

From the Red Core to the Black Sky: Corporate Crime in the Transnational Matrix

By

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Popular culture has presented a series of what Harlan Ellison (1967) might call dangerous visions, wherein man's creations become his master. This trope is as old as speculative fiction, but *The Matrix* adds a new twist in that machines are able to project an alternate reality that hides the role reversal between the creators and the created. The marketocracy, government by transnational corporations, has projected just such an alternate reality, rendering the power of nation-states and the people they represent illusory. The problem becomes whether individuals and nation-states need to "take the red pill," and what that would mean for criminal justice policy.

Keywords: corporate crime; globalization; speculative fiction

INTRODUCTION

Inside *The Matrix*, Morpheus, named for the god of sleep, offers Neo the blue pill or the red one, reality as Neo has understood it or reality as Neo might come to understand it. Choosing the red pill, a reborn Neo complains that his eyes hurt. Morpheus explains: "Because you've never used them."

The *Matrix*, in a trilogy of films by Andy and Larry Wachowski released between 1999 and 2003 (Silver, Wachowski, & Wachowski, 1999, 2003a, 2003b), is a program created by the artificial intelligence humankind created. If Morpheus and his red pill are to be believed, we all sleep in matrices of decanters and dream our daily analog lives, while our digital masters harvest our life energy. Our lives are illusion. Our reality is nothing more than passively, unconsciously producing energy for a system that we cannot see, let alone manipulate. Such is the life of "coppertops" in *The Matrix*.

The red pill is the mechanism to escape *The Matrix*. To "escape" is to apprehend what is illusion and what is not. The red pill might be a concentrated fruit from the tree of knowledge of good and evil,¹ since the first step toward value judgments is to see things the way they really are. What follows the consumption of the forbidden fruit in the Bible is all of Judeo-Christian-Islamic history. What follows from Neo's consumption of the red pill in *The Matrix* may be a visual interpretation of Foucault (1979/1975), by way of Baudrillard (1994), or just the latest update of a tale from the 19th Century.

THE FRANKENSTEIN TROPE

Nothing comes from nothing, and nothing is all that comes from nothing, so Mary Wollstonecraft Shelley (1998/1818) stands on the shoulders of other storytellers. She just stands a bit taller.

Classic Tales

*Formerly dwelt on earth all the various tribes of the human
Race, on their own and remote from evils and difficult labor
And from distressing diseases that bring doom closer to each one.
[For in misfortune do humans age rapidly, quicker than ever.]
Using her fingers, the maid pried open the lid of the great jar,
Sprinkling its contents; her purpose, to bring sad hardships to mankind.
Nothing but Hope stayed there in her stout, irrefragible dwelling.
Under the lip of the jar, inside, and she never would venture
Outdoors, having the lid of the vessel itself to prevent her.*

Hesiod (2004, pp. 5-6)

Humankind's foolishness is an endless source of stories. Icarus thinking that waxen wings could take him to the sun. A man seeking a sexual dalliance with White Buffalo Calf Woman while she was on spiritual business (Neihardt, 1979). Joseph Campbell (1988) points out the similarities of storytelling across cultures, suggesting that people are responding to the same forces, one being foolishness.

The forces of foolishness typically took the form of greed for food, sex, power, knowledge meant only for gods, or a combination of these. In modern times, I will argue, storytelling has once more put itself out in front of the concerns of humankind, consciously or not. Losing control of one's own creation is a particularly egregious foolishness, and storytelling's response begins with a tale hatched by Mary Wollstonecraft Shelley in a literal attempt to frighten her intellectual companions.² Shelley takes as her inspiration and her subtitle the theft of fire for humankind in defiance of the will of Zeus by the demigod Prometheus.³ Shelley, however, adds a motif that lives to this day, no pun intended. It lives independent of human will, which was Shelley's point. Dr. Frankenstein's creature, unlike animals or gods, is created by man but yet exhibits independent will. Fashioned from organic materials, the creature is nonetheless machinelike, the first robot, the perfect slave—or so it seems until Dr. Frankenstein is faced with the consequences of trying to make a human.

While the Jewish golem is "an important precursor" to Shelley (Clarke, 1994, section 3), it is the Industrial Revolution's quest for mechanical slave labor—more and more versatile, closer and closer to intelligent—which has made the created that turns on the creator in a modern archetypal myth. This myth may represent the ultimate revenge of an early victim of disloyalty and the desire for Regicide, the God of the Abrahamic faiths. Myths are, says Joseph Campbell (1988):

“...the world’s dreams. They are archetypal dreams and deal with human problems. I know when I come to one of these thresholds now. The myth tells me about it, how to respond to certain crises of disappointment or delight or failure or success. The myths tell me where I am.” (p. 15)

Frankenstein to The Matrix

Years ago I was working in Schenectady for General Electric, completely surrounded by machines and ideas for machines, so I wrote a novel about people and machines, and machines frequently got the best of it, as machines will.

Kurt Vonnegut (1989, p. 1)

Vonnegut (1952) represents one example of how the Frankenstein trope carries on to this day, having spun from Shelley’s organic machine to mechanical robots (Asimov, 1950) to the adventures of androids (Dick, 1968) and cybernauts (Gibson, 1984), that blur the distinctions between organisms and machines. The dystopian literature the Frankenstein trope typifies is ubiquitous on bookshelves and international in origin (Booker, 1994; Gottlieb, 2001), and it has imagined social problems in step with humankind’s ability to create them, usually several steps ahead. Literary dystopias have morphed toward technology from the political theory with minimal techno-veneer in *Brave New World* (Huxley, 1932) and *1984* (Orwell, 1949), but even the early tales invite political speculation. Is Ray Bradbury’s (1953) *Fahrenheit 451*, wherein firemen burn books, a cautionary tale about governmental excess, or is its point that citizens bombarded by electronic media will voluntarily turn away from print media, willing victims of their own shrunken attention spans?

The Frankenstein trope is seldom so controversial. Fault, if there is fault, is in humankind’s laziness as much as in its arrogation of godlike power. In *Colossus* (D.F. Jones, 1966), the computers controlling military power determine to use that power as humans have always used it: to rule. Rulers, of course, always claim to rule in the best interests of the ruled. Add time travel to the plot of *Colossus*, and the result is the trilogy of films that begins with *The Terminator* (Hurd & Cameron, 1984; Kassir, Hurd, & Cameron, 1991; Kassir & Mostow, 2003).

The science fiction genre was born in an explosion of hard science,⁴ and some of the early writing simply transplanted conventional stories into the writer’s vision of a technological future (e.g., Bradbury, 1950; Heinlein, 1959; Lieber, 1950; Van Vogt, 1950; Wells, 1922). As the genre matured, social science came front and center. Isaac Asimov (1951) imagined psychohistory and feminists imagined differently arranged gender roles (LeGuin, 1969; Russ, 1975). In short, some of our most creative cultural imaginations realized that mathematics and physics might change economic and political institutions. Humankind learns new tricks as the toolbox gets bigger, and some writers dropped “science fiction” in favor of “speculative fiction” (SF), reflecting the changing nature of the fundamental question: “What if...?” While the link to current technology became more tenuous, these were, in truth, dangerous visions (Ellison, 1967).

The Matrix may be the most dangerous vision of all because we live in it with our eyes wide shut. The most perfect social control of individuals is done without violence and indeed without a visible mechanism of control (Foucault, 1979/1975). The Matrix is the perfect iteration of Jeremy Bentham's (1787) panopticon prison design imagined as metaphor by Foucault (1979/1975), where people are always seen but can never see (Russell, 1992). It is knowledge as power as knowledge (Foucault, 1980/1977). The question I raise here is whether the lives of coppers in The Matrix differ significantly from the lives of consumers in the marketocracy and, if not, what it would mean to "take the red pill."

THE MARKETOCRACY

What if the first planetary government turned out to be a marketocracy—all of humanity coppers in a matrix of markets? Marketocracy is rule by market forces, government by faith that the market is a politically neutral force of nature. It is of-a-piece with the law and economics movement, which in its most sophisticated form takes such a broad non-monetary view of costs and benefits that it transcends its origins in mundane balance sheets. Of course, the farther it breaks from monetary notions of value, from the easy metric of currency as scorekeeper, the more it falls like Icarus by proximity to heated debates that are, in essence, qualitative. These are the debates that form the business of democracy as it has been understood in the modern world.

The political mechanisms of nation-states are the traditional fora for policy debate. In a marketocracy, policy debates are exercises in futility fueled by wishful thinking. It is useless to sanction pollution. If the market wants clean air and water, the market will pay for it. Otherwise, sanctions will put the sanctioning state at a competitive disadvantage and the air and water will remain as dirty as the market will allow. A fair wage is what an employer must pay without regard for how much it costs an employee to live. Safety should be designed into consumer products when consumers are willing to pay for it rather than by governmental fiat. The public face of politics cannot gaze too far from market rules.

Nation-states engage in public free market posturing combined with private grasping for regulatory advantage. They do so as clients of transnational corporations (cf. Benvenisti, 1999), which gain their power in a democratic manner. Corporations capture information technology, which captures public opinion and renders the oligarchic style of robber baron capitalism (i.e., the direct payoff) obsolete. The struggle of nation-states for hegemony over the preventable harms of their corporate creations is ongoing and the outcome is very much in doubt (Braithwaite & Drahos, 2000; Gilbert & Russell, 2002; Hartmann, 2002; Korten, 2001; Russell & Gilbert 2002; Sassen, 1996).

When confronted with corporate control of national governments, human beings tend to think in terms of horizontal integration, or market share. In fact, transnationals are interested in vertical integration (raw material to distribution of finished products) as a means to horizontal integration, and to the extent they succeed they destroy the competing interests that exist on sufficient scale for market forces to function as a check on transnational corporate power.

In Cancun, agricultural-producing states confronted their customers and put a temporary hitch in the giddyup of globalization by demanding an end to agriculture subsidies in developed

countries (A.T. Kearney, Inc. & Carnegie Endowment for International Peace, 2004). Rich nations want to maintain agricultural sectors in their economies. To do otherwise would mean dependence upon less wealthy nations for food, the ultimate necessity. This stand-off will last until the same corporations own production as own distribution, and not a minute longer. United Fruit Company, the transnational that gave us the term “banana republic” (Acker, 1988; Euraque, 1996), is interested in high prices where bananas are consumed, not where they are grown. More recently, its successors moved the United States to a trade war with Europe over market share (Jatras, 2001; Stovall & Hathaway, 2003) to dispose of the same bananas acquired in the first place by national power in the service of corporate power (Langley, 2002; Musicant, 1990; Striffler & Moberg, 2003)! The corporate tail wags the national dog, reversing the original role of nations and their corporate creations.

Nation-States and Corporations

Kings created corporate charters as written grants of monopoly. A bad ruler granted charters to enrich his vassals and himself. A good ruler granted charters to encourage innovation and entrepreneurship. The corporate charter as a grant of monopoly from the sovereign came to the United States with English common law. Even when monopoly was not expressed, the courts would imply it until 1837, when the Supreme Court finally held that a right to monopoly is not implied by the granting of a corporate charter (*Charles River Bridge v. Warren Bridge*, 1837). Even without implied monopoly, the corporate charter remained an efficient mode of business organization if no longer quite a license to coin money. The charter was issued by the sovereign, and the recipient acquired rights that could only come from a sovereign entity holding the police power and the power of taxation, sometimes including monopoly and sometimes even overt public subsidies.

To the extent that the development of corporations can be placed within theories of political economy, the beginnings are the mercantilism of Alexander Hamilton, using sovereign power to encourage economic growth, rather than the laissez-faire capitalism endorsed by Adam Smith (1776). Some would even find a hint of socialism in the fact the sovereign could always reclaim any “rights” granted in corporate charters under the power of eminent domain (Commons, 1957). However, a taking under this theory would require payment for the economic value of the taking (*West River Bridge Company v. Dix*, 1848).

To prevent a change in a corporate charter from becoming a Fifth Amendment taking requiring compensation, it was only necessary for the states to reserve the right to amend corporate charters at the time they were granted, a precaution that became common during the Jacksonian period (Hovenkamp, 1988). It was also during this time that general business corporation acts arose, granting blanket authority to incorporate through a regular bureaucracy in the executive branch rather than seeking a special legislative charter.

At this point, the law of general for-profit corporations parted company with the law of common carriers and utilities. The latter might still be the subject of legislative charters or franchises granting monopolies and even be granted the power of eminent domain, but these monopolies came with pervasive state regulation. The theory is that a public interest in access to utilities or common carriers justifies both protection from competition and pervasive regulation.

This limited view of state intervention in the market might be contrasted with the mercantilist position that all economic development is imbued with public interest. The latter view justifies tax abatements to attract industry⁵ and, in a more extreme iteration, use of the state's eminent domain power to take private property for the benefit of a corporation. This use of eminent domain power has always been recognized for redevelopment corporations (i.e., public purpose and nonprofit; *Berman v. Parker*, 1954; *Hawaii Housing Authority v. Midkiff*, 1984), but in the 2004-2005 term, the Supreme Court appeared to approve condemnation for transfer to corporations with only a vague economic development purpose and no binding agreement to accomplish the purpose (*Kelo v. City of New London*, 2005). In light of *Kelo*, it is hard to imagine any federal constitutional limits on the eminent domain power for corporations short of flagrant corruption—a direct payoff to public officials in their private capacities. When this expansive view of corporate purpose as invariably benign is politically dominant, criminal liability or even civil liability for corporate misconduct becomes problematic. That is, any such liability must be created by elected legislatures and ultimately ratified by juries that presumably reflect a fair cross section of public opinion. In this climate, corporate interests and public interests are easily conflated.

The distinction between public interest corporations (common carriers and utilities) and for-profit corporations meant that regulation of the latter became a matter for statutes rather than corporate charters. General business corporations proliferated to the point that the corporation was just another organizing scheme for a business and the charter was a privilege available to anyone who could draft the documents and pay a nominal fee. This proliferation of general business corporations made corporate charters a potential source of legitimate state revenue (i.e., franchise taxes), whereas they had always been an illegitimate source of private revenue (i.e., graft). The corporation, as it evolved away from monopoly, became the dominant form of business organization in the United States. The world economy phoenix that rose from the ashes of World War II simply assumed corporate organization. Still, governments were the parent institutions of corporations, state governments in the United States and national governments in most of the world.

The transnational corporation can be imagined in terms of power/control issues as it grows from a family business or partnership to a closely held corporation to a publicly traded corporation. Each form creates new powers and raises new control issues. The fundamental purpose of the corporate form is to pool investment capital. Early on this was accomplished by bestowing monopoly with a corporate charter. In the closely held corporation, the capital magnet is the ability to limit liability to the sum invested. Publicly traded corporations and the rise of fungible securities are the apex of capital accumulation.

At each level of development, the risk of preventable harms is greater. Monopolies can price-gouge, a practice that can be stopped by the sovereign if the sovereign is so inclined. Closely held corporations can be used to cheat other businesses, a practice that can result in courts deciding to “pierce the corporate veil” in order to protect the public interest. Securities markets offer vast opportunities for price manipulation and insider trading, and minimizing those opportunities is a major preoccupation of the modern regulatory state.

Globalization

What if the modern regulatory state is supplanted by marketocracy?

When the sovereign (in the anthropomorphic sense) lost personal control of corporations to bureaucratic charters, the law retained control through the *ultra vires* doctrine. Corporations could pursue the purposes for which they were organized.

The generality of the general business corporation led to an elegant simplicity of purpose: to make money. To maximize shareholder value. Therefore, the argument goes, the test of a successful corporate undertaking is not whether it makes a profit, but whether it produces a greater return on investment than other available undertakings. As new transportation and information technologies shrunk the planet, they expanded the universe of available undertakings for any given mass of capital.

The General Agreement on Tariffs and Trade and the World Trade Organization, the International Monetary Fund and the World Bank—the bugaboos of the American Left—are not the causes of globalization. They are the results of globalization. If these supranational entities did not exist, the first task of people who wish to control transnational corporations would be to invent them. Not, of course, in their current form as churches for the marketocratic faithful, but rather as leverage points for the interests of humanity (Guzman, 2004).

ESCAPE FROM THE MATRIX

If Morpheus is John the Baptist and Neo is Christ, then Cypher must be Judas Iscariot. Cypher betrays the rebels over a steak dinner, a welcome respite from the gray goo the resistance fighters normally eat, a throwback to the illusions of *The Matrix*. When we consume bovine flesh, what matters are the proteins, which we do not directly observe. We respond, instead, to the matrix of sensations that tell us whether the late cow was grass- or grain-fed, and whether the meat was grilled on hickory or mesquite. Is it such a stretch from sensations that make up a matrix to sensations that are created by a matrix? Certainly, the majority of humankind can make the stretch if the matrix is not a giant computer, but instead an anthropomorphic deity.

It is fair to ask: If *The Matrix* was reality rather than fiction, how would we know (Bostrom, 2003)? Reasonable people differ over whether *The Matrix* is theoretically possible at this time (Kurzweil, 2003) or not (Barwick, 2002). The marketocracy matrix is not only possible, but is beginning to function as a de facto world government. If the market is in fact the ultimate arbiter of all value, then resistance is futile. We will be assimilated or consigned to living under a black sky, a broken economic wasteland. In this scenario there is no red pill, and no red core of value to which we may retreat (i.e., no way forward and no way back).

Nations and the Red Pill

Whether or not there is a red pill, there is gray goo: the downside of nanotechnology. As nuclear power is to a nuclear winter, nanotechnology is to the gray goo. Imagine machines that work at the molecular level (Forrest, 1989), self-replicating and programmed to, say, dismantle

cancer cells. Now imagine the same machines programmed to attack any carbon-based life form. The result would be something like ice nine, as imagined by Kurt Vonnegut (1963) in *Cat's Cradle*. As ice nine froze all the water in the world, so nanoprobes designed for the purpose could turn every living thing into gray goo.

The techno-optimist would point out that we have managed not to exterminate ourselves with nuclear energy. This is true, leaving aside that when the first chain reaction was summoned forth in a squash court at the University of Chicago (Allardice & Trapnell, 1982), not everybody believed that it could be controlled. The casualties of nuclear energy, so far, are a few hundred thousand counting both weapons use and industrial accidents. We might believe nuclear fission was the worse case scenario, because we split the atom for the purpose of making a weapon. More benign uses came later.

As Sun Microsystems' Bill Joy (2003) points out in his seminal article, "Why the Future Doesn't Need Us," nuclear research was under control of nation-states for the purpose of weapons. Nanotechnology is under control of transnational corporations for the purpose of profit. While it was and is a chancy business, nuclear energy has so far answered to the political helm. Nanotechnology answers to no helm but the market. Joy states the problem: "There is no profit in publicizing the dangers" (p. 217).

Unfortunately, there can be profit in significant preventable harms. These harms can be viewed as criminal opportunities or economic inevitabilities, and include such actions as the marketing of unsafe products in developing nations (Braithwaite, 1984; Gerber & Short, 1986), the disposal of toxic wastes (Leonard, 1993; Porterfield & Weir, 1987), the use of child labor (Hindman & Smith, 1999), the production of defective products (Brobeck & Averyt, 1983; Mokhiber, 1988), the exposure of uninformed and unprotected workers to toxic chemicals or dangerous working conditions (T. Jones, 1988; Shrivastava, 1987), and the manipulation of markets (Truell & Gurwin, 1992), as well as price gouging and other financial depredations (Clinard, 1990). All of these harms are crimes somewhere, but might not be so in an international marketocracy, where legal sanctions against these practices are anti-competitive externalities. How can price gouging be criminal? The market will bear what the market will bear and the value to be served is return on investment.

If my task is to suggest some value that might trump return on investment, the physical survival of the human race seems a logical place to start, and nanotechnology is not the only place where the existence of human life might become an issue (Bostrom, 2002). Of course survival is merely a wedge issue. The next question is survival on what terms? If we make people more important than money, what comes next? Air and water? Endangered species? Leisure time? Life would certainly be simpler if we could measure all values with a common metric. There is a very broad sense in which a terrorist who loses the gray goo nanoprobes has engaged in an economic calculus, just like any other suicide bomber has. We just do not agree with the assignments of value. The marketocracy can not tell us how to choose between incommensurable values beyond a bidding war.

Values, the Red Pill, and the Laws of Robotics

Robots and corporations are intended to be perfect slaves, in that they go where we are unable to go but remain subservient to our ultimate values. Or so we hope. For the created to be better than the creator is the goal, but reaching the goal makes control problematic. Karel Čapek's play *R.U.R.* (1923) is probably the earliest example of human hopes colliding with reality, if we do not count Cain and Abel. The question is not how to avoid the collision, but rather how to survive it.

Isaac Asimov, in collaboration with John W. Campbell (Asimov, 1991), first posited the Three Laws of Robotics in 1940, and they became the locus of human-robot interactions in stories by Asimov and many other SF writers until 45 years later, when Asimov tacked the Zeroth Law into the top of the hierarchy (Asimov, 1991, p. 456). It is perhaps telling for the metaphor proposed in this article that Asimov locates the Zeroth Law as a discovery by the robots themselves acting on the necessary import of the First Law. Hoping it is not too late, I offer here Asimov's Laws of Robotics modified as guiding principles for how transnational corporations should be allowed to organize.

Zeroth Law. A juridical person (transnational corporation) may not injure humanity, or, through inaction, allow humanity to come to harm.

First Law. A juridical person (transnational corporation) may not injure a natural person, or, through inaction, allow a natural person to come to harm, unless this would violate the Zeroth Law of transnational corporations.

Second Law. A transnational corporation must obey orders given it by nation states, except where such orders would conflict with the Zeroth or First Law.

Third Law. A transnational corporation must protect its own existence as long as such protection does not conflict with the Zeroth, First, or Second Law.

These laws are subject to criticism at both ends. Natural persons speaking for juridical persons would point out correctly that the original three laws contained enough ambiguity to fuel 45 years of storytelling (albeit by some of the most original thinkers humankind has produced). What is "harm"? What is "injury"? How might the three laws conflict? Adding "humanity" on top truly wraps several enigmas in a riddle: How many humans does it take to equal humanity?

Furthermore, the transnational corporation is simply the newest iteration of human organization, a reassertion of the world empire after a circa 400 year interregnum, and empire with a much more optimistic outlook for humanity. The old empire was based on the will of God as enforced by military power. The new empire will be based on the will of certain people as expressed in the global movement of capital, labor, and goods. If it is undemocratic in the ideal sense, it is more democratic than the Holy Roman Empire was either holy or Roman, and it will be more of an empire to boot. The cornerstone of the new empire is not production but consumption. The ultimate weapons become the democratic sword of the consumer boycott and

the means to wield it (i.e., information technology), since killing one's customers is a poor business practice.

Natural persons speaking for themselves have a different objection. The (now four) Laws are too little, too late. Asimov postulated that the original three laws would be hardwired into robots or, more broadly, information technology. Corporations have fairly benign origins, but they became juridical persons in the United States without serious debate⁶ and acquired with that status a bundle of rights that carry along very few duties. Now that transnational corporations are beholden to no nation for their existence, their personhood is not a quirk of United States municipal law, but rather an international *fait accompli*.

Federal chartering of corporations is a grand idea whose time is past, unless chartering is meant to limit the right to do business, which is not currently an attribute of state charters. Corporate persons, like natural persons, cross state lines at will and submit themselves to the jurisdiction of state courts not by any formal declaration but when they have sufficient contact with the state to meet due process standards (*International Shoe Co. v. Washington*, 1945) or not (*World-Wide Volkswagen Corp. v. Woodson*, 1980). In the age of globalization, they do the same with international boundaries.

Corporate law has become more than metaphorically an artificial intelligence. Asimov (1991) writes of the death of a robot's lawyer, after the robot became the first of his kind to be declared legally human:

Yet he was not really alone. If a man had died, the firm of Feingold and Charney lived, for a corporation does not die any more than a robot does. The firm had its directions and it followed them soullessly. (p. 277)

With all respect to the United States Supreme Court, a corporation is not a person and was never intended to be freed by the Fourteenth Amendment. A corporation is a piece of legal technology, ink on paper, a technology of the mind.

Mankind has always chosen to counter the evils of technology, not by abandonment of technology, but by additional technology. The smoke of an indoor fire was countered by the chimney. The danger of the spear was countered by the shield. The danger of the mass army was countered by the city wall.

This attitude, despite the steady drizzle of backwardist outcries, has continued to the present. (Asimov, 1991, p. 436)

What can we say, then, about the wonder of legal technology that is the transnational corporation? Is it the hegemon of the 21st Century, beyond all hope of control? Not yet.

Transnational criminal justice policy begins with control of piracy—in the United States, with the matter of the Barbary pirates (Turner, 2003). In modern times, Interpol (<http://www.interpol.int/>) coordinates apprehension of individuals across national boundaries.

The objective is to bring individual criminals to book in the municipal courts of the offended nation.

Crimes by state actors (Friedrichs, 1998) are addressed, to the extent that they are addressed at all, in the Permanent International Court of Justice (<http://www.worldcourts.com/pcij/eng/>) and by the United Nations Security Council (<http://www.un.org/Docs/sc/>), which can authorize policing by military force.

In 1998, the international community created a new forum to try individuals for the most egregious crimes against humanity (Politi & Nesi, 2001). While this International Criminal Court (<http://www.icc-cpi.int/home.html&l=en>) is an obvious mechanism to attack transnational terrorism (Russell, 2005), it proceeds at this time without the cooperation of the United States.

Conspicuously absent in the modern complex of international criminal justice institutions is any means to try corporate persons that cause harm across international borders, or to enforce judgments against corporate persons when they are entered by municipal courts. There is no control mechanism hardwired into the transnational corporation and none has been added since corporate persons escaped national boundaries. The very concept of corporate crime is highly contested, and while enterprise liability is becoming more common outside the United States, it is not yet an international norm.

Call them crimes or call them torts, preventable harms by corporations cannot always be contained within national borders (Gilbert & Russell, 2002). Other times, harms may be apparently contained within national borders, but still have transnational impact by creating a human rights crisis, as when corporations use local corruption to loot a national asset in a nation with few assets (Frynas, 2000). It is not always possible to draw clear distinctions between environmental issues and human rights issues (Kirsch, 2003), but it is clear that preventable corporate harms pose a threat to the international community that currently lacks a control mechanism.

A control mechanism is, of course, superfluous and probably counterproductive if the marketocratic faith is correctly placed. The big corporate fish will continue to eat the small corporate fish until there is no more conflict. But if we decide to reach back into our toolkit of legal technology while that reach does not exceed our grasp, we can say the control mechanism, like the controlled entity, must be transnational in scope (e.g., something like the World Trade Organization with the human values of clean air and water and fair labor standards). The content of regulation is moot unless we seize the power to regulate. We are dealing with an artificial intelligence that was not hardwired with Asimov's laws, and the first step to correcting that error is to take the red pill. The problem is not so much creating a transnational jurisprudence (Kalir, 2001), as it is discovering we need one while there is still some authority that is not a David among transnational Goliaths, and while our policy choices are still choices and not just illusions of the marketocracy matrix.

NOTES

1. Genesis 2: 9, 17.
2. Shelley's novel was written in a ghost story competition with, among others, her husband Percy Bysshe Shelley and Lord Byron. Retrieved March 1, 2004, from <http://www.stanford.edu/group/areaone/cross/quarter4/shelley/>
3. In Cherokee lore, fire was fetched by the lowly Water Spider, a story that teaches Cherokee children that all life has purpose (Mooney, 1992). Indians in the Northwest got fire from Beaver, who even had to fight the Fire Spirits to bring it back, once more demonstrating the value to humans of all life (Wherry, 1969).
4. It is probably no accident that the legendary speculative fiction editor John W. Campbell, who discovered many of the early giants in the genre, had a degree in physics.
5. Some see attracting business as a paramount concern, such that even a suggestion that the businesses attracted by tax exemptions be required to obey other laws might be heresy (Houck, 1986).
6. "The court does not wish to hear argument on the question whether the provision in the Fourteenth Amendment to the Constitution, which forbids a State to deny any person within its jurisdiction the equal protection of the laws, applies to these corporations. We are all of the opinion that it does." (*Santa Clara County v. Southern Pacific Railroad*, 1886, p. 396). Seldom in the history of American law is a decision of such import tucked away, as this one is, in a headnote by the Chief Justice. It could be argued that corporations had already been declared "persons," *a fortiori*, when they were declared "citizens" for the purpose of invoking federal diversity jurisdiction in *Louisville, Cincinnati & Charleston Railroad v. Letson* (1844), or that the Court did not make personhood explicit until *Southern Railway Co. v. Greene* (1910). Whenever it happened, one searches the cases in vain for the exacting analysis that normally accompanies a decision of such import. Some believed that the Court was wrong even in the diversity cases (McGovney, 1943), and two Justices have attacked corporate personhood, albeit in dissenting opinions (*Connecticut Gen. Life Ins. Co. v. Johnson*, 1938, Justice Black dissenting; *Wheeling Steel Corp. v. Glander*, 1949, Justice Douglas dissenting).

ENDNOTE

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