already underway. This went with escalating use of state and institutional power to undermine formal democratic rights, criminalisation of resistance and numerous illegal or quasi-legal provisions and restrictions to freedom of assembly and protest. Mobilisations that would once have been considered essential to democracy have been framed as 'extremist' attacks on 'democracy' that demand a repressive response.

In 2005, I was present at a protest at the University of Valle in Cali where police killed twenty-one-year-old chemistry student Jhonny Silva. Protests had erupted across the country opposing the free trade agreement being negotiated between Colombia and the United States that week. Earlier that day, residents of a poor neighbourhood had taken to the streets to protest privatisation and ongoing cuts to water and electricity. Riot police had deployed tear gas indiscriminately, leading to the death of a young child. When the students went out to protest, the police drove them back inside the campus and spent the afternoon illegally firing stun grenades and teargas directly at protestors. Later, as the protest drew to a close, the police illegally entered the campus and began firing teargas and live ammunition at students. Silva could not run as fast as the other students, having suffered polio as a child. He was shot at point blank range and died on the way to hospital. Another student was seriously injured by a tear gas canister. Two more were detained overnight, threatened with being 'disappeared' and dismembered, then released the next morning without charge.<sup>79</sup>

The day after Silva was killed, the British human rights delegation that I was part of met with the secretary of the governor of the administrative department of Valle del Cauca, Gladys Hernández, who justified the police's actions on the basis of their duty to 'protect public order'. The same day, far right President Álvaro Uribe visited the city and proclaimed that the police and public authorities could count on his 'instant authorisation to go in, finish off and lock up the violent people' in the University.<sup>80</sup> These events reflect a systematic criminalization of social protest in Colombia, which has been further intensified over recent years.<sup>81</sup> In the context of the ongoing 'dirty war', members of the university community were already receiving frequent death threats. In October 2006, twenty-nine-year-old Julián Hurtado, a member of the Truth Commission investigating the murder, was shot dead by *sicarios* (hired assassins) on his return home from an event commemorating the first anniversary of Silva's death.<sup>82</sup>

Despite the intensity of the violence in Colombia, there were similarities in the logic of repression to be found five years later in Britain, during the 2010 protests against spending cuts and university fees. I remembered Jhonny Silva when protestor Jody MacIntyre was dragged from his wheelchair by police. The mainstream media even implied this was an

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<sup>78</sup> Ugo Mattei and Laura Nader, *Plunder: When the Rule of Law is Illegal*, Oxford: Basil Blackwell, 2008, p. 44-5.

<sup>79</sup> See Lara Coleman and Olivia Blanchard (eds.), *Terrorismo de estado en la Universidad: la Reestructuración de la educación superior y los derechos humanos en Colombia*. Report of the British delegation to Colombian public universities, September 2005 and follow-up visits by the author in 2006. [https://www.academia.edu/5358504/Terrorismo de estado en la universidad](https://www.academia.edu/5358504/Terrorismo_de_estado_en_la_universidad), 24-30.

<sup>80</sup> *Ibid.*, 28.

<sup>81</sup> Maria Carolina Olarte, 'Depoliticization and Criminalization of Social Protest through Economic Decisionism', *Oñati Socio-Legal Studies* 4:1, pp.139-160.

<sup>82</sup> Coleman and Blanchard, *Terrorismo de Estado en la Universidad*, p. 26.

appropriate response given McIntyre's thought crime of holding 'revolutionary' views.<sup>83</sup> The parallels were perhaps even more pronounced in the case of Alfie Meadows, who suffered life-threatening injuries after being hit on the head by a police baton the same year. The Metropolitan Police subsequently charged Meadows and fellow student Zak King with violent disorder. Meadows and King were acquitted in 2013 after a jury accepted that they had been attempting to defend themselves and fellow protesters. Their acquittal highlighted the extent to which police had begun to make unlawful use of Section 2 of the 1986 Public Order Act, which defines the crime of violent disorder, in order to repress dissent. Eighteen out of nineteen students charged with violent disorder during the tuition fees protests were likewise acquitted. Counsel for Zak King described the use of the Public Order Act as a 'sledgehammer' against peaceful protesters that 'failed to differentiate between the actions of a crowd and individuals within it'.<sup>84</sup>

## *Illegal Rule of Law*

Authoritarianism and coercive repression are not just initial means to impose unpopular neoliberal policies. In Latin America and beyond, state terrorism has certainly made it easier for the ruling class to implement a 'shock redistribution' of resources in favour of the wealthy.<sup>85</sup> Nevertheless, in both North and South, authoritarianism is 'a *permanent* and *necessary* part of neoliberal ideology, institutionalization and practice'.<sup>86</sup> Despite the myths of 'market rule' and the 'rollback' of the state, neoliberalism has never been about unfettered markets. Even orthodox neoliberal dogma has never entertained doing away with the state or with legal regulation.<sup>87</sup> We should not see authoritarianism simply as the exercise of brute coercive repression. Rather, '[a]uthoritarianism can also be observed in the reconfiguring of state and institutional power in an attempt to insulate certain policies and institutional practices from social and political dissent'.<sup>88</sup>

At the heart of these processes has been an unfolding reconceptualisation of law as a supposedly neutral, technical tool of governance. Property rights are sacred and freedom of contract between private individuals sets the limit to state intervention and democratic contestation. The result is that the rule of law is understood in highly authoritarian terms as a 'a universal minimal legal system, capable of harsh control of any individual threatening the bottom line of property rights and incapable of limiting corporate actors'.<sup>89</sup> Yet this

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<sup>83</sup> Lara Montesinos Coleman and Karen Tucker, 'Between Discipline and Dissent: Situated Resistance and Global Order', *Globalizations* 8:4, 407.

<sup>84</sup> Jerome Taylor, 'Alfie Meadows calls on IPCC to re-open investigation into student protest', *The Independent*, 11 March 2013.

<sup>85</sup> Cf. Veltmeyer et al, *Neoliberalism and Class Conflict in Latin America*, 57. On the importance of the 'shock' of disaster for the imposition of neoliberal economics, see Naomi Klein, *The Shock Doctrine: The Rise of Disaster Capitalism*. London: Penguin, 2007.

<sup>86</sup> Ian Bruff, 'Neoliberalism and Authoritarianism', 109-110.

<sup>87</sup> *Ibid.*, 114-5. As Bruff notes, there is a tendency, even within studies that acknowledge the role of 'non-market' forms in neoliberalism, to over-emphasise the tensions between 'pure' neoliberal ideology and 'messy' neoliberalizing practices that give a larger than anticipated place to the state., thus masking the underlying philosophical commitments within neoliberal theory. Cf. David Harvey, *A Brief History of Neoliberalism*. Oxford: Oxford University Press, 2005; Jamie Peck, 'Remaking Laissez-Faire', in *Progress in Human Geography* 31:1 (2008), 3-43; Philip Mirowski and Dieter Plehwe, *The Road from Montpelerin: The Making of the Neoliberal Thought Collective*. Cambridge, Harvard University Press, 2009; Damien Cahill, *The End of Laissez-Faire? On the Durability of Embedded Neoliberalism*. Cheltenham: Edward Elgar, 2014.

<sup>88</sup> Ian Bruff, 'The Rise of Authoritarian Neoliberalism', *Rethinking Marxism* 26:1, 115.

<sup>89</sup> Mattei and Nader, *Plunder*, 47.

authoritarianism is simultaneously disguised by the redefinition of law as a 'neutral', merely 'technical' means of securing economic growth. The significance of this conceptual shift cannot be understated. It is no coincidence that neoliberal globalisation took off at the time this understanding of law rose to dominance in the United States. Previously, the World Bank and IMF had been prohibited from intervening in countries' legal systems because of their own bylaws, which prohibited political intervention. Redefining law as non-political allowed the IMF and World Bank to side-step these bylaws and make domestic law reform a condition of aid.

The contractual power of international financial institutions to condition aid to domestic law reform has helped shape this particular vision of rule of law into a global constitutional structure.<sup>90</sup> This not only sets the parameters for legal reforms that trump constitutional rights. It has also paved the way for constitutional reforms that undermine those rights, not merely in the name of economic competitiveness but, paradoxically, in the name of the rights of the population. In 2011, the Colombian constitution itself was modified by Legislative Act 3, which 'gave constitutional recognition to fiscal sustainability, as a right of citizenship', endowing the authorities with the duty to control public spending and public debt.<sup>91</sup> This gave rise to new fiscal rules prohibiting any public spending that exceeds public income.<sup>92</sup> These reforms represent not simply the by-passing of constitutional rights but a paradoxical constitutionalisation of austerity *in the name of rights* that are simultaneously precluded.

This same conception of law as neutral and technical has underpinned an increasingly undemocratic shift within many European states. Neoliberal reforms have intensified across Europe since the 2008 global financial crisis. This has involved increasing legal intervention into politics with the aim of eliminating democratic control over 'the economy' and forcing governments to implement austerity measures, subordinating governments to (often supranational) constitutional and legal rules that are portrayed as 'necessary' and beyond question.<sup>93</sup> There were precursors to this, long before the crisis. The treaties of the 1970s and '80s that anticipated a single market constituted the first steps toward making neoliberalism binding in law. This was reinforced by an activist judiciary that extended the power of European law over domestic law on the basis that economic competition was the key objective of the treaties.<sup>94</sup> Article 14c of the 1992 Maastricht Treaty committed governments to avoiding 'excessive deficits', empowering the European Commission to monitor economies and to impose sanctions where a member state was deemed to have committed a 'gross error'. Through this, and a series of subsequent measures, austerity was enshrined within the legal framework of the EU.<sup>95</sup> This 'is not simply an incidental part of the

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<sup>90</sup> See Mattei and Nader, *Plunder*, 14-15, chapter 3. See also Robert Knox, 'Legalising the Violence of Austerity', in Cooper and Whyte (eds.), *The Violence of Austerity*, 182

<sup>91</sup> Carlos Parra Dussan, 'La regla fiscal configura una política económica del Estado', *La Republica*, 21 June 2013, <https://www.larepublica.co/asuntos-legales/actualidad/la-regla-fiscal-configura-una-politica-economica-de-estado-2041170>, my translation.

<sup>92</sup> These constitutional reforms were given legal status by Law 1471 of 2011. Prior to the constitutionalisation of budget control, a series of laws had incrementally imposed restrictions on public borrowing. Law 358 of 1997 restricted regional government borrowing, while Law 617 of 2000 placed further restrictions on region public spending. Law 819 of 2003 imposed strict fiscal monitoring and projection on both local and national governments. *Ibid.*

<sup>93</sup> Bruff, 'Neoliberalism and Authoritarianism', 108, 112.

<sup>94</sup> Chris J. Bickerton, *European Integration: From Nation-states to Member States*. Oxford: Oxford University Press, 2012, 125-130

<sup>95</sup> Bruff, 'Neoliberalism and Authoritarianism', 112-13.

EU framework'. It is 'accorded supreme constitutional status'.<sup>96</sup>

The EU has adopted the IMF model of conditioning aid to neoliberal economic reforms. When Greece was on the verge of default in 2010, the EU and IMF agreed a bailout package with strict conditions such as the 'modernisation' of the public sector and more 'flexible' and 'efficient' labour markets.<sup>97</sup> However, in the aftermath of the Greek Crisis, a series of stricter 'economic governance' regulations were agreed. These were aimed at getting governments to *pre-emptively self-impose* measures to 'detect, prevent, and correct 'problematic' economic trends' (which is to say 'excessive' budget deficits and 'high' unit labour costs), instead of retrospectively imposing austerity measures on crisis-hit countries in the style of the IMF-World Bank.<sup>98</sup> Thus when Greece's Syriza party was elected on an anti-austerity mandate in 2015, the President of the European Commission, Jean Claude Juncker, could declare that Syriza would be unable to implement its programme because 'there can be no democratic choice against the European treaties'.<sup>99</sup> Juncker's argument did not even invoke the idea of economic necessity: he could simply appeal to law, as if law itself were neutral and beyond the terrain of democratic contestation. The violence of austerity is thereby normalised as necessary, merely technical, demanded by law.<sup>100</sup> This is the case despite the fact that EU-level changes have involved a deliberate breach of EU law intended to give democratic oversight to national governments.<sup>101</sup>

The UK already had a solid track record of using legal targets to 'tie its own hands' in this way. This began to be visible in 1997, with the election of New Labour and the imposition of fiscal rules that the government should maintain a balanced budget or budget surplus, while keeping debt at less than 40% of GDP.<sup>102</sup> The self-imposition of austerity through law was entrenched in the wake of the 2008 financial crisis. 'Echoing the EU's constitutionalisation of austerity, the 2010 Fiscal Responsibility Act imposed binding legal rules under which the Treasury had to ensure public sector borrowing decreased yearly. In effect, the Labour government attempted to use law to create "external" compulsions *on itself* to implement austerity. Similar techniques were adopted through the subsequent Coalition government's Budget Responsibility and National Audit Act, according to which any future budgets were to meet strict fiscal targets. The Act also established the Office for Budgetary Responsibility, charged with the task of 'objectively, transparently and impartially' analysing the Treasury's policy for managing national debt and setting fiscal targets. 'Thus, the Coalition – building on New Labour Policy – attempted to import the legal surveillance techniques of the IMF and EU into UK economic policy'.<sup>103</sup>

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<sup>96</sup> Knox, 'Legalising the Violence of Austerity', 183.

<sup>97</sup> *Ibid.*, 183.

<sup>98</sup> European Commission, quoted in Bruff, 'Neoliberalism and authoritarianism', 112-3. Meanwhile, the executive authority of the European Commission has been further extended so as to impose heavier sanctions upon states who fail to comply with the regulations. For detailed analysis, see Lukas Oberndorfer, 'From new constitutionalism to authoritarian constitutionalism: new economic governance and the state of European democracy', in Johannes Jäger and Elisabeth Springler (eds.), *Asymmetric Governance and Possible Futures: Critical Political Economy and post-Keynesian Perspectives*. Abingdon: Routledge, 2015, 186-207.

<sup>99</sup> Quoted in Gavin Hewitt, 'Greece: The Dangerous Game', BBC News, 1 February 2015. <http://www.bbc.co.uk/news/world-europe-31082656> [1 July 2016].

<sup>100</sup> Knox, 'Legalising the Violence of Austerity', 181; Bickerton, *European Integration*, 137.

<sup>101</sup> Bruff, 'Neoliberalism and Authoritarianism', 112-13.

<sup>102</sup> Known respectively as the 'golden rule' and the 'sustainable investment rule'. The following year, the Finance Act reinforced these austerity measures by making it incumbent upon the Treasury to produce a code for fiscal stability, and mandating the production of a Debt Management Report. Knox, 'Legalising the Violence of Austerity', 184.

<sup>103</sup> *Ibid.*, 184-185.

In much of the Global South, international financial institutions have become *de facto* legislators. However, the concept of law as a neutral means to economic competitiveness has also made corporations into natural counterparts of government in drafting new legislation. Housing campaigners have highlighted the role of the global real estate corporation, Savills, in 'advising' the British government on drawing up the 2016 Housing and Planning Act.<sup>104</sup> The Housing and Planning Act has been criticised for its 'radical assault on the country's remaining public housing stock', socially cleansing poorer people from profitable areas, to the benefit of private equity firms and other global corporate landlords.<sup>105</sup> The 2012 Health and Social Care Act was likewise written with extensive input from international management consultants McKinsey and Company. The Health and Social Care Act abolished the state's duty to provide comprehensive healthcare and paved the way for reforms from which McKinsey and its clients stood to derive enormous commercial benefit.<sup>106</sup> In 2012 and 2013, McKinsey were one of a group of healthcare multinationals and other 'industry leaders' responsible for two World Economic Forum reports on the future of global healthcare. These proposals were quickly made into British government policy, bypassing parliamentary oversight.<sup>107</sup>

In Colombia, rights set out in the constitution were overwritten by economically-mandated reforms of law. In Britain, legally-mandated austerity has been judged to violate human rights and equalities legislation, as well as human rights conventions ratified by the UK.<sup>108</sup> Law has always been plural and contradictory. The clashes between liberal principles of human rights, freedom and equality and the capitalist order that demands inequality, coercion and premature death do not just reflect two different visions of humanity. They also reflect two very distinct constellations of meaning around the 'rule of law'. Principles of equality and human rights emerge – broadly speaking - from the ethical tradition of 'natural law', developed by fifteenth and sixteenth century Spanish Jesuits. It is here that we find the

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<sup>104</sup> Marc Shoffman, 'Housing protestors succeed in shutting down four Savills branches for a day', *Property Industry Eye*, 5 August 2016; see also statement by Lambeth Housing Activists, 27 July 2016. <http://housingactivists.co.uk/protest/protest-get-savillains-out-of-lambeth/>. [27 September 2017]. The issue is given fuller coverage in Paul Sng's recent documentary, *Dispossession: The Great Social Housing Swindle* (2017).

<sup>105</sup> Joe Beswick, Georgia Alexandri, Michael Byrne, Sònia Vives-Miró, Desiree Fields, Stuart Hodgkinson and Michael Janoschka, 'Speculating on London's Housing Future: The Rise of Global Corporate Landlords in "Post-Crisis" Urban Landscapes', *City* 20:2 (2016), pp.321-341.

<sup>106</sup> Patients4NHS, 'The Health and Social Care Act 2012'. Online at: <http://www.patients4nhs.org.uk/the-health-and-social-care-act/>. Accessed 19 June 2017; David Rose, 'The firm that hijacked the NHS: MoS investigation reveals extraordinary extent of international management consultant's role in Lansley's health reforms', *The Mail on Sunday*, 12 February 2012.

<sup>107</sup> See Stewart Player, 'The Truth About Sustainability and Transformation Plans', *Socialist Health Association Blog*, 25 May 2017. <https://www.sochealth.co.uk/2017/05/25/truth-stps-simon-stevens-imposed-reorganisation-designed-transnational-capitalism-englands-nhs-stewart-player/>. [17 June 2017]. World Economic Forum, *The Financial Sustainability of Health Systems: A Case for Change, in Collaboration with McKinsey and Company*. [http://www3.weforum.org/docs/WEF\\_HE\\_SustainabilityHealthSystems\\_Report\\_2012.pdf](http://www3.weforum.org/docs/WEF_HE_SustainabilityHealthSystems_Report_2012.pdf). [19 June 2017]; World Economic Forum, *Sustainable Health Systems: Visions, Strategies, Critical Uncertainties and Scenarios, A Report for the World Economic Forum Prepared in Collaboration with McKinsey and Company*. [http://www3.weforum.org/docs/WEF\\_SustainableHealthSystems\\_Report\\_2013.pdf](http://www3.weforum.org/docs/WEF_SustainableHealthSystems_Report_2013.pdf). [19 June 2017]. I am grateful to Nicholas Csörgö for pointing me to these resources and for sharing with me his extensive knowledge of healthcare privatisation.

<sup>108</sup> See, for example, John Bingham, Steven Swinford and Kate McCann, 'Bedroom tax "breaches human rights of vulnerable people" - top judge', in *The Telegraph*, 27 January 2016; Centre for Welfare Reform, 'UK in Breach of International Human Rights', 28 June 2016.: <http://www.centreforwelfarereform.org/news/uk-in-breachhuman-rights/00287.html>. [28 June 2017].

origins of discourses of 'the rights of man and citizen' central to classical eighteenth century revolutionary declarations and anti-colonial struggles. This conception of law also underpins the 'social' theories of law developed by nineteenth century reformers and taken up by post-war welfare states and developmental states. Within this broad tradition, property rights can be limited or curtailed in the name of justice and social solidarity. We should not romanticise such conceptualisations. Jesuit formulations of natural law were a response to colonial scepticism about whether or not colonised peoples counted as human. They served to shape legal justifications of colonial rule.<sup>109</sup> 'Social' theories of law have not only underpinned democratic reform but also authoritarian forms of populism in the Global South.<sup>110</sup> Nevertheless, we should contrast social theories of law to another, quite distinct, understanding with an equally long history in modern legal thought. According to this second conceptualisation, property rights are at the heart of the law. State regulation to protect socio-economic rights (through, for example, wealth redistribution or welfare provision) is said to undermine a 'natural', merely technical legal order, emptied of democratic politics and protected by courts as 'neutral' solvers of private conflicts arising in a free market.<sup>111</sup>

This is not to say that the formal recognition of rights is mere sham. Even in Colombia, the constitutional rights of indigenous and black populations to prior consultation over the use of their collective territories have been vital tools to social movements and lawyers opposing extractive projects. The right to appeal the violation of a 'fundamental right' before a judge, meanwhile, has enabled trade unionists to be reinstated following unfair dismissal.<sup>112</sup> When Coca-Cola worker Adolfo Múnera was shot dead in Barranquilla, he had just returned to the city following a successful appeal against his dismissal by his employer. The dismissal was deemed unlawful because threats related to his trade union work had forced him to flee. Law can be an important site of resistance, but we must be careful not to mythologise law in general as neutral, benign, or as any guarantee of responsible government. Appeal to legal obligations sounds softer and more liberal than appeal to economic necessity, but it masks the differences between highly divergent notions of law. When governments appeal to legal necessity as the basis of policy, we should be suspicious in the extreme. By declaring themselves subject to 'the law', governments may protect fundamental rights, but they may just as easily entrench the tyranny of systemic violence.

## *Social Fascism*

There is something deeply fascistic about this unfolding conceptualisation of law. Authoritarian state power is harnessed to the power of transnational capital, often accompanied by highly nationalistic and overtly racist ideologies that serve to justify coercive repression and mask spiralling inequality. Yet what is remarkable is the extent to which this is accompanied by legal, democratic and social rhetoric. For theorists of neoliberalism, such as Hayek and Von Mises, economic necessity left little room for social concerns. The appeal to the 'legal necessity' of austerity, rather than simply 'economic' necessity marks a significant and particularly Orwellian shift. It is not just that democratic forces are suppressed: the very meaning of democracy and citizenship are being reshaped in

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<sup>109</sup> Suarez-Krabbe, *Race, Rights and Rebels*. 93.

<sup>110</sup> Mattei and Nader, *Plunder*, p. 43.

<sup>111</sup> *Ibid.*, 14-15.

<sup>112</sup> See Mauricio García Villegas and César Rodríguez, 'La acción de tutela', in Santos and García Villegas (eds.), *El Kaleidoscopio de las Justicias*, 423-454.

accordance with authoritarian neoliberal constitutionalism.<sup>113</sup> Democracy, Santos reminds us, is not done away with, even in highly repressive contexts such as Colombia. Rather, democracy is trivialized and hollowed-out, so as to make it almost impossible to threaten corporate power.

Santos himself refers to this hollowing-out of democracy as 'social fascism'. The 'social' element of contemporary fascism seems, for Santos, to be limited to the maintenance of a formal liberal-democratic infrastructure in highly authoritarian political surroundings. Yet the 'social' aspect of these fascistic tendencies warrants further consideration. Across the world, the hollowing out of democracy and evisceration of social rights, has been accompanied by continued emphasis, not only upon the rule of law, but also upon social, democratic and humanitarian goals. In contrast to the hard-line neoliberalism of the 1980s and early 1990s, social, democratic, humanistic discourse and vague ideas of the 'rule of law' are configured as an *ethical* rationale for doing whatever also – serendipitously - happens to be demanded by the criteria of efficiency and competitiveness.

In the mid-1990s, criticism of the devastating consequences of structural adjustment generated a strategy change within the World Bank. Under the new rubric of 'poverty reduction', a greater role for state intervention was promoted, while 'country ownership' of the agenda, 'good governance', 'local participation' and 'dialogue' were to become buzzwords around which aid conditionality was structured. Neoliberalism gained a much-touted 'human face', to the horror of traditional neoliberals at the IMF and US treasury.<sup>114</sup> Critics have pointed out that interventions under the label of 'poverty reduction' are, in reality, strategies designed to create the social underpinnings for productive labour and competitiveness in order to make targeted countries more hospitable to foreign direct investment. As Paul Cammack was quick to note when the World Bank changed tack, 'poverty reduction' means 'locking the poor into the market', without any substantive change to the staples of neoliberal policy such as privatization or to the role of post-colonial states as producers of cheap commodities for the West. Civil society 'participation', meanwhile, has largely implied the co-optation of community organizations and NGOs into neoliberal agendas.<sup>115</sup>

There are important, but rarely acknowledged shifts towards a softer, more pro-poor approach within the World Bank and the 'social' justifications for neoliberalism in Europe. Indeed, Ian Bruff suggests that Europe is a particularly useful place to begin to explore the authoritarian nature of neoliberalism, precisely because 'more than anywhere else in the world, Europe's self-image is that of a socially-aware, more generous and more inclusive form of capitalism than in other world regions'.<sup>116</sup> In the wake of the 2008 financial crisis, instead of the argument being made that the attachment to 'social Europe' must be dropped, austerity has been justified on the basis that 'social' institutions such as the welfare state can only survive if they are able to adapt to change.<sup>117</sup> As Bruff underscores, 'Europe has in reality been neoliberalizing *through*, not against, 'social' institutions of governance since the

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<sup>113</sup> For a prescient discussion, see Stephen Gill, 'New Constitutionalism, Democratisation and Global Political Economy', *Pacifica Review* 10:1 (1998) 23.

<sup>114</sup> Robert Wade, 'Showdown at the World Bank', *New Left Review* 7 (Jan/Feb 2001), 124-137.

<sup>115</sup> Paul Cammack, 'Attacking the Poor', *New Left Review* 13 (Jan/Feb 2002), 125-134. Paul Cammack, 'What the World Bank Means By "Poverty Reduction" and Why It Matters', *New Political Economy* 9:2 (2004), 189-211.

<sup>116</sup> Bruff, 'Neoliberalism and authoritarianism', 107.

<sup>117</sup> *Ibid.*, 108.



1980s'. Long before the 2008 crisis, collective bargaining mechanisms had begun to be used to discipline labour rather than treating trade unions as equal partners (as they were considered under the post-World War Two rubric of social partnership between capital, labour and the state). Even before the 2008 crisis, European countries were witnessing welfare retrenchment and a shift from 'welfare' to 'workfare' (in accordance with a shift in emphasis from collective entitlement to a social safety net onto the individual responsibility to work).<sup>118</sup> UK Prime Minister Tony Blair was a leading proponent of the idea that Europe's social institutions needed to adapt to survive.<sup>119</sup> His New Labour government did not only introduce the fiscal rules that paved the way to austerity after the 2008 crisis. New Labour also presided over numerous privatising reforms, such as those that 'rapidly accelerated the fragmentation of the NHS and its permeation by private capital'.<sup>120</sup> These reforms, which went with a huge mid-term funding increase, were rationalized on the basis of the need to 'save' the NHS.<sup>121</sup>

Convergence between the 'social' neoliberalism of the EU and the humanistic rhetoric of mainstream development discourse can be found in projects such as the 'peace laboratories', established at the turn of this century in Colombia. These are regional programmes for 'development and peace', established as a joint initiative between the Colombian state and European Union, in association with the World Bank, transnational corporations and NGOs. They were designed to 'explore, with the instruments appropriate to the Social Rule of Law, the paths which Colombian society must go down to reach peace and generate sustainable development'.<sup>122</sup>

In Magdalena Medio, for example, the rhetoric of the peace laboratory is couched in terms of community 'participation' and 'dialogue', aimed at generating a culture of peace and 'integral rights'.<sup>123</sup> In reality, what this has involved are initiatives such as the insertion of peasants into global markets through the 'sustainable' production of monocultures such as oil palm. The 'participation' advocated is 'a participation on a supposedly equal footing with corporations' through so-called 'strategic alliances'. These involve 10-12- year contracts under which peasants must sell palm fruit to the company with the price is determined at the point of sale, meaning that peasants must bear the risks of falling prices. The company also extracts the cost of seeds and technical assistance from peasant participants in these alliances.<sup>124</sup> Despite the reference to the Social Rule of Law, the 'peace laboratories' embody the 'reverse of the social contract' of which Santos speaks. 'Strategic alliances' between peasants and corporations are the quintessence of neoliberal contractualism, 'a mere

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<sup>118</sup> Ibid., 111-12.

<sup>119</sup> Tony Blair and Gerhard Schroeder, *Europe: The Third Way/Die Neue Mitte*. London/Berlin: Labour Party/Sozialdemokratische Partei Deutschlands, 1999.

<sup>120</sup> Pollock, *NHS plc*, 50. It should be noted that the Labour government's commitment to Public Private Partnerships in the health service was 'as much a foreign policy as a domestic one', as the General Agreement on Trade in Services demanded an opening up of all countries public services to private sector provision. Ibid., 53-4.

<sup>121</sup> Kailash Chand, 'A moment of honesty is required – New Labour began the dismantling of our NHS', *Open Democracy*, 23 April 2014. <https://www.opendemocracy.net/ournhs/kailash-chand/moment-of-honesty-is-required-new-labour-began-dismantling-of-our-nhs>. [ 4 July 2017]; see also El-Gingihy, *How to Dismantle the NHS*.

<sup>122</sup> Anders Rudqvist and Fred van Sluys (2005), *Informe Final de Evaluación de Medio Término Laboratorio de Paz del Magdalena Medio*. Brussels: ECO, 2005, 5.

<sup>123</sup> Ibid. 8.

<sup>124</sup> Lara Coleman, 'The Gendered Violence of Development: Imaginative Geographies of Exclusion in the Imposition of Neoliberal Capitalism', *British Journal of Politics and International Relations* 9:2, 215, Gearóid Ó Loingsigh, 'Peace Laboratories: Europe's Plan Colombia', *Frontline Latin America* 2:3, 4, 20.

appearance of a compromise constituted by conditions, as costly as they are inescapable, imposed without discussion on the weaker party'.<sup>125</sup> Or as one peasant put it, in an interview with author and investigative journalist Gearóid Ó Loingsigh, they are like 'an alliance between the fox and the chickens: in the end the fox will eat the chickens'.<sup>126</sup>

Successive governments, the World Bank and EU talk about 'peace and development', as if development were the antidote to violence. Yet the model of development advocated in the name of 'peace' is the very model for which people were massacred in the first place. The paramilitary groups who took over entire regions like Magdalena Medio in close collaboration with the army were never mere armed mercenaries, but political organizations whose visions of 'development' overlapped with those of the government, World Bank, EU and international NGOs.<sup>127</sup> Since the 1990s, forced displacement and massacres have been accompanied by a humanistic, developmentalist and conservationist discourse, propagated by UN bodies, the World Bank, transnational corporations and NGOs, as well as paramilitary and state organizations.<sup>128</sup>

This is nowhere more visible than in current proposals for land restitution and 'post-conflict' development following the Colombian government's peace deal with defeated FARC guerrillas. Most of Colombian national territory is now destined to be handed over to extractive industries in order to pay for 'peace', while displaced peasants have to agree to produce monocultures for export in order to get their land (more commonly) be relocated to 'unproductive' land of no current use to capital. The very mechanisms put forward to promote 'peace' and advance 'justice' serve to consolidate what was achieved through state-backed massacres and forced displacement.<sup>129</sup>

## Conclusion: 'Ethical' Murder

We should not underestimate the significance of these social and legal rationalisations of dispossession. They represent a complete disavowal of the deadly consequences of capitalism, quite distinct to the reasoning of neoliberal theorists like Hayek and Von Mises. For the intellectual authors of neoliberalism, not even the right to exist can be recognised: if people cannot secure their own subsistence they must, from time to time, simply be allowed to die. This is the best of all possible worlds, despite the suffering it engenders. Such lines of normative reasoning persist, of course. Nevertheless, the brutality of corporate plunder is simultaneously obscured by labelling policy interventions in social and ethical terms. A virtual reality is conjured in which everyone participates on an equal footing and even corporations are driven by good will. The tyranny of neoliberalism is disguised by persistent reference to the demands of law. Meanwhile, social and democratic principles are

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<sup>125</sup> Santos 2002, *Towards a New Legal Common Sense*, 451.

<sup>126</sup> Quoted in Ó Loingsigh, *La Estrategia Integral de los Paramilitares*, 98. For a longer discussion, see Coleman, 'The Gendered Violence of Development', 215-6.

<sup>127</sup> Ó Loingsigh highlights how paramilitaries have even set up their own NGOs to channel international development funding. *La Estrategia Integral de los Paramilitares*, 84-5.

<sup>128</sup> Cardenas and Marín, *La Biodiversidad*, .11.

<sup>129</sup> Lara Montesinos Coleman, 'The Violence of the Peace', *Alborada Magazine*, 29 August 2017.

<https://alborada.net/the-violence-of-the-peace/>. [30 August 2017]; Lara Montesinos Coleman and Gearóid Ó Loingsigh, 'La Paz en Colombia: Realidad, Mito y Fantasías', working paper published by British Academics for a Colombia Under Peace.

[https://www.academia.edu/12447416/La\\_Paz\\_en\\_Colombia\\_Mitos\\_Realidades\\_y\\_Fantasias](https://www.academia.edu/12447416/La_Paz_en_Colombia_Mitos_Realidades_y_Fantasias). [17 July 2016].

reconceptualised as the basis for entirely anti-social economic decisions insulated almost entirely from democratic oversight.

Social fascism retains the tropes of social democratic discourse, but eviscerates the content of these principles so as to align them with the requirements of capitalism. In social democracy (whether in post-war European welfare states or in accordance with the idea of a 'social rule of law' in Colombia), the rights of citizenship are established as *limits* – at least in theory - to what can be authorised on economic grounds. These are limited limits, of course, representing little more than a 'modest ethical gap' between economy and polity.<sup>130</sup> They only offer protection from the brutality of economic force to the extent that regulatory mechanisms are in place to ensure rights are enforced. Nevertheless, social fascism represents something quite different: an Orwellian world in which liberal values and principles are collapsed as far as possible into deadly economic processes. 'Democracy', 'poverty-reduction', 'social welfare' and 'rule of law' and so on are part of an increasingly penetrative ethical newspeak used to disguise policies evidently intent on increasing the wealth of the rich at the expense of the lives of the poor, sealed off from democratic process and justified through laws that are – from the perspective of formally recognised rights - illegal.

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<sup>130</sup> Wendy Brown, 'Neoliberalism and the End of Liberal Democracy', 46.