

## *Aliens: Legal Conceptions of the Corporate Invasion*

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There has long been recognition that the criminal legal system has great difficulties in ascribing responsibility to corporations for harms caused and crimes committed.<sup>1</sup> Corporate criminality is tangential to the tradition of criminal legal doctrine which is primarily structured and conceived around the individual human being.<sup>2</sup> The failure to conceptualise the corporation as a responsible legal agent is a failure of imagination.<sup>3</sup> This article turns to fiction to enrich the corporate criminal law imaginary. Film, like law, is a way of making sense of the world. Both the genre of horror film and criminal law are meditations on wickedness, suffering and responsibility.<sup>4</sup> This analysis of law and horror is part of a larger legal cultural studies project of examining popular culture for how it reflects and expresses assumptions, values and wishes for and about the legal system.<sup>5</sup> Both law and horror are works of imagination. Meaning is socially produced, and law and horror are powerful discourses in the construction of the notion of what it means to be bad or wicked. Both horror and criminal law represent and construct formulae by which to explore, represent and analyse

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<sup>1</sup> Brent Fisse and John Braithwaite, 'The Allocation of Responsibility for Corporate Crime: Individualism, Collectivism and Accountability' (1988) 11 Sydney Law Review 468; Gregory Gilchrist, 'The Expressive Cost of Corporate Immunity' (2012) 64 Hastings Law Journal 1; Neil Gunningham, 'Negotiated Non-Compliance: A Case Study of Regulatory Failure' (1987) 9 Law and Policy 59; Celia Wells, 'Corporate Responsibility and Compliance Programs in the United Kingdom' in Stefano Manacorda, Gabrio Forti and Francesco Centonze (eds), *Preventing Corporate Corruption: The anti bribery compliance model* (Springer 2014); Liz Campbell, 'Corporate Liability and the Criminalisation of Failure' (2018) 12 Law and Financial Markets Review 57.

<sup>2</sup> For example, corporate criminality is frequently not taught as part of the core criminal law subject studied by undergraduates as part of their law degree.

<sup>3</sup> This article uses the terms corporation and organisation interchangeably. There are many organisations, such as the Catholic Church, which are not incorporated and have used this lack of incorporation to evade criminal and civil responsibility. This article analyses not only incorporated organisations but also unincorporated organisations in an analysis of the criminal legal response to organisational culpability. Matthew Turnour, 'Should Australians Have a Revised Uniform Unincorporated Nonprofit Associations Act?' (2020) 37 Company and Securities Law Journal 279.

<sup>4</sup> Whilst it may be difficult to pinpoint precisely the definition of the genre of horror, fans and those who abhor the genre know it when they see it. Andrew Tudor, 'Why Horror? The Peculiar Pleasures of a Popular Genre' (1989) 11 Cultural Studies 443.

<sup>5</sup> Austin Sarat, 'What Popular Culture Does for, and to, Law' in Austin Sarat, Desmond Manderson and Montre Carodine (eds), *Imagining Legality: Where law meets popular culture* (University of Alabama Press 2011); Michael Asimov and Shannon Mader, *Law and Popular Culture* (Peter Lang Publishing 2004); William MacNeil, *Lex Populi: The Jurisprudence of Popular Culture* (Stanford University Press 2007).

wickedness, established and developed through rules and precedents.<sup>6</sup> Horror films reformulate and elaborate wickedness by offering nuanced narrative examples.

Although corporate and organisational culpability are tangential to criminal legal doctrine, large organisations and corporations are a staple of horror and science fiction (e.g. *28 Days Later*, *Poltergeist*, *Resident Evil*, *Mr Robot*, *Stranger Things* the *Terminator* series).<sup>7</sup> Frequently, corporations may occupy a background role – they are often instigators, setting off a chain reaction or failing to adequately react to monstrous threats, but their culpability is not necessarily explored in depth (see for example *28 Days Later*, *Poltergeist* and the *Terminator* series). Other horror films provide a meditation on corporations as evil, through a representation of the mechanics of corporate malfeasance and harms caused, a depiction of the corporate form and exploration of whether or not the corporation is sufficiently culpable to justify attributions of blameworthiness (*Mr Robot*, the *Aliens* series, *Stranger Things*). The horror theorist Robin Wood has argued that horror films have the potential to be subversive and critical because the genre’s perceived lack of seriousness encourages a loosening of censorship in viewers and makers.<sup>8</sup> However, despite the centrality of the theme, there is a relative dearth of academic analysis of evil corporations in horror films.<sup>9</sup> Evil corporations are so common and such an accepted staple of horror that they are almost background noise and are often secondary to the monster (which they may have created or exacerbated) and may not even register.

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<sup>6</sup> Horror films have developed and are dependent upon rules that underlie and contribute to the genre which are known by fans and subject to development, challenge and disruption. Penny Crofts and Honni van Rijswijk, ‘Traumatic Origins in Hart and Ringu’ in Ashley Pearson, Thomas Giddens and Kieran Tranter (eds), *Law and Justice in Japanese Popular Culture* (Routledge 2018).

<sup>7</sup> Cassandra Sharp, ‘“Fear” and “Hope” in Graphic Fiction: The Schismatic Role of Law in an Australian Dystopian Comic’ [2017] *International Journal of Semiotics and Law*; Mitchell Travis and Kieran Tranter, ‘Interrogating Absence: The Lawyer in Science Fiction’ (2014) 21 *International Journal of the Legal Profession* 23. At law, corporations have a specific narrow meaning, which large organisations such as the Catholic Church have drawn upon to evade liability. This article avoids technical legal definitions of the corporation and includes large organisations in the analysis to elucidate the capacity for systemic harms.

<sup>8</sup> Robin Wood, ‘The Return of the Repressed’ [1978] *Film Comment* 25.

<sup>9</sup> In contrast, there is a great deal of academic analysis of individual responsibility, sites of horror, mad scientists, sexuality, race, monsters, policing etc. For example, Harry Benshoff, ‘The Monster and the Homosexual’ in Barry Keith Grant (ed), *The Dread of Difference* (2nd edn, University of Texas Press 2015); Judith Halberstam, *Skin Shows: Gothic Horror and the Technology of Monsters* (Duke University Press 1995); Donna Haraway, ‘The Promise of Monsters: A Regenerative Politics for Inappropriate/d Others’ in L Gossberg (ed), *Cultural Studies* (Routledge 1992); Travis Linnemann, ‘Fear the Monster: Racialized Violence, Sovereign Power and the Thin Blue Line’; Penny Crofts and Anthea Vogl, ‘Dehumanized and Demonized Refugees, Zombies and World War Z’ (2019) 13 *Law and Humanities* 29.

Just as with law, horror generates in its audience a desire for justice, whether or not this is delivered. In most horror films, the narrative generally establishes a set of assumptions about what is just – usually unmasking and punishing or resolving the monster.<sup>10</sup> But what kind of representation is held out in horror films of responsibility and justice for evil corporations? By reading corporate criminal law alongside aliens and Weyland Yutani, this article forms part of the project of cultural legal studies that identifies how texts of popular culture (here, *Aliens*) and legal constructions (corporate criminal law theory) intertwine in our constructions, expectations and perceptions of law. This article argues that the film *Aliens* delivers a complex representation of the evil corporation Weyland Yutani and a depressing, realistic depiction of our (low or lack of) expectations of law and justice for corporations. *Aliens* bleakly portrays the consequences of the legal failure of imagination in conceptualising and attributing corporate responsibility.

The horror genre's representation of the pervasiveness of evil corporations and relative dearth of any challenge or punishment, reflects and reinforces an acceptance of corporate harms and longstanding separation between 'real' crime and corporate crime – exacerbated in state responses to corporate crime.<sup>11</sup> Harms caused by corporations are less visible and less direct than conventional crimes,<sup>12</sup> and victims of corporate crime may not even regard themselves as such.<sup>13</sup> There is a hierarchy of crime and victimisation,<sup>14</sup> and a neglect of certain harms as crimes, such as environmental and health and safety offences.<sup>15</sup> This lack of visibility is likewise reflected in research that the general population seems to be un- or ill-informed about corporate crime and tend to perceive it as relatively physically harmless compared with street crime.<sup>16</sup> This is despite evidence that corporate violence and medical crimes claim 20

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<sup>10</sup> As is argued at the end of this article, the resolution of the (alien) monster is satisfying, but closure is never complete to allow for sequels.

<sup>11</sup> David Whyte, 'It's Common Sense, Stupid! Corporate Crime and Techniques of Neutralization in the Automobile Industry' (2016) 66 *Crime, Law and Social Change* 165.

<sup>12</sup> Heather Croall, 'What Is Known and What Should Be Known about White-Collar Crime Victimization' in Shanna R Van Slyke, Michael L Benson and Francis T Cullen (eds), *The Oxford Handbook of White-Collar Crime* (Oxford University Press 2016).

<sup>13</sup> B Grant Stitt and DJ Giacomassi, 'Assessing Victimization from Corporate Harms' in Michael Blankenship (ed), *Understanding corporate criminality* (Garland 1993); RF Meier and JF Short, 'The Consequences of White-Collar Crime' in Gilbert Geis, RF Meier and LM Salinger (eds), *White-collar crime: Classic and contemporary views* (Free Press 1995); Steve Tombs and Katy Snell, "'How Do You Get Your Voice Heard When No-One Will Let You?'" Victimization at Work' (2011) 11 *Criminology and Criminal Justice* 207.

<sup>14</sup> Heather Croall, 'Victims of White Collar Crime and Corporate Crime' in Paul Davies, P Francis and Chris Greer (eds), *Victims, Crime and Society* (Sage 2007).

<sup>15</sup> Tombs and Snell (n 13).

<sup>16</sup> Cedric Michel, John Cochran and Kathleen Heide, 'Public Knowledge about White-Collar Crime: An Exploratory Study' (2016) 65 *Crime, Law and Social Change* 67.

times more lives annually than criminal homicide.<sup>17</sup> Research has indicated that the social impact of white-collar crime greatly exceeds street crime, both in terms of physical harmfulness and financial costs.<sup>18</sup> Sutherland pointed decades ago to an ignorance and indifference about organizational crime,<sup>19</sup> and this article argues that *Aliens* portrays an apathetic and horrific acceptance of organisational crime as a symptom of capitalist realism – the inability to imagine a world without capitalism.<sup>20</sup> The architecture and structure of criminal legal doctrine and procedure reflects and reinforces the tendency to fail to conceptualise corporate harms as criminal.

This article analyses the 1986 film *Aliens* (20<sup>th</sup> Century Fox) to grapple with questions of corporate criminality and legal models of (ir)responsibility. *Aliens* is a genre bending Action/Horror/Science Fiction film, written and directed by James Cameron. Audiences and critics alike loved the film,<sup>21</sup> and it received an unprecedented seven Oscar nominations (which is very rare for horror/science fiction films), including Sigourney Weaver for a best actor nomination. The film has also been the subject of a great deal of academic analysis, from different disciplines and perspectives, including feminist interpretations,<sup>22</sup> philosophy,<sup>23</sup>

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<sup>17</sup> Cedric Michel, Kathleen Heide and John Cochran, 'The Consequences of Knowledge about Elite Deviance' (2016) 41 *American Journal of Criminal Justice* 369. The authors found that more knowledgeable subjects about white-collar crime were more likely to consider it a serious topic and more inclined to support tougher forms of punishment against it.

<sup>18</sup> For example, compared with the 14,000 people who lose their lives to murder and manslaughter each year, an estimated 300,000 die annually as a result of work place related 'accidental' injuries due to company's negligence, illnesses due to exposure to toxic chemicals and the dumping of wastes and pollutants, faulty consumer products, medical malpractice and addictive substances. Lynch, M. J., & Michalowski, R. J. (2006). *Primer in radical criminology* (4th ed.). Monsey: Criminal Justice Press. Reiman, J., & Leighton, P. (2010). *The rich get richer and the poor get prison; ideology, class, and criminal justice* (9th ed.). Boston: Allyn & Bacon. Steven Tombs and David Whyte, 'Worker Health and Safety', *Oxford Research Encyclopedia: Criminology and Criminal Justice* (Oxford University Press 2017) <<http://criminology.oxfordre.com/view/10.1093/acrefore/9780190264079.001.0001/acrefore-9780190264079-e-270?rskey=bkTZve&result=8>>; Steve Tombs and David Whyte, *The Corporate Criminal: Why Corporations Must Be Abolished* (Taylor & Francis 2015); Michel, Cochran and Heide (n 16).

<sup>19</sup> Sutherland lamented the general public's indifference and ignorance of the extent and seriousness of white collar crime. Edwin Sutherland, *White Collar Crime* (Dryden 1949); Michel, Cochran and Heide (n 16); Francis T Cullen, B Link and C Polanzi, 'The Seriousness of Crime Revisited: Have Attitudes toward White-Collar Crime Changed?' 29 *Criminology* 83.

<sup>20</sup> Mark Fisher, *Capitalist Realism: Is There No Alternative?* (Zero Books 2009) <<https://ebookcentral.proquest.com/lib/uts/detail.action?docID=954706>>.

<sup>21</sup> It scores five stars and 99% on RottenTomatoes. [https://www.rottentomatoes.com/m/1000617\\_aliens](https://www.rottentomatoes.com/m/1000617_aliens).

<sup>22</sup> Barbara Creed, *The Monstrous Feminine: Film, Feminism, Psychoanalysis* (Routledge 1993). See also McFarland for an analysis of sexism of the corporation in Melanie McFarland, 'Ripley burns it all down: On "Aliens" and the dangers of dismissing women's rage' <https://www.salon.com/2018/10/04/ripley-burns-it-all-down-on-aliens-and-the-dangers-of-dismissing-womens-rage/> October 4, 2018.

<sup>23</sup> Joseph Kupfer, *Visions of Virtue in Popular Film* (Routledge 2018); Stephen Mulhall, 'On Film' (*Taylor & Francis*, 2016) <<https://www.taylorfrancis.com/books/e/9781315757599>> accessed 31 July 2019.

and artificial intelligence.<sup>24</sup> *Aliens* is a sequel to (the equally fabulous) *Alien* (directed by Ridley Scott, 1979), in which Ripley is an officer on the *Nostromo* and the sole survivor of her crew of the infiltration by an alien by getting into an escape pod and setting the cargo ship she's co-commanded to self-destruct, blowing the intruder alien out of an air lock. In *Aliens*, a salvage crew discovers Ripley's pod floating in deep space, where she has been locked in hyper-sleep for 57 years. The company, Weyland Yutani, demotes her for blowing up company property and dismisses her account of the alien – a creature that gestates inside a living host, has a hard exoskeleton, a razor-like whip for a tail, and concentrated acid for blood. Ripley is later sent back as a 'consultant' after the company loses contact with the colony Hadleys Hope which had settled on exomoon LV-426 where the *Nostromo* had initially encountered the derelict ship containing alien eggs. She is persuaded to return with a band of colonial marines who fare no better than Ripley's shipmates in *Alien*. By the end of *Aliens* everyone except Ripley and the little girl she saves, Newt, has died. Ripley is then found again on a prison planet in *Alien 3* (1992), with an alien gestating inside her.

Weyland Yutani is widely regarded as the 'true villain of the series',<sup>25</sup> however *Aliens* has been criticized for minimizing or even dropping the critique of capitalism that had been raised by Ridley Scott in the original *Alien*. The film critic Greenberg has argued that *Aliens* 'is a testament to the radically diminished possibility of popular cinema offering even a modicum of social criticism in the age of Reagan and Rambo'.<sup>26</sup> This article argues to the contrary that *Aliens* proffers a resounding and disturbing critique of large organisations and the absence of legal oversight. Whilst the Company (as Weyland Yutani is referred to in dialogue) is the quintessential evil corporation in *Alien*, explicitly willing and nefariously planning to sacrifice workers in order to capture the alien to study for biological warfare, in *Aliens* the evil of Weyland Yutani is far more implicit, insidious and realistic – depicting the ways in which a central concern for profit dehumanizes the corporation. This article analyses questions of corporate malfeasance that have plagued criminal law such as whether corporations can intend or act; difficulties of conceptualizing a normative account of corporations; whether there is any point to the criminalization of corporations; and what

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<sup>24</sup> Ryan Abott and Alex Sarch, 'Punishing Artificial Intelligence: Legal Fiction or Science Fiction' (2019) 53 UC Davis Law Review 323.

<sup>25</sup> Bruno de Brito Serra, 'Disposable Assets: Weyland-Yutani's Special Brew of Business Ethics' in Kevin Decker and Jeffrey Ewing (eds), *Alien and Philosophy: I infest, therefore I am* (John Wiley and Sons 2017). 39.

<sup>26</sup> Harvey Greenberg, 'Fembo: *Aliens*' Intentions' (1988) 15 Journal of Popular Film and Television 164. 166.

would justice for an evil corporation involve?<sup>27</sup> These questions are explored through an application of legal conceptions of corporations to the aliens and Weyland Yutani in *Aliens*. This article argues that the law conceives of corporations, like the aliens, as monstrous – strange, inhuman, immortal, dehumanising, incomprehensible agglomerations, that contaminate and transgress classic criminal legal doctrine. Although infected by capitalist realism, this article frames reforms by drawing upon monster theory and the idea that monsters require and justify extreme responses. Although the film straddles the genres of horror and science fiction, I will draw particularly on horror theory as key to my argument is an analysis of horror aroused (or not) by the aliens and Weyland Yutani.<sup>28</sup>

Section one of this article compares the fictional aliens with legal conceptions of corporations to tease out their commonalities and the idea of corporations as monstrous. Sections two and three apply the major legal conceptions of corporations of nominalism (a corporation is nothing more than a collective of individuals) and realism (a corporation is an entity independent of its members) to representations of the aliens and the mega-corporation Weyland Yutani in *Aliens*. Section four argues that in light of the failure of *Aliens* to imagine alternatives to capitalism, what can and should be done in response to the monstrous corporation?

### 1. The monstrous corporation

The conception of the corporation as monstrous is a feature of academic and judicial writings, although corporations are most commonly compared to Frankenstein's monster rather than aliens.<sup>29</sup> The comparison of corporations with Frankenstein's monster is apposite because

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<sup>27</sup> John Coffee Jr, 'No Soul to Damn: No Body to Kick: An Unscandalised Inquiry into the Problem of Corporate Punishment' (1980) 79 Michigan Law Review 386; Mihailis E Diamantis, 'Clockwork Corporations: A Character Theory of Corporate Punishment' (2018) 103 Iowa Law Review, Forthcoming, University of Iowa Legal Studies Research Paper No. 2017-32.

<sup>28</sup> The line between horror and science fiction is not hard and fast, but broadly, the aim of the genre of horror is to arouse the affect of horror, whereas science fiction uses actual or imaginary scientific discoveries of advanced technology. Noel Carroll, 'The Nature of Horror' (1987) 46 The Journal of Aesthetics and Art Criticism 51.

<sup>29</sup> For example, Theresa Gabaldon, 'The Lemonade Stand: Feminist and Other Reflections on the Limited Liability of Corporate Shareholders' (1992) 45 Vanderbilt Law Review 1387; Joel Bakan, *The Corporation: The Pathological Pursuit of Profit and Power* (Simon and Schuster 2004); Ronald Chen and John Hanson, 'The Illusion of Law: The Legitimizing Schemas of Modern Policy and Corporate Law' (2004) 103 Michigan Law Review 1; Katie Thoennes, 'Frankenstein Incorporated: The Rise of Corporate Power and Personhood in the US' 28 Hamline Law Review 203; Timothy Peters, 'I, Corpenstein: Mythic, Metaphorical and Visual Imaginings of the Corporate Form in Comics and Film' (2017) 30 International Journal for the Semiotics of Law 427; Maurice Wormser, *Frankenstein, Incorporated* (Whittlesey House 1931). Justice Louis Brandeis' 1933 Supreme Court judgment cited Wormser's account of corporations as Frankenstein's monsters. *Louis K*

Shelley was writing at the time of the industrial revolution and the increasing use of joint-stock companies for business enterprise and, like the monster, corporations are an artificial being uncannily made up of multiple individuals.<sup>30</sup> The conception of corporations as Frankenstein's monsters sets up a narrative of a creation that has escaped the control of its creator, and requires the state to take responsibility for its creation and intervene.<sup>31</sup> Yet the idea of the corporation as monster predated Frankenstein's monster. Barkan refers to pictures of the corporation as a multi-headed hydra in response to debates about the re-chartering of the Second Bank of the US in the 1830s,<sup>32</sup> and Hobbes described corporations as 'wormes in the entrayles' of the body politic.<sup>33</sup>

Aliens are a different breed from Frankenstein's monster. Frankenstein's monster was created by humans using human body parts, in contrast, aliens may well pre-exist and have no genetic link to humans.<sup>34</sup> The alien metaphor is particularly apt, because unlike Frankenstein's monster who is an individual seeking vengeance on a harsh creator, aliens seek to invade and conquer. This has led the business ethicist Peter French to argue, that like aliens, corporations have invaded the world to the extent that humans are now incorporated.<sup>35</sup> What is common to both aliens and Frankenstein's monster is the key attribute that monsters transgress the borders of humanity.<sup>36</sup> For Foucault, the production of monsters should be understood as a breach of nature and law, they 'combine the impossible and the forbidden.'<sup>37</sup> Monsters are represented in horror and conceptualised in philosophy as beyond understanding, as incomprehensible to human beings.<sup>38</sup>

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*Liggett Co et al v Less, Comptroller et al* 288 US 517 (1933) 548, 567. The idea of corporations as aliens was explored by the corporate ethicist Peter French to make his argument that corporations can be regarded as moral entities. Peter A French, *Corporate Ethics* (Harcourt Brace College Publishers 1995).

<sup>30</sup> Peters (n 29). 434.

<sup>31</sup> Bakan (n 29). 149. See also Thoennes (n 29). 205, 'Like Doctor Frankenstein, the Court and the government are now controlled by the creations which they breathed life into...' For an analysis of the limits of this narrative see Peters (n 29). 432.

<sup>32</sup> Joshua Barkan, *Corporate Sovereignty: Law and Government under Capitalism* (University of Minnesota Press 2013). 54-55.

<sup>33</sup> Thomas Hobbes, *Leviathan* (1991st edn, Tuck 1651). 230.

<sup>34</sup> *Prometheus* (2012, Ridley Scott, 20<sup>th</sup> Century Fox), the "prequel" of the Alien franchise, suggests that the aliens have human DNA.

<sup>35</sup> French (n 29).

<sup>36</sup> In light of the proliferation of monstrous corporate metaphors including Frankenstein's monster, vampires, zombie corporations, zombie capitalism, and aliens, I am researching which metaphor gives the most insight into legal conceptions of the corporation.

<sup>37</sup> Michel Foucault, *Abnormal: Lectures at the College de France 1974-1975* (Picador 2003). 64-65.

<sup>38</sup> Phillip Cole, *The Myth of Evil* (Edinburgh University Press Ltd 2006).

One common characteristic shared by monsters and corporations is that they are creatures of fiction. Aliens are fictional (as far as we know) – created in the minds of writers and expressed in special effects and animation. Likewise a central trope in law is that corporations are a legal fiction,<sup>39</sup> because they only exist through a creative act of the state.<sup>40</sup> This trope is well rehearsed, for example, Coke asserted, the corporation is ‘invisible, immortal and rests only in intendment and consideration of the law.’<sup>41</sup> Likewise, Chief Justice Stone stated ‘[T]he corporate personality is a fiction, although a fiction intended to be acted upon as though it were a fact.’<sup>42</sup> Recently, in oral arguments in *Citizen United v Federal Election Commission*, Justice Sotomayor remarked in Shelley-esque terms that the US Supreme Court ‘gave birth to corporations as a person, and ... imbued a creature of State law with human characteristics’.<sup>43</sup> But fictionality is not sufficient in and of itself to render a creature monstrous.

A central attribute, shared by monsters and corporations, is the transgression of borders. The etymology of aliens emphasizes the strangeness of these creatures. The Latin, *alienus* – is defined as belonging somewhere else. In Old French in the 14<sup>th</sup> century it meant stranger, foreign, and in the 1670s it denoted wholly different in nature. Central to the etymology and idea of aliens is that they have come from somewhere else and are not like us.<sup>44</sup> Likewise, legal narratives produce corporations as monsters because in comparison with the classic legal subject, the ‘natural’ human being, corporations are artificial, strange and foreign. Corporations breach nature: ‘Corporations are not natural living persons, but artificial beings, *corpora ficta*.’<sup>45</sup> Corporations (and aliens) also do not fit easily or comfortably into pre-

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<sup>39</sup> Douglas Lind, ‘The Pragmatic Value of Legal Fictions’ in Maksymilian Del Mar and William Twining (eds), *Legal Fictions in Theory and Practice* (Springer, 2015) 83, 93; and Frederick Schauer, ‘Legal Fictions Revisited’ in Maksymilian Del Mar and William Twining (eds), *Legal Fictions in Theory and Practice* (Springer, 2015) 113, 123.

<sup>40</sup> Frederick Hallis, *Corporate Personality* (Oxford 1930), p. xlii.

<sup>41</sup> *The Case of Sutton’s Hospital* [1612] 10 Co 23a.

<sup>42</sup> *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

<sup>43</sup> *Citizens United v Federal Election Commission* 130 S Ct 876 (2010).

<sup>44</sup> An alien is a foreign-born resident who is not a citizen by virtue of parentage or naturalisation and is still a citizen or subject of another country. The legal status of aliens was recently considered by Australia’s High Court. Under section 51(XIX) of the Australian Constitution, the Parliament has ‘power to make laws for the peace, order and good government of the Commonwealth with respect to... naturalisation and aliens’. The High Court upended the settled law of decades of the mutually exclusive nature of the twin concepts of ‘citizen’ and ‘alien’ in *Love v Commonwealth of Australian* [2020] HCA 3. A majority (Justices Bell, Nettle, Gordon and Edelman) held that Aboriginal Australians “were not within the reach of the “aliens” power” in section 51(xix) of the Constitution. Therefore, they could not be removed from Australia under section 198 of the Migration Act 1958 (Cth).

<sup>45</sup> Wormser (n 29). V-vi.



existing legal categories that have been created and modelled on biological human beings. Attributions of corporate accountability are frequently regarded as an additional layer of fiction laid upon the fiction of the legal subject.<sup>46</sup> This reflects Foucault's arguments that corporations are products of law:

Essentially, the monster is the casuistry that is necessarily introduced into law by the confusion of nature [...] it is a monster only because it is a legal labyrinth, a violation of and an obstacle to the law, both transgression and undecideability at the level of the law.<sup>47</sup>

Corporations are disturbing hybrids that refuse to participate in the classificatory 'order of things', problematizing and challenging the criminal legal order. As a judge commented, the law of corporate criminal liability is:

... bedevilled in many respects by fictions arising out of the equation of the legal personality given to a corporation with the personality of an individual with all human attributes . . . Such fictions are to be avoided wherever possible; the law can only hope to operate justly if it looks at the realities.<sup>48</sup>

Monsters are conceptualised when (legal) categories are exhausted.<sup>49</sup> Hence the fear and fascination of monsters, because of their potential to contaminate and undermine cherished borders, to blur and weaken dividing lines that affirm binary relations. Monsters have the potential to destabilise cherished borders – in this case, the legal subject. Monsters demand and justify a response to attempt to reinstate law and reassert law as neutral arbiter, compelling us to question and redraw our cherished systems of order.<sup>50</sup>

Both aliens and evil corporations populate horror and science fiction, and in films such as *Aliens*, both are present.<sup>51</sup> The aim of horror is to arouse the affect of horror. In the film, it is

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<sup>46</sup> This disregards the extent to which the human as legal subject is itself an act of legal fiction. Law transmits or constitutes individual subjectivities and authorises specific forms of individual identity through techniques such as ritual, symbol, physical force and textual account. Critique of adequacy of these conceptions of the legal subject. Penny Crofts, 'Killing to Survive: The Walking Dead, Police Slayings and Medieval Malice' *Law Culture Humanities*.

<sup>47</sup> Foucault (n 38). 64-65.

<sup>48</sup> *Re Chisum Services Pty Ltd and the Companies Act 1961* (1982) 7 ACLR 641 at 650.

<sup>49</sup> Penny Crofts, 'Monstrous Wickedness and the Judgment of Knight' (2012) 21 *Griffith Law Review* 72. 82.

<sup>50</sup> Mary Douglas, *Purity and Danger: An Analysis of the Concepts of Pollution and Taboo* (Routledge and Kegan Paul 1966).

<sup>51</sup> Whilst aliens may make an appearance in comedies and children's films, they are most frequently associated with horror/science fiction films. There are many alien horror/science fiction films, but examples that I have watched and enjoyed include *Cloverfield* (2008), *A Quiet Place* (2018), *District 9* (2009), *Attack the Block* (2011), *Battleship* (2012), *The War of the Worlds* (2005), *The Host* (2013), *Independence Day* (1996), *It* (2017), *Village of the Damned* (1960) and *Predator* (1987). Alien movies which are not scary alien include *The Fifth Element* (1997), the *Men in Black* series, and *Galaxy Quest* (1999) – which also stars Sigourney Weaver.

the alien transgression of borders and inflicting of malevolent harms that arouses fear and disgust. The aliens defile human bodies, breaching the border of the knowable outside of the body and its secret insides with penetration.<sup>52</sup> The aliens also breach gender roles by inscribing all their victims as female by forcing them into their role as reproducers.<sup>53</sup> Corporations are amoral immortals,<sup>54</sup> which ‘have no conscience and feel no pain’.<sup>55</sup> They have superhuman strength, growing exponentially in size and wealth in accordance with the dictates of capitalism, and are capable of doing evil.<sup>56</sup> Accordingly, aliens and corporations are fictional creatures that are strange and different from human beings. They are beyond the limits of humanity – beyond explanation, incomprehensible to normal human beings. I will sustain the idea of Weyland Yutani as monstrous to analyse the legal conceptualisation of the corporation.

## 2. Finding the Head of the Monster: Nominalism

The dominant criminal legal conception of corporate accountability dating from the 19<sup>th</sup> century is that of nominalism. This approach argues that corporations cannot behave as persons and lack defining characteristics of biological people, specifically, corporations have ‘no soul to damn, no body to kick.’<sup>57</sup> This approach regards corporations as nothing more than a collective of individuals, that is, the idea that corporations can only act through individuals.<sup>58</sup> This approach aims to fit corporations into the dominant mode of responsibility in criminal law, that of individual culpability,<sup>59</sup> by attributing corporate responsibility through the actions and intentions of the individuals who make up an organisation. The courts have ascribed corporate responsibility for the actions of an employee through the concept of vicarious liability.<sup>60</sup> Under this principle, a corporation can be liable for actions or omissions

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Children’s movies with aliens include *ET* (1982), *Close Encounters of the Third Kind* (1977), *Monsters vs Aliens* (2009) and the *Guardians of the Galaxy* series.

<sup>52</sup> Carol Clover, *Men, Women, and Chain Saws: Gender in the Modern Horror Film* (Princeton University Press 1992). 32.

<sup>53</sup> Creed (n 23).

<sup>54</sup> Mark McCutcheon, ‘Frankenstein as a Figure of Globalization in Canada’s Postcolonial Popular Culture’ (2011) 25 *Continuum* 731.

<sup>55</sup> Thoennes (n 29). 204.

<sup>56</sup> *Louis K Liggett Co et al v Lee, Comptroller et al* 288 US 517 (1933), 548, 567.

<sup>57</sup> Coffee Jr (n 28). The tendency to conceptualise corporations as lacking souls is another link between corporations and monsters, particularly vampires.

<sup>58</sup> Eric Colvin, ‘Corporate Personality and Criminal Liability’ (1995) 6 *Criminal Law Forum* 1; Meir Dan-Cohen, *Normative Subjects: Self and Collectivity in Morality and Law* (Oxford University Press 2016).

<sup>59</sup> Scott Veitch, *Law and Irresponsibility: On the Legitimation of Human Suffering* (Routledge 2007); Nicola Lacey, ‘In Search of the Responsible Subject: History, Philosophy and Criminal Law Theory’ (2001) 64 *Modern Law Review* 350.

<sup>60</sup> *R & Minister for Customs v Australasian Films Ltd* (1921) 29 CLR 195.

committed by an agent in the course of or during the scope of employment. In Australia and the UK there has been limited application of vicarious liability, compared with the USA.<sup>61</sup>

The dominant approach for ascribing corporate liability in the United Kingdom and Australia is identification liability, which holds a company liable only when a director or senior officer has acted with the requisite fault, expounded in *Tesco v Natrass* [1972] AC 153.<sup>62</sup> In *Bolton's* case, Lord Justice Denning compared the company to a human body with a brain (the 'directing mind') and hands (the servants or agents).<sup>63</sup> Only the 'state of mind' of the directing mind of those invested by proper authority with managerial powers and responsibility are treated by law as the state of mind of the organisation. This principle permits criminal liability to be imposed on a corporation for an offence that requires *mens rea*. The identification principle requires that any successful prosecution of a corporation needs to demonstrate that the controlling mind of the corporation (usually the board of directors) was aware of the criminal actions, and possessed the necessary *mens rea*. To sustain the dominant metaphor of the corporation as monster, identification doctrine requires the court to determine who or what is acting as Frankenstein's monster's head.

The nominalist model has long been recognised as highly restrictive and not always reflective of culpability.<sup>64</sup> These shortcomings are manifested in *Aliens*. A major difficulty of the directing mind doctrine is 'determining who the directing mind is and whether she controls what the organisation does'.<sup>65</sup> Unlike the original film *Alien* (which as the title suggests featured one alien), *Aliens* is populated with many aliens at various stages of development – embryos, face huggers, attackers and the 'Queen'. The audience might assume that the Queen

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<sup>61</sup> *Standard Oil Co v US* 307 F2d 120. In the recent civil case of *Prince Alfred College Incorporated v ADC* [2016] HCA 37, the majority of the High Court (French CJ, Kiefel, Bell, Keane and Nettle JJ) noted that common law courts have struggled to identify a coherent basis for identifying the circumstances in which an employer should be held vicariously liable for the negligent acts of an employee, let alone for intentional, criminal acts. (HC [39]).

<sup>62</sup> These general principles have been adopted in Australia (see *Hamilton v Whitehead* 166 CLR 121, 127). Although *Tesco* is recognised as an authority, there was different reasoning by the Law Lords as to the principle's precise content. This lack of clarity has exacerbated practical problems of prosecution. The directing mind test was tempered somewhat by the Privy Council expanding the people whose actions and state of mind are attributed to the company in *Meridian Global Funds Management Asia Ltd v Securities Commission* [1995] 3 All ER 918. The UK has largely reaffirmed the directing mind approach in *AG's Reference (No 2 of 1999)* [2000] EWCA Crm 90. In *CBA v Kojic* (2016) 249 FCR 421 [2016]; FCAFC 186 Edelman J referred to *Meridian* as a 'rejection of the "directing mind and will" and as a universal rule of attribution.' [97]

<sup>63</sup> *H. L. Bolton (Engineering) Co. Ltd v T. J. Graham & Sons Ltd* [1957] 1 QB 159.

<sup>64</sup> For examples of judicial criticisms of identification theory, see Lord Hoffman, Privy Council in *Meridian Global Funds Management Asia Limited v Securities Commission* [1995] 3 All ER 918; Justice Estey, *Canadian Dredge & Dock Co v R* [1985] 1 SCR 662 at 693.

<sup>65</sup> Campbell (n 1). 58.

is the directing mind of the aliens – but this is not confirmed in the film. As is common with the reality of large corporations, communications and decision-making by the aliens are not made apparent to the audience. It is difficult to ascertain the alien decision-making structures behind closed doors. The Queen seems to be in control of reproduction – particularly when her eggs are threatened by Ripley. The Queen is ostensibly able to enter into a contract with Ripley whereby they appear to make an agreement to avoid mutual destruction of each other’s children. However, the Queen does not have full control over the aliens (even if she has any). For example, one of the eggs hatches almost immediately after the Queen appears to have reached the agreement with Ripley, presumably without the Queen’s consent. Nor is it clear if the Queen is in charge of attack and defence – it is possible that this is the responsibility of different alien/s. The difficulties of establishing the directing mind amongst the aliens reflects difficulties the prosecution may have in attempting to ascribe responsibility to large organisations. In the original film *Alien* there is only one alien, so as with a small, owner-managed company, it is easier to establish the requisite knowledge. In comparison, the multiple aliens in *Aliens* are similar to large, multi-national corporations. Modern corporations divide authority in a myriad of ways which create more than one directing mind – knowledge, information and authority are diffuse. The identification doctrine insulates larger and more sophisticated companies from criminal investigation and prosecution. The larger an organisation is, the more difficult it is to establish the directing mind and that they had necessary *mens rea*.<sup>66</sup>

The shortcomings of nominalism are particularly apparent in relation to Weyland Yutani. The smarmy (junior) executive Carter Burke (played by Paul Reiser) is the face (and dominant voice) of the Company. He greets Ripley saying: ‘I’m Burke. Carter Burke. I work for the company, but other than that I’m an okay guy’. Although Ripley and the audience regard Burke as the primary representative of the corporation, his first strategy is to dissociate himself from the Company in order to instil trust in Ripley. Burke does seem to have decision-making powers, for example he has the capacity to make deals with Ripley: ‘What if I said you could be reinstated as a flight officer? And that the company had agreed to pick up your contract?’ Despite his statements to the contrary, his language reflects his complete identification with the company. He knowingly lies in order to persuade Ripley to return to the alien (as a consultant):

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<sup>66</sup> *ibid.*

RIPLEY: 'Burke, just tell me one thing. That you're going there to kill them. Not study. Not bring back. Just burn them out... clean... forever.'

BURKE: 'That's the plan. My word on it.'

RIPLEY: 'All right. I'm in.'

Despite his claims, Burke has no intention to destroying the alien. Instead, he wants to bring the alien back for research and development as a biological weapon. He engages in reckless and ruthless behaviour in the quest for wealth, a form of cost-benefit reasoning that embodies the values of the Company in how he relates to people and things. When she becomes aware of his betrayal, Burke attracts much of Ripley's rage. This focus on Burke, by Ripley and the audience, as the embodiment of the Company is one of the reasons why Greenberg regards *Aliens* as an inferior sequel to its predecessor. Greenberg argues that the sequel shifts away from Ridley Scott's critique of capitalism to the 'wrongdoing of a sleazy junior executive, which inevitably recoils upon the perpetrator'.<sup>67</sup> Burke is portrayed as one bad apple, and his bad behaviour is resolved through the efforts of a few courageous individuals and an alien. His death is cathartic – he escapes by cravenly locking the rest of the survivors behind him – only to be killed by an alien.

Whilst Burke's death is portrayed as a form of rough justice, it is not the finale of the film. The aliens continue attacking and there is no sense of any ascription of responsibility or imposition of justice on Weyland Yutani. The Company continues and will not be punished or even suffer financial loss for the death of the colony, crew and quest to own the alien. Although Burke seems to be the face of the Company, he would not be regarded as the 'directing mind' of Weyland Yutani at law. He seems to be some kind of executive – probably low to mid-level – reflecting Fisse and Braithwaite note that offences committed on behalf of large organisations are often committed at the middle management level, whereas the *Tesco* principle requires proof of fault on the part of a top-level manager.<sup>68</sup> Burke is merely a part of the body rather than the mind of Weyland Yutani. For example, although he is present at the Board meeting he does not speak. In addition, his role is ambiguous. *Aliens* does not clarify if Burke is acting for himself and/or the Company. What is clear is that for the Company, Burke, like the colonists and the rest of the crew, is ultimately expendable.

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<sup>67</sup> This is the usual justice meted to representatives of corporations by the mutants or monsters that they have engendered or sought to profit from. E.g. *King Kong* (1976), *It's Alive* (1974), *The Children* (1980), *Prophecy* (1979) *Stranger Things* (2016).

<sup>68</sup> Fisse and Braithwaite (n 1).

Contrary to Greenberg's arguments, Cameron's portrayal of the Company is a more realistic and insidious representation of contemporary multinational structures than the original *Alien*. Only one of the organisational structures of the Company is portrayed in *Aliens* and that is when Ripley appears before a Board of Inquiry made up of individuals representing corporate and state investments. Burke tells Ripley that 'there are going to be some heavyweights in there. You got Feds, you got interstellar commerce commission, you got colonial administration, insurance company guys...' Although Burke describes the eight Board members as 'heavyweights' they appear instead to be middle management types inquiring into Ripley's actions at the end of *Alien* of setting the Nostromo to self-destruct. After a three and a half hour inquiry the Board holds Ripley at least indirectly responsible for loss of the Nostromo, its cargo and crew:

Look at it from our perspective. You freely admit to detonating the engines of, and thereby destroying, an M-Class star-freighter. A rather expensive piece of hardware... 42 million in adjusted dollars. That's minus payload of course.

The focus of the Board is on property lost rather than the people who died. This is a portrayal of the dehumanising effect of the corporate form. Although the Board is made up of humans, they have no interest in humanity. The shuttlecraft's data does not 'contain any entries concerning the hostile life' and fails to corroborate Ripley's story, and the Board notes that a colony dispatched to terraform the Acheron has never been threatened. The Board concludes that Nostromo landed and was destroyed for reasons unknown. Ripley is not punished beyond denying her employment in space.

The decision by the Board is logical based on the evidence available to them. The Extrasolar Colonization Administration states that there is no species like this on LV-426 'It's a rock. No indigenous life larger than a simple virus':

To be perfectly frank, we've surveyed over three hundred worlds and no-one's ever reported a creature which, using your words 'gestates in a living human host' and has 'concentrated molecular acid for blood'.

Ripley's claims of an alien monster are greeted with entirely rational disbelief. In addition, the decision is rational given that more than half a century has passed since the nefarious actions by Weyland Yutani in *Alien* – the past has been legitimately forgotten by the present board. Greenberg has criticised the 57-year time gap as the basis for reducing the radicalism offered at the end of *Alien* with Ripley planning to unmask the ruthlessness of Weyland

Yutani.<sup>69</sup> However, this neglected and forgotten history of Weyland Yutani's evil intentions reflects the immortality of corporations. The death and destruction in *Alien* was not caused by the actions and decisions of existing board members in *Aliens*, but was caused by the corporation itself.<sup>70</sup> The diffusion of knowledge is a product of the practicality of large corporations but also encouraged by identification doctrine – in terms of criminal liability, the less the 'directing mind' of a corporation knows the better.<sup>71</sup> Weyland Yutani reflects a form of institutional ignorance and/or amnesia that is common in corporate criminality.<sup>72</sup> *Aliens* highlights the difficulties for the prosecution of establishing who and/or what the directing mind is *and* that they have necessary *mens rea*. Even if the Board of Inquiry in *Aliens* were to be regarded as a directing mind at law (which is unlikely due to its mid-level status) the Board lacks the necessary *mens rea* due to the time gap and the lack of evidence supporting Ripley's claims. The Board's decision is not a product of a nefarious conspiracy but reflects the diffusion of knowledge and responsibility in large corporations across time.

There is also a certain amount of ambivalence in *Aliens* about the fault or wickedness of Weyland Yutani. Earlier and later films in the series establish that Weyland Yutani has explicit evil intentions. For example, in *Alien*, Ash (the android) has been programmed to ensure the alien's survival *and* to regard the crew as expendable. This is unambiguous evidence of what has been labelled positive evil, that is, intentional wrongdoing.<sup>73</sup> But *Aliens* is more complex. Whilst the craven, greedy Burke is at fault, having both the *mens rea* and *actus reus* to sacrifice the crew for profit, it is not evident that the directing mind of Weyland Yutani (whoever or whatever that is) knew or would desire Burke's actions (although later and earlier films show that Weyland Yutani would). Moreover, *Aliens* confirms that even if there is a directing mind of Weyland Yutani back at base, it is not in control of the action on the planet or space ship. This is one reason for the continued relevance of the Frankenstein

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<sup>69</sup> Greenberg (n 27).

<sup>70</sup> The current directors should not be exposed to personal liability for things that occurred before they held official positions. Turnour (n 3).

<sup>71</sup> Mihailis Diamantis, 'Functional Corporate Knowledge' (2019) 61 William and Mary Law Review 319.

<sup>72</sup> This institutional amnesia was demonstrated in the recent film *Dark Waters* (2020) which portrayed the toxic spills scandal that led to US Chemical giant DuPont paying US\$671 million to settle more than 3,500 lawsuits in 2017. DuPont had used the chemical PFOA since the 1950s and employees noted that this chemical was likely to be toxic in 1954. Internal corporate documents detailed knowledge about the toxicity of the chemical in animals and humans by 1982. Yet DuPont continued to produce PFOA. *Dark Waters* showed DuPont providing boxes and boxes of information about PFOA dating from the 1950s in response to a discovery motion. It is unclear whether this was an act of hubris by the corporation or due to ignorance of what was actually in the corporate repository, but the boxes provided the basis for establishing corporate knowledge about the toxicity of PFOA.

<sup>73</sup> Mary Midgley, *Wickedness: A Philosophical Essay* (Routledge 1984).

monster metaphor – where corporations in the same way as Dr Frankenstein, may instigate the horrific action, but have no control over the resulting mayhem. *Aliens* portrays the awkwardness of the common law attempt to conceptualise the corporation within the anthropomorphic model. The head (even if we could identify who or what that was), is not in control of the ‘body’ on the colony or spaceship. This represents the diffusion of knowledge and responsibility – a product of distance and the complex structures of multi-national corporations. The individualist methodology does not succeed for either the aliens or Weyland Yutani and they transgress pre-existing legal categories producing monsters.

### 3. Legal realism and the intention of aliens and corporations

An alternative is the so-called ‘realist’ approach which attempts to grapple with the corporation as a legal agent in and of itself. According to this perspective, corporations can act and be at fault in ways that are different from the ways in which their members can act and be fault.<sup>74</sup> This realist approach is reflected in the film, where characters refer to ‘The Company’ to justify and rationalise decisions. Whilst it might be argued that labelling corporations in this way is simply a matter of linguistic convenience but does not reflect the reality of corporate responsibility,<sup>75</sup> realist theorists assert that an organisation can have its own discrete responsibility, beyond the aggregation of the responsibility of individual members. This perspective asserts that corporations are more than just the sum of their parts,<sup>76</sup> and is informed by studies in organisational and collective behaviour that organisations often develop an identity that is independent of and transcends the specific individuals who control or work within the organisation.<sup>77</sup> For example, Australia has enshrined a realist approach in its corporate culture provisions, which can attribute *mens rea* to corporations based on their corporate culture.<sup>78</sup> In the UK, under failure to prevent

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<sup>74</sup> Campbell (n 1); John HC Colvin and James Argent, ‘Corporate and Personal Liability for “Culture” in Corporations?’ (2016) 34 *Company and Securities Law Journal* 30; Stewart Field and Nico Jorg, ‘Corporate Manslaughter and Liability: Should We Be Going Dutch?’ [1991] *Criminal Law Review* 156; Tahnee Woolf, ‘The Criminal Code Act 1995 (Cth) - Towards a Realist Vision of Corporate Criminal Liability’ (1997) 21 *Criminal Law Journal* 257.

<sup>75</sup> John Hasnas, ‘Reflections on Corporate Moral Responsibility and the Problem Solving Technique of Alexander the Great’ 107 *Journal of Business Ethics* 183.

<sup>76</sup> Susanna M Kim, ‘Characteristics of Soulless Persons: The Applicability of the Character Evidence Rule to Corporations’ (2000) 2000 *Illinois Law Review* 763; Dan-Cohen (n 59).

<sup>77</sup> David Whetten and Paul Godfrey, *Identity in Organizations* (Sage 1998); Stephen Robbins, *Essentials of Organizational Behaviour* (Pearson 2016); Margaret Gilbert, ‘Who’s to Blame? Collective Moral Responsibility and Its Implications for Group Members’ (2006) 30 *Midwest studies in philosophy* 94; Dan-Cohen (n 59); Kalina Christoff, ‘Dehumanization in Organizational Settings: Some Scientific and Ethical Considerations’ (2014) 8 *Frontiers in Human Neuroscience* 748.

<sup>78</sup> *Criminal Code Act 1995 (Cth)* Part 2.5.



offences, a corporation is liable for bribery or tax evasion committed by agents of the corporation, unless the corporation is able to establish that it had reasonable or adequate procedures in place.<sup>79</sup> This section explores the representation of realist perspectives in *Aliens*, by arguing that the aliens and Weyland Yutani are united by, and express through practices and actions, norms about the expendability of human life to achieve their specific aims.

A key argument against realist approaches in criminal law is that it is farcical to suggest that a corporation can have any intention which is separate from the human beings that make up the corporation. This argument is consistent with a key (assumed) characteristic of monsters, that is, that monsters are beyond understanding and incomprehensible to human beings. It is this very inability to explain monsters that leads to the concept of monstrous wickedness.<sup>80</sup> But even in *Aliens*, the aliens' actions are knowable and comprehensible. It feels inappropriate and awkward to apply realist corporate criminal law concepts to the aliens because they are so strange and foreign. However, throughout the film, the aliens work as a cohesive whole to achieve short- and long-term goals. Although alien communications are never portrayed in the film and we can assume that we would not be able to understand them anyway, it is clear that they are working together toward the specific goals of the survival and reproduction of the species. Unlike *Alien*, which featured only one alien, *Aliens* portrays innumerable species at various stages of life development, sizes and function. Although there are multiple aliens, it is apparent to the audience and human characters that the species are acting as an agglomeration of aliens with common intentions.

Likewise it is possible to ascertain the goals and intention of Weyland Yutani. From early on in *Aliens*, the central motive and *raison d'être* of the Company is unambiguously profit. The Board of Inquiry reduces everything to monetary value and disregards the loss of human life. Burke, the 'face' of the Company, consistently makes cost-benefit decisions based on money and profit. For example, when Ripley recommends that they 'nuke the planet' – Burke's instant response is in terms of monetary values:

BURKE: 'This physical installation has a substantial dollar value.'

RIPLEY: 'They can bill me. I got a tab running.'

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<sup>79</sup> Campbell (n 1); SF Copp and A Cronin, 'New Models of Corporate Criminality: The Development and Relative Effectiveness of "Failure to Prevent" Offences' (2018) 39 *The Company Lawyer* 104.

<sup>80</sup> Cole (n 39); Crofts (n 50).

BURKE: ‘This is a multimillion dollar operation’

Although Burke is not a directing mind of Weyland Yutani and his response is not approved directly and explicitly by executives of Weyland Yutani, it is completely consistent with values of the corporation. The *Criminal Code Act 1995* (Cth) defines corporate culture as ‘an attitude, policy, rule, course of conduct or practice existing within the body corporate generally’. The privileging of profit over people is a consistent attitude and course of conduct throughout the film.

One critique of *Aliens* is that the aliens are reduced to massive bugs subject to a biological imperative, a kind of ‘insectoid Terminator’.<sup>81</sup> The aliens seem to represent pure drive – their only aim is to survive and reproduce. This reflects another (simplistic) attribute of monsters, that of pure malevolence – they wish only to harm and there is no explanation for their actions.<sup>82</sup> But the aliens are not acting out of any general or specific malice towards the human race. Rather, the harms imposed on humans are in order to achieve their goal of parasitic reproduction. This is a form of instrumental evil, where suffering is not the goal of the act just a necessary means towards achieving something else.<sup>83</sup> For the aliens, harm to humans is inflicted to obey their imperative of reproduction. The same arguments can be made for the majority of corporations and of Weyland Yutani specifically. Weyland Yutani does not have specific malice towards human beings, to the contrary, like the aliens, it is dependent on humans (as workers and consumers). Damage to human beings (and the environment) is collateral to the purpose for which corporations are created – the maximisation of profits for its owners (the shareholders). Incorporation is the creation of a legal subject that can be recognised as having a single identity or ‘personhood’ that is distinct from the human persons that make up the corporation. Legal principles operate to enshrine the central purpose of the corporation – profit – and to protect investors and executives from losses. In the present day, incorporation almost always bestows limited liability for owners and shareholders, that is, the protection from risk. Investors can only lose the capital that they choose to invest.<sup>84</sup> The effect of this legally enshrined irresponsibility has led the legal

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<sup>81</sup> Greenberg (n 27). 166. This is a scathing reference to Cameron’s earlier film, *Terminator* (1984).

<sup>82</sup> Cole (n 39). The ‘monsters’ in schlock horror are most likely to portray pure malevolence, where they wish only to harm and there is little to no explanation for why. Examples include the *Halloween*, *Friday 13<sup>th</sup>* and *Nightmare on Elm Street* franchises. However, for classic monsters like vampires, we know that they need to drink blood to survive, which is an example of instrumental evil rather than unexplained malevolence.

<sup>83</sup> *ibid.* 16-17.

<sup>84</sup> David Ciepley, ‘Can Corporations Be Held to the Public Interest, or Even to the Law?’ (2019) 154 *Journal of Business Ethics* 1003.

theorist Bakan to argue that corporations are externalizing machines.<sup>85</sup> Accounting practices privilege certain costs and benefits and exclude others, which means that harms (like those to people and the environment) are externalised by the corporation and there is accordingly no requirement to protect against them. Ironically, in the process of being granted legal subjecthood corporations were dehumanised, as the law enshrines and requires only limited responsibility for a limited set of consequences, and this seems not to require much care for humans.

A quintessential example of the dehumanising effect of incorporation is the portrayal of the loss of the people of the colony in *Aliens*. The practices of (state) corporate colonisation by Weyland Yutani are reminiscent of the great ravaging territorial appetites of the brutal, militarised mega-corporation the East India Company, which, like Weyland Yutani, was also referred to simply as The Company.<sup>86</sup> The British state chartered companies like the East India Company to secure colonial territories for British interests which had the advantage of reducing the risk of political exposure and shifting the burden of economic risk from state to wealthy individuals.<sup>87</sup> The East India Company was a joint stock company and could issue tradeable shares on the open market to any number of investors to generate capital. Limited liability was introduced to encourage investment and protect investors against losses of the Company. The East India Company had no stake in the just governance of the region or its long-term well-being. Like contemporary corporations it was answerable primarily to its shareholders, although after the South Sea Bubble and bail outs in the late eighteenth century the state gradually increased regulation of the Company.<sup>88</sup> The East India Company was not required to protect Bengal, only its own profits, and in the process of the pursuit for the profit, devastated Bengal with war, famine and high taxation.<sup>89</sup> In echoes of the East India Company, Weyland Yutani co-finances colonies like Hadley's Hope with the colonial administration against mineral rights. As Bourke explains to Ripley (once again identifying

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<sup>85</sup> Bakan (n 29).

<sup>86</sup> Stern notes in his preface that there is now an East India Company video game and the Company was cast as the corporate archvillain in the final two blockbuster *Pirates of the Carribean* films. The Company's fictive representative states: 'It's nothing personal... It's just good business'. Philip Stern, *The Company-State: Corporate Sovereignty and the Early Modern Foundations of the British Empire in India* (Oxford Univeristy Press).

<sup>87</sup> Steve Tombs and David Whyte, *The Corporate Criminal: Why Corporations Must Be Abolished* (Taylor and Francis 2015). 58.

<sup>88</sup> William Dalrymple, *The Anarchy: The Relentless Rise of the East India Company* (Bloomsbury Publishing Plc 2019).

<sup>89</sup> *ibid.*

himself with the Company): “We’re getting into a lot of terraforming... ‘Building Better Worlds’”. The Company sent 60-70 plant engineers with their families to set up atmosphere processors to make the air breathable. When it becomes apparent that there are no survivors at the colony Gorman comments:

‘Looks like your company can write off its share of this colony.’

BURKE: ‘It’s insured.’

This reflects legal accounting practices which include only some costs and harms (like insurance) while others are externalised. In this case, the death of the 157 colonists and the destruction of the colony is casually written off by Burke and not questioned (or mourned) by Gorman. Weyland Yutani is protected by legal structures from worst outcomes and accordingly is not encouraged and has no need to protect against them. Burke’s comments reflect the dehumanising effect of incorporation where care for human life is radically reduced. This is also represented in Weyland Yutani’s pursuit of the alien as a biological weapon. Many scholars have pointed to the link of corporations to warfare and weapons and the history of corporations aiding and abetting the most brutal and violent states.<sup>90</sup> Corporations ‘have guaranteed their own financial health at the expense of human slaughter generated by wars’.<sup>91</sup> In pursuit of profit margins the present and future cost to human life is not included on accounts. Even if Weyland Yutani can control the alien and successfully and develop a bioweapon – potential profit rests on the expendability of human life through the development of more effective weapons.

Both the original *Alien* and the sequel *Aliens* portray Weyland Yutani’s treatment of humans as expendable as a consequence of legal structures that externalise loss of human life. However, the reasons behind Weyland Yutani’s treatment of their crews are subtly different in each of the films. In *Alien*, Weyland Yutani is the quintessential (fictional) evil corporation, explicitly willing to sacrifice humans in the quest for profit. In *Alien*, the Company intentionally gives the crew no notice and inadequate weapons because they do not want the crew to defeat the alien. This is a classic form of positive evil – intentional, duplicitous, devious wrongdoing, with the explicit calculated intention to sacrifice the crew.<sup>92</sup>

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<sup>90</sup> There are many examples of corporate violence on behalf of the state, including by the East India Company. On collaborations with the Nazis see Edwin Black, *Nazi Nexus: America’s Corporate Connections to Hitler’s Holocaust* (Dialog 2009). For a recent example, see David Whyte, ‘Market Patriotism and the “War on Terror”’ (2007) 35 *Social Justice* 111.

<sup>91</sup> Tombs and Whyte, *The Corporate Criminal: Why Corporations Must Be Abolished* (n 88). 63.

<sup>92</sup> Midgley (n 74).

However, Weyland Yutani in *Aliens* is arguably worse and more realistic. Although the crew are provided with inadequate and malfunctioning equipment, there is no explicit intention or malice to sacrifice the colonists or crew. The poor equipment is just a manifestation of the profit logic of the corporation. The marines are so used to working with malfunctioning equipment that when Drake is told his camera is not working he whacks himself on the head to fix it. In *Aliens*, the malfunctioning equipment is a product of cost-cutting, rather than any nefarious motive. Both motives have the same root cause, that is, the regard and treatment of humans as expendable in the rapacious quest for profit. But in *Aliens* the reason is more realistic and insidious.

The pursuit of profit at the expense of human life is likewise reflected in the working conditions of the marines. *Aliens* depicts a rudimentary spacecraft with nominal care of workers – rations are minimal and tasteless, ‘the floor is freezing’, and one of the marines groans ‘they ain’t paying us enough for this’. The lack of care is also dangerous. For example, Weyland Yutani employs the inexperienced Lieutenant Gorman, who has had only two live combat drops (and 38 stimulated), to lead the expedition. Gorman ignores Ripley’s warnings and panics when the marines get into trouble. It is left to Ripley to save the marines and construct a plan to keep them safe. Although Gorman is blamed for freezing and leaving them in danger, the responsibility extends beyond him – he should not have been employed in such an integral leadership role in the first place. Gorman is not portrayed as a villain and towards the end of the film he redeems himself by blowing himself and a fatally wounded soldier up to avoid the fate of being cocooned, killing many aliens in the process. His redemption shows how even just one expedition can improve knowledge and skills. The inability to appoint a more experienced leader reflects cost-cutting and a lack of care – either on that specific expedition for those specific workers, or more generally, that there are no more experienced leaders available because they have been also been killed due to a similar lack of care on other expeditions. The flawed logic of the expendability of human life is starkly portrayed in the alien’s mode of parasitic reproduction. The alien implants larval aliens into human beings and discards the host in the process of birth. Accordingly, the alien kills the humans that it needs in the process of reproduction. This reflects the inherent contradiction of capitalism generated by the relentless demand for profit – but at the same time threatens to exhaust capacity for sustaining profits in the future by the need to

accumulate.<sup>93</sup> Both the aliens and Weyland Yutani treat humans as commodities but are dependent upon them. Both treat humans as collateral to aims – the ends justify the means – an instrumental approach that is completely rational but horrific.

#### 4. Corporate responsibility in the context of capitalist realism

Despite *Aliens* being set in a dystopic future with intergalactic settlements and xenomorphic aliens, the film represents the bleak failure to imagine alternatives to capitalism. This is consistent with the idea of capitalist realism, which the theorist Mark Fisher describes as ‘the widespread sense that not only is capitalism the only viable political and economic system, but also that it is now impossible even to imagine a coherent alternative to it.’<sup>94</sup> Fisher attributes the quote, ‘it is easier to imagine an end to the world than an end to capitalism’ to both Fredric Jameson and Slavoj Žižek. Despite terrible working conditions and complete dependence on corporations, capitalist realism posits that it is the only system that can operate in a means compatible with human nature and economic law. Fisher argues that capitalist realism is ‘a pervasive atmosphere, conditioning not only the production of culture but also the regulation of work and education, and acting as a kind of invisible barrier constraining thought and action’.<sup>95</sup> One of the most horrific scenes in *Aliens* is when the characters become aware that the alien is part of the spaceship. The aliens have formed a biomechanical lattice that is so dominant that it is barely noticeable, until it starts moving. Likewise, *Aliens* depicts incorporation, where everything is owned by the Company – Hadley’s Hope is a company town and the crew are on board a company ship - what they wear and eat, where they sleep and work, what their jobs are, and even what they breathe.<sup>96</sup> Burke makes it clear to Ripley (without any challenge by her) that he has access to Ripley’s reports by the Weyland Yutani mandated psychologist. Private Hudson’s question ‘how do I get out of this chicken shit outfit?’ epitomises the lack of escape. This depiction of the pervasive ubiquity of the Company is not criticised in anyway by the film, but is just a fact of living under capitalism.

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<sup>93</sup> Tombs and Whyte, *The Corporate Criminal: Why Corporations Must Be Abolished* (n 88). 138.

<sup>94</sup> Mark Fisher, *Capitalist Realism: Is There No Alternative?* (Zero Books 2010) <<https://ebookcentral.proquest.com/lib/uts/detail.action?docID=954706>>. 2.

<sup>95</sup> *ibid.* 2.

<sup>96</sup> The implications of living in a company town are horrifically represented in *Dark Waters*. In the film, many of the townspeople are reluctant to hold DuPont responsible for toxic chemicals causing disease and fatalities because they are completely dependent on the firm for their livelihoods and the economic well-being of the town.

Fisher's idea of capitalist realism as an all-encompassing pervasiveness intersects with the monstrous. The fear and fascination for monsters that we feel is because they are contaminated and contaminate. Carroll has argued that monsters are something that we do not want to have contact with, 'they make our skin creep'.<sup>97</sup> They do not fit within cherished categories and contact with the monster can render us monstrous also.<sup>98</sup> *Aliens* depicts alienation, or distance from each other as humans, as a consequence of incorporation. The colonists have become alienated from each other by the aliens, they are trapped in cocoons and cannot see or contact each other and are contaminated and impregnated by the aliens. Although companies are made up of people (who can and should be held responsible for their actions), they have become dehumanised by incorporation. Marx described the process of alienation as when 'all values are measured in money'<sup>99</sup> and not by considering the development of humanity itself as the goal of society, then the activity of commerce stands opposed and indifferent to and, therefore, alienated from individuals.<sup>100</sup> Workers only want to live in order to have and consume, and not because they are concerned with a life that fulfils their humanity.<sup>101</sup> But alienation can also be seen in the weak bonds between the characters. Leaving aside the macho camaraderie between the Marines, Gorman does not even bother learn the names of the Marines he is leading. This alienation from each other means they are less likely to care for each other. They relate through contracted bonds rather than friendship. Community is distorted by corporate interests.<sup>102</sup> Alienation is aided by great mobility undermining meaningful attachments, in accordance with the interests of the corporation, the primary interest is money. For example, at the beginning of *Aliens*, instead of being excited at finding a living human being, the salvage team express disappointment upon finding Ripley: 'Well, there goes our salvage guys'. We are less likely to care for people we do not know and people we cannot see.<sup>103</sup> Many of the characters (excluding Ripley), have become alienated, they are contaminated by incorporation and their lust for gain or simply payment has displaced care for each other. As Ripley comments, 'I don't know which species is worse. You don't see them fucking each other over for a goddam percentage'.

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<sup>97</sup> Noel Carroll, *The Philosophy of Horror or Paradoxes of the Heart* (Routledge 1990). 32.

<sup>98</sup> For example, if we are bitten by a zombie we are contaminated and become a zombie.

<sup>99</sup> Jon Elster (ed), *Karl Marx: A Reader* (Cambridge University Press 1986). 51.

<sup>100</sup> Alejandro Barcenas, 'Corporate Greed and Alien/Ation: Marx vs. Weyland-Yutani' in Kevin Decker and Jeffrey Ewing (eds), *Alien and Philosophy: I infest, therefore I am* (John Wiley and Sons 2017).

<sup>101</sup> Robert Tucker (ed), *The Marx-Engels Reader* (WW Norton and Company Inc 1978). 96.

<sup>102</sup> Kupfer (n 24). 10.

<sup>103</sup> Stanley Milgram, *Obedience to Authority* (Harper and Row 1974).

Like the legal structures of corporations, the characters are also infected with a lack of care for the consequences of their actions. Employees perform specific roles without having a complete understanding of the whole that their role contributes to. This is a form of legal irresponsibility, enshrined not only in corporate law but as a condition of employment. The law structures not only what we are responsible for, but what we are not responsible for.<sup>104</sup> Part of the tragedy of *Aliens* is that there are moments throughout the film when the crew could have avoided death, ‘but ultimately they follow the orders of the company either because doing so would lead to a sizable bonus in their salary, or because doing the opposite would make the company dock their pay.’<sup>105</sup> Many people are just doing their jobs, and in most cases the film does not even raise the question of responsibility for these characters. For example, it transpires that Burke has instructed the colonists to investigate Ripley’s story of the alien. The Operating Manger sends a survey team to the plateau, who then ask him if any claim they find will be honoured, the Manager responds:

Some honch in a cushy office on earth says go look at a grid reference in the middle of nowhere, we look. They don’t say why, and I don’t ask. I don’t ask because it takes two weeks to get an answer out here and the answer’s always ‘don’t ask’... Tell him as far as I’m concerned, he finds something it’s his.

The instruction to send the surveyors is unquestioned by the manager, partly as a product of distance – he is unlikely to receive a response for weeks – but also because it is his duty to obey the Company. His job is not to question, but simply to obey. There are no corporate procedures or structures to enable or encourage questions. When confronted by Ripley, Burke admits that sending colonists to investigate without warning was a ‘bad call’. It is not made clear if this is a rationalisation and minimisation by Burke or simply reflects his lack of care, a lack of care that is augmented by a corporate culture that is unlikely to hold Burke accountable. Part of this lack of care is a product of the distance of Burke from the colonists – he has never met them, they are on another planet, and the order is mediated through another party.<sup>106</sup>

It is not only the villainous Burke but also the heroic Ripley who follows orders. In *Alien*, she followed orders to investigate a distress call, and this resulted in the death of her entire crew.

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<sup>104</sup> Veitch (n 60).

<sup>105</sup> de Brito Serra (n 26). 43.

<sup>106</sup> Later Burke also cravenly locks out fellow crew members in his quest to escape the alien – accordingly his willingness to risk others’ lives is not a product solely of distance but due to his complete identification with the Company and its values.



In *Alien*, Weyland Yutani's villainy was clear – Ash was ordered to return the alien for analysis 'all other considerations secondary. Crew expendable'. Yet despite Ripley's negative experiences with the Company in *Alien*, in *Aliens* it is apparent that Ripley continues to believe in the Company's capacity and interest in imposing responsibility upon Burke for the deaths of the colonists and his plot to impregnate Ripley and Newt. She threatens Burke:

But they will know about it, Burke, from me. Just like they'll know how you were responsible for the deaths of one hundred and fifty-seven colonists here...

Once the Marines become aware that Burke was plotting to kill them to eradicate any witnesses, they want to kill him, but Ripley refuses, insisting that he should be brought back to receive justice from Weyland Yutani. Ripley's trust in the Company may be naïve, foolish or a form of amnesia.<sup>107</sup> This is similar to community perspectives about corporations – which belies the history of corporate harms, denial of those harms, and the absence of any attributions of responsibility.<sup>108</sup> Recent Royal Commissions in Australia have aroused horror in response to harms and crimes unveiled, but have also shown a long history of similar inquiries in the past which have likewise aroused horror and then been forgotten.<sup>109</sup>

The harms casually and legally inflicted by Weyland Yutani in its ravenous pursuit for profit are monstrous, it incorporates and contaminates all the characters. The film depicts the outcome of Marx's concept of alienation. Like the colonists, the characters have been incorporated and dehumanised and infected with the flawed logic of the expendability of human life. Yet despite this, Weyland Yutani is not portrayed as a monster. Weyland Yutani is a major plot instigator, a major character, but is barely seen by the audience and the crew even though its structures and aims influence the plot. The horror genre aims (but does not always succeed) to arouse horror. The horror theorist Carroll defined horror as an arousal of fear and disgust.<sup>110</sup> *Aliens* represents the threat of incorporation of humans by both the aliens and the Company. Disgust has been described as an emotional intolerance of practices that

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<sup>107</sup> Unlike all the other characters, Ripley's experiences in *Alien* would have been very recent, as she has been in hypersleep for the 57 years that have passed. Accordingly, the perfidy of Weyland Yutani should be top of mind for Ripley.

<sup>108</sup> Cullen, Link and Polanzi (n 19); Croall (n 12).

<sup>109</sup> See for example, Shurlee Swain, 'History of Australian Inquiries Reviewing Institutions Providing Care for Children' (Commonwealth of Australia tr, Royal Commission into Institutional Responses to Child Sexual Abuse 2014).

<sup>110</sup> Carroll (n 21).

are antithetical to the individual and community.<sup>111</sup> Miller argues that disgust is an emotion that initially expresses the protection of the body but develops to express moral opprobrium, protecting the soul. Disgust is a moral and social sentiment that conveys a strong sense of aversion to something that is perceived as dangerous because of its powers to infect or pollute by proximity, contact or ingestion.<sup>112</sup> A particularly horrific and disgusting scene is when the characters realise that the colonists incorporated and cocooned on the walls are alive. Yet there is no similar arousal of fear or disgust in response to the incorporation of humans by Weyland Yutani. This may in part reflect disgust studies which shows that disgust can be muted by becoming habituated to something that we have previously found disgusting.<sup>113</sup> *Aliens* is an abject portrayal of our infection by capitalist realism and what will happen if we fail to respond to and stop incorporation by the aliens and Weyland Yutani.

*Aliens* bleakly portrays the extremes of capitalism. Although Weyland Yutani does not set out with intentional evil there is a depressing, insidious absence of goodness and care. The film was made at a time of increasing globalisation and monopolisation which has continued exponentially since resulting in the internationalisation of the concentration of capital.<sup>114</sup> The fear of mega-corporations is not new. For example, the East India Company was described by Edmund Burke as a ‘viper’ with the potential to drag the government ‘down into an unfathomable abyss’.<sup>115</sup> In the 1930s, when comparing corporations to Frankenstein, Justice Brandeis expressed concern about ‘the evils attendant upon the free and unrestricted use of the corporate mechanism as if these evils were the inescapable price of civilized life, and hence, to be borne with resignation.’<sup>116</sup> Judge Brandeis argued against the domination of corporations in terms of fear and evil – reminiscent of the language of horror:

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<sup>111</sup> Lord Patrick Devlin, *The Enforcement of Morality* (Oxford University Press 1965); Paul Johnson, ‘Law, Morality and Disgust: The Regulation of “Extreme Pornography” in England and Wales’ (2011) 19 *Social and Legal Studies* 147.

<sup>112</sup> William Miller, *The Anatomy of Disgust* (1997). 2.

<sup>113</sup> Paul Rozin, Jonathan Haidt and Clark McCauley, ‘Disgust’ in Michael Lewis and Jeannette Haviland (eds), *Handbook of Emotions* (Guilford 1993); Paul Rozin, Linda Millman and Carol Nemeroff, ‘Operation of the Laws of Sympathetic Magic in Disgust and Other Domains’ (1986) 50 *Journal of Personality and Social Psychology* 703.

<sup>114</sup> Steve Tombs and David Whyte, ‘The State and Corporate Crime’ in R Coleman and others (eds), *State, Crime, Power* (Sage 2009); John Bellamy Foster, Robert Chesney and Jamil Jonna, ‘The Internationalisation of Monopoly Capital’ 63 *Monthly Review* <<https://monthlyreview.org/2011/06/01/the-internationalization-of-monopoly-capital/>> accessed 3 March 2020. The original *Alien* was released in 1979, the year that Mark Fisher asserts has been identified as the origin of capitalist realism.

<sup>115</sup> Dalrymple (n 89).

<sup>116</sup> *Louis K Liggett Co et al v Lee, Comptroller et al* 288 US 517 (1933), 548.

Fear of encroachment upon the liberties and opportunities of the individual. Fear of the subjection of labour to capital. Fear of monopoly. Fear that the absorption of capital by corporations, and their perpetual life, might bring evils similar to those which attended mortmain.<sup>117</sup>

As Judge Brandeis feared, Weyland Yutani reflects the insatiable drive of capitalism for more capital based on assumptions about economies of scale, specifically monopolistic advantages resulting from reduced barriers to entry and the capacity to acquire monopoly rents. Once it becomes big enough to impact the economy generally, it exercises power in the political sphere and is able to draw more fully on state subsidies and support.<sup>118</sup> The state/corporate colonisation of Hadley's Hope reflects the imbrication of corporation and state such that it has become increasingly difficult to separate government from corporate interests. Worse, the state appears to be only a bit player in Weyland Yutani's ambitions. Weyland Yutani, like many monopolistic corporations is a behemoth - capable of inflicting great harm not necessarily through malice but simply by avidly pursuing the logic of capitalism. Like many multinational corporations it appears too big to fail and/or punish.<sup>119</sup>

The theory of capitalist realism asserts that even if we are aware of the extremes of capitalism we greet them with a hopeless apathy. Tombs and Whyte have argued that one reason for this response is because of the synoptic effect of corporate power.<sup>120</sup> The synoptic is the reversal of Bentham's panopticon. The appearance of the corporation in every part of our lives is a key element of the synoptic or viewer society. Corporate public relations impose a constraint and diet of positive images of various corporations and brands and are a central part of the corporation's ability to assert its socially necessary and beneficial role.<sup>121</sup> We are disciplined to a particular way of thinking about power when we watch the powerful. We think of the corporation as natural and personal and tied up with desires.<sup>122</sup> Horror can be an antidote to the synoptic effect by providing a grim depiction of the costs and harms of corporate

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<sup>117</sup> Ibid.

<sup>118</sup> Bellamy Foster, Chesney and Jonna (n 115). The support by the state for corporations has been particularly apparent during COVID19 with corporations requesting bail outs and support by governments to ensure their survival based on arguments that the economy is dependent upon business.

<sup>119</sup> Elena Cubillas, Ana Fernandez and Francisco Gonzalez, 'How Credible Is a Too-Big-to-Fail Policy? International Evidence from Market Discipline' (2017) 29 *Journal of Financial Intermediation* 46.

<sup>120</sup> Steve Tombs and David Whyte, *The Corporate Criminal: Why Corporations Must Be Abolished* (Routledge 2014).

<sup>121</sup> Advertisements for corporations during the pandemic have particularly emphasised the social services provided by the company.

<sup>122</sup> During the pandemic consumption of products from particular corporations has been expressed as a form of 'support' for the company.

invasion. Whilst much of horror fiction depicts a regression away from law and civilization and explores what is left, part of the horror of the *Aliens* series of films is the dominance of the conglomerate Weyland-Yutani. The series can be watched as an attempt to arouse horror at the effects of incorporation.

Although horror films can be part of an antidote to capitalist realism, this radicalism is limited because the films themselves are imbricated within corporate structures. Film franchises and sequeldom have dominated Hollywood film making since the 1990s.<sup>123</sup> Although the Alien franchise proffers a critique of corporate greed and capitalism and the dehumanising effects of incorporation, the series garners huge profit at the same time and offers ‘sullied jeremiads, collective artistic derivatives of capitalism, deeply embroiled in the very practices they presume to attack’.<sup>124</sup> Although the alien is resolved at the end of each film, it needs to survive (in some form or other) for the sequel. The film’s critique of Weyland Yutani is also depressingly but realistically restricted. Although Weyland Yutani has inflicted great harms and fatalities through its pursuit of profit and lack of care, it remains unpunished, and there is no suggestion that it will be held accountable.

*Aliens* demonstrates that the aliens and Weyland Yutani are unlikely to alter their intentions or patterns of behaviour due to ethical criticism or awareness of harm to others. The parasitic alien and working conditions are a moot point for the Company and the aliens. There is no care exercised for the human hosts on the wall of horror where colonists have been entombed alive in frozen agony, causing those still alive to beg ‘please... God... kill me’, only to die when their rib-cages burst outward as if exploded from within with the birth of an alien. Likewise, Weyland Yutani epitomises the logic enforced by law, the devaluation of humans, whether as colonists, crew, or even executives. Harms are collateral damage that do not enter a cost benefit analysis. Corporations (like aliens) can act intentionally and will not alter their pursuit of profit in response to criticism or having their heartlessness pointed out to them.

One response to the grim apathy of capitalist realism is to respond to corporations in the same way we would monsters. Monsters require and justify extreme responses. It is not enough to kill monsters, they need to be resolved. Vampires need a stake through the heart, a zombie’s

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<sup>123</sup> Mulhall (n 24).

<sup>124</sup> Greenberg (n 27). 166.

brain must be destroyed. The aliens have armour on their exterior and acid for blood – so killing them is very difficult and may result in the death of the killer. Ripley proposes that they nuke the planet to destroy the aliens once and for all, a kind of belligerent xenophobia. Likewise Tombs and Whyte have argued that corporations are fundamentally criminogenic and irredeemable and the only response is to abolish them.<sup>125</sup>

However, *Aliens* shows that monsters can and do respond to events which are potentially detrimental to their interests. For example, the aliens retreat in the face of blocked doors and shooting by marines – and come back an alternative way ‘they learned. They cut the power and avoided the guns. They must have found another way in, something we missed.’ Similarly, the Queen and Ripley ostensibly achieve a *détente* when Ripley threatens the Queen’s eggs – the life of Newt in exchange for the alien’s offspring. This suggests that identifying what matters most to the monster and threatening it can assist with controlling it (at least temporarily). Thus with corporations, we cannot rely on corporations to self-regulate but we can threaten the thing that matters most – profit. We need to change accounting and legal measures so that corporations are no longer legally entitled to externalise the loss of lives, bad working conditions, and environmental impact. This can be accomplished because corporations, like monsters, are creatures of legal fiction constructed and conceptualised by humans, accordingly, humans can change the fiction. There have been attempts to rewrite the corporation in ways which inscribe responsibility, through the creation of public benefit corporations or reinterpreting the purposes of corporations.<sup>126</sup> For example, in 2019, the American Business Roundtable announced a redefinition of the purpose of the corporation to promote ‘an economy that serves all Americans’. CEOs announced a commitment to lead their companies for the benefit of all stakeholders including customers, employees, suppliers, communities and shareholders.<sup>127</sup> This viewpoint was reiterated by the World Economic Forum’s DAVOS Manifesto that asserts that the purpose of a company is to engage all its stakeholders in share and sustained value creation.<sup>128</sup>

## 5. Conclusion

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<sup>125</sup> Tombs and Whyte, *The Corporate Criminal: Why Corporations Must Be Abolished* (n 121).

<sup>126</sup> Public benefit corporations allow for public benefit to be a charter purpose in addition to the traditional corporate goal of maximising profit for shareholders.

<sup>127</sup> <https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans>. August 2019.

<sup>128</sup> <https://www.weforum.org/agenda/2019/12/davos-manifesto-2020-the-universal-purpose-of-a-company-in-the-fourth-industrial-revolution/> December 2019.

*Aliens* offers a pyrrhic victory at its end. Even as we celebrate the resolution of the alien (which we hope and know is incomplete), the idea of ascribing responsibility to Weyland Yutani is not even suggested. Films like *Aliens* do to a certain extent, challenge the synoptic effect of corporate power by portraying a grim realistic depiction of the dehumanising effects of incorporation. Whilst the aliens are the most obvious villains, Weyland-Yutani Corporation facilitates, enables, exploits and exacerbates harms caused by the aliens. Weyland-Yutani is an insidious, ubiquitous organisation that asserts ownership over the colonial marine unit, their equipment, their spaceship and the colony Hadley's Hope that the marines are sent to investigate. This assertion of property rights privileges profit over people – with the corporate representative Burke demonstrating a willingness to sacrifice human life for the potential profit of developing a new biological weapon. The film portrays the dehumanising effect of the corporate form, an entity with legal personality but with almost no interest in humanity except as a means of labour and profit. *Aliens* depicts the routinization of harms, whereby the harms of Weyland Yutani are rendered banal and normal and not even categorised as crime but just part of doing business. Despite holding up untrammelled rapacious inhuman exploitativeness for critique – no solution is proffered or even suggested. Part of the horror of *Aliens* is our lack of fear and disgust of Weyland Yutani. The film is in accordance with the insights of capitalist realism, the grim depiction of the absence of any legal response. *Aliens* manifests the urgent need to modify the atomistic individualist liberalism favoured in legal discourse to negotiate the new world order of domination by corporations. If law continues to regard corporations as monstrous, incomprehensible and capable of great systemic harms, then law can and should import the insights of horror and use extreme measures to resolve the corporation. Alternatively, we can recognise corporations as a fiction of our own creation and change the story and genre of corporations away from horror, and rewrite the corporation.