

The Weapons Industry Kills

How U.S. Corporations Export Death
Around the World

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About the Critical Corporate Theory Collection

The Critical Corporate Theory Collection is part of the *Systemic Justice Journal*, published by the Systemic Justice Project at Harvard Law School. The Collection is comprised of papers that analyze the role of corporate law in systemic injustices. The authors are Harvard Law students who were enrolled in Professor Jon Hanson's Corporations course in the spring of 2021.

The Collection addresses the premise that corporate law is a core underlying cause of most systemic injustices and social problems we face today. Each article explores how corporate law facilitates the creation and maintenance of institutions with tremendous wealth and power and provides those institutions a shared, single interest in capturing institutions, policies, lawmakers, and norms, which in turn further enhance that power and legitimates its unjust effects in producing systems of oppression and exploitation.

For more information about the *Systemic Justice Journal* or to read other articles in the Critical Corporate Theory Collection, please visit the website at www.systemicjustice.org.

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ABSTRACT

The United States is the world's largest weapons exporter, supplying weapons to countries around the globe, including many accused of using the weapons to perpetrate war crimes and human rights violations. These weapons are not just a driver of economic growth, as the corporations hawking them claim. They are a deeply harmful outgrowth of the total capture of the U.S. regulatory system by corporations. U.S.-made weapons kill innocent people, yet nobody holds companies remotely responsible for selling weapons to brutally oppressive regimes, let alone for their role in fomenting unrest.

This paper addresses the gaps that allow corporations to deny responsibility for harms caused by their weapons. In the final section, I propose some solutions to hold corporations accountable, or at least blunt some of their influence.

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INTRODUCTION

On September 4, 2018, a Saudi coalition airstrike hit a school bus full of kids on a field trip as it sat in the middle of a busy marketplace in Dahyan, Yemen. At least 34 people were killed in the attack, including 25 children and 4 teachers on the bus.¹ The parents of some victims were unable to recover any remains because the blast was so forceful.² An eight-year-old survivor of the attack recalled seeing his friends die and the psychological toll it has had on him: “I don’t want to go anywhere near a bus. I hate buses, I hate school and I can’t sleep. I see my friends in my dreams begging me to rescue them.”³ Bomb remnants found at the site of the attack correspond to a Mk 82 bomb manufactured in Texas by General Dynamics, and fitted with the GBU-12 Paveway II laser guidance system, manufactured and sold by Lockheed Martin.⁴ A U.N. report by investigators appointed by the U.N. Human Rights Council named and implicated the United States, France, and United Kingdom as “third states” for selling weapons used in the conflict.⁵ Belgium, Germany, Norway, the Netherlands, and Sweden have all moved to restrict or suspend arms sales to Saudi Arabia over similar concerns about violations of international humanitarian law and human rights in Yemen. Despite the devastation and human toll of the ongoing conflict, the U.S. has continued to supply the Saudi coalition with newly-made weapons that it uses in unlawful strikes in Yemen.⁶ One father of a 14-year-old who was killed lay blame squarely at the feet of the U.S., vowing: “I will take revenge on Salman, Mohammed Bin Zayed and Trump.”⁷ Yet somehow Lockheed Martin, Raytheon, and General Dynamics have escaped such scrutiny— they are not mentioned in the

United Nations report— even as bombs etched with their names rain down on Yemen.

PART I: HOW THE UNITED STATES IS INVOLVED IN WEAPONS

The United States is the largest exporter of weapons globally. Through direct commercial sales and State Department-managed Foreign Military Sales, U.S. manufacturers sell obscene quantities of weapons. These weapons go directly into the hands of government regimes that use them against civilians, in extrajudicial killings, and to commit further human rights abuses. These weapons also wind up under control of other actors, or no actors at all, causing further harm to civilians. The Saudi coalition in Yemen has transferred U.S.-made weapons to Al-Qaeda-linked and Iranian-backed fighters, potentially exposing U.S. military technology and further endangering lives.⁸ Explosive remnants of war, or weapons left behind after conflict, including abandoned munitions, cluster munitions, and mines, have deadly consequences decades after the end of conflicts.

Millions of Americans have a stake in the manufacture and sale of weapons, whether they know it or not. Americans are heavily invested in the military-industrial complex, through the nearly bottomless national defense budget and through the investments of individuals, retirement funds, city pensions, and of course, university endowments. The United States federal government spends upwards of \$700 billion per year on defense; in 2020, \$143 billion of that was allotted for procurement (subcategories of procurement include missile, weapons, and ammunition procurement) and \$104 billion for research and development.⁹ Research, development, test, and evaluation funding is “the pathway by which the U.S. military explores new technologies and capabilities and develops them into weapons systems and platforms.”¹⁰ The California state pension fund, CalPERS, the largest public pension fund in the United States, has hundreds of millions of dollars in corporate bonds issued by and stocks in Raytheon, Northrop Grumman Corp, and Lockheed Martin.¹¹ On the private side, investment management groups invest billions in weapon stocks. Vanguard funds invest \$115.7 billion in weapons stocks,¹² American Funds invests \$56.3 billion,¹³ and Fidelity invests \$35.9 billion,¹⁴ just to name a few examples. The Harvard Management Company (HMC) is up to its neck in the weapons industry, investing in funds with tens of billions of dollars in Raytheon, Lockheed Martin, Northrop Grumman Corp, and

more.¹⁵ HMC invests in at least two international index funds, through Vanguard, with direct holdings in corporations that manufacture cluster munitions and antipersonnel landmines.¹⁶ Furthermore, because Harvard is only required to disclose direct investments, which at present total about 4% of the \$41.9 billion endowment, the still-substantial \$1.8 billion in investments available for public scrutiny is only scratching the surface of Harvard's complicity in human suffering caused by the export of military-grade weapons around the world.

People in the United States tend not to think about the consequences of these weapons sales and investments in military research, development, and production. This relative ignorance is, of course, encouraged by weapons manufacturers. After the United Nations outlawed wars of aggression, the United States Department of War became the Department of Defense, in the late 1940s. The defense industry followed suit in renaming and sanitizing its business. Honeywell buries its defense work as a tiny link at the bottom of its Aerospace page,¹⁷ where there is no mention of the nuclear weapons contracts that make up approximately \$46.56 billion of Honeywell's business.¹⁸ Lockheed Martin's "About Us" page, brimming with typical corporate buzzwords describes the company as follows: "Headquartered in Bethesda, Maryland, Lockheed Martin is a global security and aerospace company that employs approximately 110,000 people worldwide and is principally engaged in the research, design, development, manufacture, integration and sustainment of advanced technology systems, products and services."¹⁹ Conspicuously missing is any mention of what those products do. The weapons and military aircraft are "advanced technology" providing "global security." Compare this advertising with the way guns are marketed and sold domestically.

Tragically, Saudi Arabia's bombings in Yemen are only the most recent and well publicized example in a whole cadre of state actors using U.S. weapons to kill civilians and commit other atrocities. In the early 2010s, the United States sold firearms, armored vehicles, and chemical and riot control agents to nations including Algeria, Egypt, and Peru even as they violently repressed civilians.²⁰ Shipments to the Philippines have been the subject of recent criticism as the Armed Forces of the Philippines have been accused of extrajudicial killings related to the country's war on drugs and against environmental and land rights activists.²¹ The United States currently has "no restrictions" on arms sales to the Philippines, despite discussions in Congress about blocking them.²²

Since the 1934 Nye Committee Report brought to light efforts by the

arms industry to prevent or destroy peace following WWI,²³ there have been concerns about the ways weapons manufacturers and private commercial interests influence U.S. foreign policy. The United States is the worst contributor to global arms sales; U.S. arms exports count for 36% of the global total.²⁴ The industry is growing, even in the midst of a global crisis. Sales of U.S. military equipment to foreign governments rose 2.8% in 2020, totaling \$175 billion.²⁵ Trump pushed further than any previous president in acting as a salesman for the U.S. weapons industry, rolling out a “Buy American” set of policies to roll back restrictions on weapons exports, shorten the timeframe for approval, and calling for top government officials to hawk weapons at air shows.

Furthermore, the U.S. government routinely rejects international, multilateral projects to protect civilians from harm caused by military weapons. In fact, the United States weapons industry has a long and ignominious history of tanking international diplomatic efforts on weapons. In 1925, the American delegation was credited with weakening two key provisions in the draft of the Geneva Arms Control Conference, with the influence of representatives from the du Pont Co., who were invited to a Department of Commerce meeting to supply objections and comment on formal reservations to the convention.²⁶ In 1927, the “Big Three” American naval shipbuilding companies took credit for the failure of the Geneva Disarmament Conference, which they trashed in order to secure a Navy contract of \$53.744 million.²⁷ When the U.S. has not succeeded in upsetting disarmament discussions— as they have with attempts to update the Convention on Conventional Weapons to cover incendiary weapons— the U.S. has chosen to be an outlier in refusing to sign disarmament treaties. The U.S. has not ratified the Arms Trade Treaty, which seeks to prevent the illicit sale and diversion of conventional arms. Neither has the U.S. signed or ratified the Treaty on the Prohibition of Nuclear Weapons, the Convention on Cluster Munitions, or the Anti-Personnel Mine Ban Convention, all of which seek to prevent the harms of specific weapons. This means that— following the Trump administration’s 2020 rollback of U.S. policy prohibiting manufacture and export of antipersonnel mines²⁸— U.S. manufacturers can deal in weapons that are illegal, in the case of the Mine Ban Treaty, in over 80% of the world’s countries.²⁹ Furthermore, and perhaps more insidiously, U.S. companies can freely invest in foreign companies manufacturing landmines and cluster munitions. Of the 88 financial institutions in the world that still invest in cluster munitions, 21 are based in the United States.³⁰

PART 2: CURRENT DOMINANT NARRATIVES

Since both foreign military sales and direct commercial sales require U.S. government approval, the government has more of a role in this industry than others. The traditional narrative holds that the government, through its authority under the Arms Control Export Act, acts as a check on weapons sales that spiraled out of control during the 1970s. However, the government often acts in the role more as a broker than a regulator, which the Trump administration's "Buy American" policy made explicit. From the perspective of the federal government, the United States needs to sell weapons to our allies in order to protect our security and project strength around the world. The story continues that if other countries do not buy weapons from the United States, they will buy them from other countries, which would be strategically and economically disadvantageous. Those other countries are Russia and China, the two nations trailing the U.S. in weapons exports. In this telling of events, the United States is a ball, simply responding to the demand of the purchasing countries, and those purchasing countries are sticks, deciding to buy weapons no matter what. When the United States sells weapons to bad people, at least we can leverage the purchases and put conditions on the use. The Trump administration particularly leaned into the sales angle by setting economic benefits from arms sales as a policy priority.³¹

There are economic incentives in play in addition to the billions in revenue generated by sales. On the domestic side, manufacturing jobs in the weapons industry are spread widely across the country, so that a lot of people feel they have a stake in the continued viability of these companies. This model for creating local demand for and reliance on weapons manufacturing is now exported in the form of offsets and industrial participation, where weapons companies bring weapons manufacturing jobs to purchasing countries in exchange for weapons contracts.

There was some criticism that the Trump administration's end goal of selling as many weapons as possible was not strategic from a defense perspective, as well as raising human rights concerns.³² If the ultimate goal of arms sales is to promote regional stability and deter conflict, then selling as much as possible to all comers is not a sound policy. But there has been little focus on the question of whether the United States should be in the business of selling weapons at all.

From the corporate perspective, at least when it comes to Foreign

Military Sales through the State Department, the United States government is the ultimate client. The weapons company is the quintessential ball, and every single other actor is a stick. The government (stick) arranges the sales with allies (stick), and then the weapons manufacturers (ball) simply fulfill them.

As far as attribution, the buck always passes to someone way down the line and very far away misusing a weapon. Lockheed Martin referred Human Rights Watch investigators to the Department of Defense to answer for its bomb being used in the Saudi strike of the Yemeni school bus.³³ When questioned about a bomb it manufactured that killed a family of eight in Sana'a, Raytheon spinelessly responded that "prior to export, military and security equipment is 'subject to a multifaceted review by the U.S. Department of State, Department of Defence and Congress.'"³⁴ The refrain that [insert a class of weapons, like explosive or incendiary] weapons are not illegal, only certain uses are, is laughably commonplace at diplomatic consultations. The sentiment is usually followed by the corollary that we cannot risk any limitations on the use of said weapons, because that might stigmatize weapons that we need for our defense. In this scenario, weapons are ball, and bad-actor users are stick. Weapons themselves cannot be seen to be bad or harmful, because people might start to ask uncomfortable questions about those making and selling them.

Based on these narratives, it might seem like stricter controls on the U.S. State Department's ability to sell weapons to certain foreign nations is a possible a solution. Since the government is in charge of sales, the government should simply be more scrupulous about vetting purchasers. In fact, the government has at times responded to specific perceived concerns. The current weapons sales regime was implemented in response to the Iran-Contra fiasco, allegedly crafting a stronger government role in regulating weapons sales. In 2019, the Senate and House both voted against one arms deal to Saudi Arabia, Jordan, and the United Arab Emirates, and introduced a number of bills to implement more congressional oversight or ability to suspend certain arms sales to Saudi Arabia.³⁵ According to this dominant narrative, since the Biden Administration halted weapons sales to Saudi Arabia in January,³⁶ the problem should be solved, at least until another bad-actor foreign regime pops up. But the problems of lax oversight and bad incentives persist at a structural level.

PART 3: THE ROLE OF CORPORATE POWER IN CREATING HARM THROUGH WEAPONS SALES

On a surface level, weapons companies spend hundreds of millions every year lobbying the federal government to set certain defense priorities.³⁷ Weapons dealers further convince the government that weapons manufacturing jobs are vital to the domestic economy by spouting overblown numbers. Lockheed Martin, for example, claimed approximately twice as many jobs making the F-35 combat aircraft—which notoriously may never be ready for combat—as the bloated project actually created.³⁸ This story of “jobs creation” may have particular weight for Congressional representatives in districts with weapons plants. But perhaps more importantly, congresspeople have deep personal financial ties to weapons companies.³⁹ Members of the Foreign Affairs Committee, which approves foreign sales, regularly approve sales for companies in which they own shares.⁴⁰ Because of these patterns of influence, Congress regularly fails in its statutory duty to regulate weapons sales, and the U.S continues to enter weapons sales agreements with governments accused of abuses, violations, and war crimes.

The capture runs through the Pentagon as well. In 2018 alone, at least 380 high-ranking DoD officials shifted to the private sector, where 90% became registered lobbyists.⁴¹ This revolving door creates conflicts of interest that influence foreign policy and lead to favoritism in awarding contracts, which creates ineffective weapons and programs.⁴² Individuals are rewarded based on the value of government contracts they are able to secure for a company.⁴³ Thus the incentive for individuals spinning through the revolving door is to increase costs and sell more weapons.

The supply and demand principles run backwards when it comes to weapons manufacturing. Manufacturers need to sell weapons, so they drum up demand. In order to secure ever more lucrative contracts, weapons manufacturers have long used their power and influence to oppose projects for peace and disarmament both internationally and domestically.⁴⁴ Corporations fund the think-tanks that spew out assessments of ever-growing threats to the U.S. and our allies, and craft reports specifically pushing the weapons products of their financial supporters.⁴⁵ As previously described, American pensions, retirement plans, and municipal funds are all tied up in weapons investments,

which means average Americans profit from the sale of more and more weapons. Furthermore, weapons manufacturers force buy-in by bringing manufacturing jobs to other countries as well, fueling the cycle of reliance on jobs making weapons, which then need to be sold.

By selling through the United States government, corporations are able to wholly evade liability and the appearance of responsibility when their weapons are used to commit atrocities, even when the connection is direct and foreseeable. Amnesty International recently published a report detailing how weapons corporations, including U.S. giants Boeing, Lockheed Martin, and Raytheon, have failed to take adequate due diligence measures that could prevent their weapons from being used in human rights abuses and war crimes.⁴⁶ But there is no domestic law that would hold U.S. companies accountable for how their weapons are used. The international criminal law concepts of “corporate complicity” and “aiding and abetting” international crimes mentioned in the Amnesty report⁴⁷ have the support of the International Committee of the Red Cross,⁴⁸ an organization with an important role in clarifying international law, but they are still developing. So the weapons dealers go unpunished and unchecked.

PART 4: POTENTIAL SOLUTIONS

Weapons are currently a hugely profitable business, and changing their allure for investors and politicians is no simple task. The incentive structures that have resulted in industry capture are deeply imbedded in the American corporate system. But there are some targeted actions, including divestment, government ethics reform, and international law that could begin to dismantle the hold of the weapons industry and thereby mitigate some of its harms. Mobilizing around these reforms will require educating Americans on their investments in the weapons industry, and the government’s role in sales, and the resultant countless innocent people killed by U.S. weapons.

PAX, a Dutch peace organization, has done a lot of work making cluster munitions and nuclear weapons unpalatable to investors and financial institutions. Individuals, financial institutions, municipalities, and countries have all joined in to withhold financial support from cluster munitions producers, to great effect. Since 2017, investments in cluster munitions have dropped from \$31 billion to \$8.7 billion, and two major U.S. producers have stopped manufacturing the weapons.⁴⁹ PAX’s work has shown the way for a public perception campaign against certain types of weapons, and they are currently undertaking a new project to

encourage countries and municipalities to divest from nuclear weapons. One of the potential shortcomings of this method of singling out certain weapons is that it does not drive at the heart of the industry. Weapons companies can (and do) spin off subsidiaries or shut down divisions to avoid responsibility for stigmatized weapons.⁵⁰ Undoubtedly this change in practice is a net benefit in terms of making extremely inaccurate, unstable weapons less accessible, but it does not seem to impede weapons companies, which use government funding in research and development to grow in new directions.

Government regulation and oversight alone is currently not sufficient to stem the tide of weapons sales considering the competing interests at work on government actors. Reforms to force more involved Congressional oversight of weapons deals could push government actors to take more responsibility for approving sales. Severing the personal financial stakes congresspeople have in the weapons industry could also potentially change how they rubber-stamp arms deals. Senators Sherrod Brown and Jeff Merkley have repeatedly introduced a bill to prohibit congresspeople from buying and selling individual stock, requiring them to divest their personal financial stakes and prohibit them from serving on corporate boards.⁵¹ Strengthening federal ethics laws to slow the revolving door between the Department of Defense and defense contractors and prevent conflicts of interest that are currently unregulated could also change the way defense contractors peddle influence with the government.⁵² These incremental changes could potentially slow the tide of weapons flowing out of the U.S., but they are unlikely to stem it altogether, particularly if manufacturing jobs and factories appear to be on the line.

Using international law to constrain the weapons industry is another possibility. This could happen if the U.S. is held responsible for brokering the weapons sales and shirking its oversight duty. In the wake of the United Nations report on Yemen, there has been renewed talk of holding the United States and other coalition partners responsible for the war crimes and human rights violations committed by the coalition in Yemen.⁵³ Actual liability might force the government into being more cautious with its sales, at a minimum. This solution, however, does not reach the corporations ultimately profiting by fomenting violence and destruction. Soft law and international pressure have not yet succeeded in reigning in these U.S. arms dealers. Criminal liability through corporate complicity is another avenue by which international law might reach weapons companies. Currently, several factors constrain corporate accountability for human rights violations: the lack of international pressure and domestic judicial leadership because of the

absence of settled international law, low civil society demand for corporate rather than state responsibility, and strong veto players in business.⁵⁴ Civil society mobilization to bring attention to abuse and creative use of domestic judiciaries to apply domestic interpretations of human rights law can sometimes overcome or circumvent the vetoes of powerful business interests.⁵⁵ Atrocities committed with U.S. weapons are precisely the type of abuse around which civil society should be able to mobilize, and actors including Amnesty International and Human Rights Watch are consistently advocating in that space. Perhaps new innovations in corporate responsibility will someday bring arms companies to justice for their role in peddling death.

CONCLUSION

The United States is the largest exporter of weapons in the world, driving a booming industry. The traditional story the U.S. government tells on behalf of manufacturers and arms dealers is that everyone else having more weapons will make the United States safer. So U.S. corporations support war and arm oppressive regimes around the globe in the name of economic strength. They sell through the government to avoid even a whisper of responsibility. Public and private investment in weapons companies only deepens the hold they have on the American public.

The grip weapons companies have on government and foreign policy will not easily be loosened. There are strategies, however, employing divestment, ethics rules, or international law that can shift the balance of power and begin to lessen the devastation wrought by U.S. weapons. Still, true change may prove more elusive without a systemic overhaul of the special rights the U.S. grants to corporations.

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⁴⁵ Eric Lipton & Brooke Williams, *How Think Tanks Amplify Corporate America's Influence*, New York Times, Aug. 7, 2016, <https://www.nytimes.com/2016/08/08/us/politics/think-tanks-research-and-corporate-lobbying.html>.

⁴⁶ *Arms Companies Failing to Address Human Rights Risks*, *supra* note 34.

⁴⁷ *Id.*

⁴⁸ William Hartung, *Should Arms Makers Be Held Responsible for How Their Weapons Are Used?*, Forbes, Sep. 9, 2019, <https://www.forbes.com/sites/williamhartung/2019/09/09/should-arms-makers-be-held-responsible-for-how-their-weapons-are-used/?sh=7a9f0a061709>.

⁴⁹ PAX, *supra* note 16, at 9.

⁵⁰ Mary Wareham, *US Defense Contractor Distances Itself From Cluster Munitions*, Human Rights Watch, Jan. 29, 2021, <https://www.hrw.org/news/2021/01/29/us-defense-contractor-distances-itself-cluster-munitions>; PAX, *supra* note 16, at 14-15.

⁵¹ Shaw & Moore, *supra* note 39.

⁵² Smithberger, *supra* note 42.

⁵³ Human Rights Watch, What Military Target Was in My Brother's House?: Unlawful Coalition Airstrikes in Yemen (2015), <https://www.hrw.org/report/2015/11/26/what-military-target-was-my-brothers-house/unlawful-coalition-airstrikes-yemen>; Andrea Prasow, *U.S. War Crimes in Yemen: Stop Looking the Other Way*, Human Rights Watch, Sept. 21, 2020, <https://www.hrw.org/news/2016/11/29/us-suspend-saudi-arms-sales>

⁵⁴ Leigh A. Payne & Gabriel Pereira, *Corporate Complicity in International Human Rights Violations*, 12 Annual Review of Law and Social Science 63 (2016).

⁵⁵ *Id.*