

The Legal Symbiosis. The State, Ilva and Harm Made Lawful

In Taranto the "State that lets it happen" has a more naked face than elsewhere: it does not merely fail to see, it legislates so as not to stop. A recent essay reads the Ilva case with the tools of the criminology of the crimes of the powerful — and shows how the law became the site of the symbiosis between State and business, and harm to health a thing that was, for years, perfectly legal.

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In the previous essay I described the American science of the crimes of the powerful and its crux: the "State that lets it happen", the State which — its regulator captured — stops seeing the harm done by the enterprise. One question remains: and here at home? A recent academic article, open-access to boot, takes those same tools and points them at a case we all know — the Ilva of Taranto. What emerges is a portrait in which the Italian State does something more naked than simply failing to see: it legislates, obstinately, so that production shall not stop. And thus it makes lawful, for years, an established harm to health.

An Italian case, seen through foreign eyes

The article is by Carlo Nicoli Aldini, published in 2024 in *Crime, Law and Social Change* — one of the field's journals of reference — and it has the rare merit of being freely accessible.^[1] Its thesis is clear-cut and, for us, precious: in the Ilva case “the law became, for seven years, the channel through which the Italian State and Ilva established a symbiotic relationship” which created the conditions for the harm to be produced and reproduced.

To say this, Aldini imports the categories we lack. The first is that of *state-corporate crime*, crime at the intersection of State and enterprise, and Kramer and Michalowski's distinction between corporate crime *initiated* by the State and corporate crime *facilitated* by the State — the latter being the case in which the State “operates on its own regulatory capacity to create legal conditions favourable to the offending enterprise”.^[2] The second is the critical corrective of Steve Tombs and David Whyte: one must look not at the “moments of rupture” — the single disaster, the single failure — but at the *ordinary* and continuous relationship between State and enterprise, at the “symbiosis” and the “regimes of permission” that make the harm structurally possible.^[3] The third is the

notion of *social harm*: since it is the State that decides, with its political power, what is a “crime” and what is not, it is better to study harm — the impairments to people’s well-being — rather than crime as labelled by the law.^[4] It is, word for word, the method of this blog.

The facts: the harm is established

It is worth fixing the facts, because everything rests on them. Taranto has lived with Ilva — one of the largest steelworks in Europe — since 1964; for decades the factory was the city’s largest employer, and the city became economically dependent on it.^[1] In 1995 the State privatised it, selling it to the Riva group: a deregulation which, the literature observes, weakened the role of the State and handed the enterprise a position of dominance over institutions and civil society.^[1]

On the harm to health there has long been no dispute. The national epidemiological studies (the SENTIERI series) have for more than a decade photographed a critical situation;^[5] and — this is the point a jurist cannot ignore — **two expert reports ordered by the judiciary established a causal link between Ilva’s production and mortality and morbidity in Taranto**. The chemical expert report found high concentrations of pollutants coming from the factory; the epidemiological expert report, entrusted by the judge for preliminary investigations Patrizia Todisco to Forastiere, Biggeri and Triassi, established the grave impact on the health of the population.^[6] On the basis of those expert reports, on 25 July 2012 the judge ordered the seizure of the plant’s “hot areas”.^[7]

It was then that the conflict exploded, in the form of a blackmail that is itself a diagnosis: workers at the gates shouting that “it is better to die of cancer than of hunger”.^[8] It is the “impossible choice” between work and health that Barca and Leonardi have pointed to as the paradigmatic example of environmental injustice: a subaltern community is asked to choose which right to sacrifice.^[1]

The symbiosis: reading the laws in sequence

Here begins the part that concerns us most. Faced with a judicial seizure founded on expert reports that established the harm, what does the State do? It does not close the plant, does not make remediation a precondition. **It legislates**. Aldini reconstructs seven years — from 2011 to 2017 — of “frenetic and compulsive law-making” on Ilva: searching “Ilva AND Taranto” in the Normattiva database and supplementing it with the official lists of Parliament and the Ministry, he arrives at a corpus of **nineteen laws** devoted to the case, almost all directed at a single purpose — keeping alive the *Integrated Environmental Authorisation* (the AIA), the legal condition for producing, by amending it, extending it, postponing its implementation.^[9] These are the measures the press christened the “save-Ilva decrees”.

The decisive move is the most revealing: with a decree of 2012 the government allowed the activity to continue *despite* the criminal seizure — the law overriding the judge. Placed in sequence, and set beside the epidemiological reports that were accumulating in the meantime, those provisions tell one thing only: the State's response to the mounting evidence of harm was not to stop it, but to make it lawful. It is in this sense that the symbiosis between State and business becomes, Aldini writes, a *legal symbiosis*: the “regime of permission” does not lie in a closed eye, but is written, in black and white, in the laws.^[1]

The point of arrival comes in January 2023, and closes the circle. The government adopts decree no. 2/2023 which, in connection with Ilva's production, guarantees a form of immunity from criminal consequences; and in Taranto the Genitori Tarantini take to the streets with one banner reading “A mass genocide is under way here” and another demanding “No immunity. Let the polluter pay”, while a demonstrator marches dressed as a judge with his hands bound.^[10] The image is worth a thesis: criminal law gagged by statute.

The point

This is why the Ilva case is the perfect bridge between the theory that comes from abroad and what we see at home. American criminology describes a State that, captured, *does not see*. Italy offers a more extreme variant of it: a State that sees perfectly well — it has the expert reports, it has the numbers, it even has a seizure ordered by its own judges — and yet *legislates so as not to stop*. Not the omission, but the positive act; not the silence of the regulator, but the voice of the legislator. The “State that lets it happen” here becomes the “State that makes it happen”.

It is not only a criminologist who says so. In 2019 the European Court of Human Rights, in *Cordella and Others v. Italy*, ruled against the Italian State for failing to protect the health and private life of the inhabitants of Taranto from Ilva's emissions: a violation of Article 8 of the Convention.^[11] The harm, even before being a “crime”, is a fact recognised by the highest court of rights in Europe.

A methodological clarification is due. The criminal trial over Ilva — the “Ambiente Svenuto” strand — is a different matter from this discussion; it has had a troubled course and the convictions pronounced are not final: no one is being put on trial here, and personal criminal liability remains to be established in the competent forums.^[12] The point of Aldini's essay, and of this page, is another and deeper one: that in Taranto the harm to health was, for years, *legal*. And that a thing can be legal and unjust at once — indeed, it can be unjust precisely because someone made it legal.

It is the lesson we have been repeating for as long as this blog has existed, and which the Ilva case carves into the flesh of a city: a law that legalises the harm of the strong is not the failure of criminal law. It is its reversal. And the impossible choice between bread and

life is not a destiny: it is the product of laws that someone wrote, and that someone could rewrite.

Notes

Notes

1. C. Nicoli Aldini, *State-corporate legal symbiosis and social harm: the case of the steel factory 'Ilva' in Taranto, Italy*, "Crime, Law and Social Change", 82 (2024), no. 4, pp. 893-914 — **open access**: <https://link.springer.com/article/10.1007/s10611-024-10154-w>. From it are drawn the thesis of the "legal symbiosis", the historical reconstruction (Ilva since 1964; privatisation to the Riva group in 1995 and the ensuing deregulation, on which Greco and Chiarello), and the reading of the conflict as environmental injustice (Barca and Leonardi).
1. The category of *state-corporate crime* and the distinction between *state-initiated* and *state-facilitated* corporate crime are in R. Kramer, R. Michalowski, D. Kauzlarich, *The Origins and Development of the Concept and Theory of State-Corporate Crime*, "Crime & Delinquency", 48 (2002), 263-282.
1. S. Tombs, *State-corporate Symbiosis in the Production of Crime and Harm*, "State Crime Journal", 1 (2012), 170-195; D. Whyte, *Regimes of Permission and State-Corporate Crime*, "State Crime Journal", 3 (2014), 237-246. The critique of the "moments of rupture" and the call to look at the structural, ordinary relationship between State and enterprise belong to both.
1. P. Hillyard, S. Tombs, *From "crime" to social harm?*, "Crime, Law and Social Change", 48 (2007), 9-25; on the concept of social harm as that which "compromises the satisfaction of human needs", S. Pemberton, *Harmful Societies*, Bristol University Press, 2015.
1. The SENTIERI national epidemiological study (several reports, from 2011 onward), documenting the critical health situation of the Taranto area.
1. The two expert reports ordered in the criminal proceedings: the chemical expert report (Sanna and others, 2012) and the **epidemiological expert report** entrusted by the judge for preliminary investigations of the Taranto Court, Patrizia Todisco, to F. Forastiere, A. Biggeri, M. Triassi (2012), which established the causal link between the emissions and the excess mortality and morbidity. (Records of the proceedings; document retrievable, cited by Nicoli Aldini, 2024.)
1. Seizure of the plant's "hot areas" ordered by the Taranto judiciary on 25 July 2012, on the basis of the expert reports.
1. The workers' phrase at the gates ("it is better to die of cancer than of hunger") was reported by the press of the time (Il Fatto Quotidiano, July 2012) and taken up by Nicoli Aldini, 2024.
1. The dataset of 19 laws 2011-2017 and the methodology (a search for "Ilva AND Taranto" on Normattiva, supplemented with the lists of the Chamber of Deputies and the Ministry of the Environment) are in Nicoli Aldini, 2024. 2011 is the year the AIA was issued; 2017 that of the last extension of its validity, until 23 August 2023.
1. Decree-Law no. 2 of 5 January 2023 and the demonstration of the "Genitori Tarantini" association in Piazza Vittoria (25 February 2023), described at the opening of Nicoli Aldini's essay, 2024.
1. European Court of Human Rights, *Cordella and Others v. Italy*, 24 January 2019 (applications nos. 54414/13 and 54264/15): violation of Arts. 8 and 13 of the ECHR for the failure to protect the population of Taranto from Ilva's pollution.
1. The reference is to the "Ambiente Svenduto" trial (Taranto Court of Assize, first-instance judgment of 31 May 2021), whose course through the subsequent instances has not concluded with final outcomes. Nothing here asserts any individual criminal liability: the facts of criminal relevance remain subject to establishment in the competent forums.

