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THE STATE OF STATE CRIME RESEARCH: A COMMENTARY

Jeffrey Ian Ross; Gregg Barak; Jeff Ferrell; David Kauzlarich; Mark Hamm; David Friedrichs; Rick Matthews; Sharon Pickering; Michael Presdee; Pete Kraska and Victor Kappeler.

REFLECTIVE STATEMENT

This commentary outlines current difficulties with the academic conceptualization, investigation, and treatment of state crime. It also provides a series of recommendations to improve the acceptance of state crime research in the field of criminology and criminal justice.

INTRODUCTION

Criminologist's concerned with developing a critical analysis of state crime, criminality, and criminals share a certain discomfort when they realize that, with the exception of Barak's *Crimes by the Capitalist State*, Tunnell's *Political Crime in Contemporary America*, and Ross' *Controlling State Crime*, precious few comprehensive treatments have been published on the subject since the 1988 American Society of Criminology (ASC) conference and its focus on "crimes by and against the state."¹

However, the apparent paucity of recent research into state criminality may be somewhat misleading. Research on this topic is incorporated and should continue to be included in critical studies of the war on drugs (Kraska, 1993), legal attacks on the homeless (and their responses) (Barak, 1991b), state complicity in the development of nuclear weapons (Kauzlarich, 1995), state campaigns against gangs and graffiti writers and resistance to these campaigns (Ferrell, 1996), the criminalization of resistance and the creation of suspect communities (Green, 1990; Hillyard, 1993), state participation in the denial of justice for detained immigrants (Hamm, 1995), the militarization of the police (Kraska and Kappeler, 1997), paramilitarization of the police (Jefferson, 1980), and of police misconduct (Kappeler, Sluder, and Alpert, 1993; Kraska and Kappeler, 1995).² However, few broader treatments which examine the phenomenon of state crime, including etiology, effects, and control have been produced in recent years. Why has this been the case?

Some of the reasons for this distressing state of affairs can be explained by nine interrelated difficulties connected to research and publishing in the field of state crime. These problems are, from least to most important: a. obstacles in obtaining funding from mainstream sources; b. resistance to getting research proposals passed by institutional Internal Review Boards (IRBs) or ethics committees; c. the reformist nature of solutions to state crime; d. preoccupation with quantitative over qualitative data; e. difficulty in getting material published; f. scarceness of good mentoring in this subject area; g. hostility of the public to the concept of state crime and criminals, especially if it is domestic in nature; h. resistance by the state, its agencies, and academics co-joined with state agencies;

sympathetic to this type of agenda to educate those individuals who sit on IRBs about their field and its increasing legitimacy. Third, too often controls proposed by analysts of state crime are reformist in nature. There is nothing wrong with change in organizations and policies if it helps stop some victimization, but this is only a beginning. There is not much hope in supranational models, such as the United Nations, controlling state crime. This institution is not as strong as it should be. These types of reforms result in the changing of one law and not a restructuring of the entire legal code or criminal justice system, or abolishing the existing state.⁵

Additionally, it is worth questioning whether the reformist agenda does, or should, in fact sit comfortably within the various understandings of crimes by the state? It seems from the debates between the "New Realism" and "Left Idealism," that a far more skeptical stance should be taken regarding the utility or even validity of reformist models which largely fail to problematise the nature of the state. Perhaps the incapacitation of reformist attempts in this area has served to obscure or at least retard adequate theorizing of crimes by the state.

Fourth, there is also a disciplinary preoccupation with quantitative data. Too often good numerical data on state crime is nonexistent largely because this kind of information is either not collected or intentionally concealed by the state, and thus access to it is largely difficult. This problem is reproduced when you take into account the preoccupation of state bureaucrats, policy advisors, and policymakers with responding more favorably to quantitative than qualitative data. Fortunately, there are a number of qualitative measures that state crime researchers can use. Investigators also need to be creative in how they go about doing research, even if that means deception. Researchers interested in the subject of state crime can use historical research, particularly archival records, in order to test hypotheses, hunches, and educated guesses.⁶ Like much qualitative socio-historical work, too often state crime research becomes delegitimized and labelled "journalism" or "essay-writing" by critics of state crime research. Additionally, part of the problem of conducting state crime research is connected to what we could call the interdisciplinary nature of the field. It often requires competence in different subjects beyond criminology/criminal justice including, but not limited to, anthropology, history, law, political science, public administration/policy, and sociology. Criminologists (including students in this field), often do not have the desire, skills, or energy to master these disciplines.

Fifth, many editors and reviewers for academic journals and book publishers, like individuals serving on IRBs and ethics committees, lack subject knowledge regarding state crime. Similarly, experts from related areas of inquiry such as human rights, public administration and public policy, find the concept of state crime too difficult to understand and apply. Too often they are preoccupied with semantics and not the substantive arguments that support state crime research and policy change. This situation prevents otherwise good research on state crime from being published in academic venues. Another related argument concerns the fact that a greater percentage of space in our journals is being taken up by state

and; i. the absence of consensus on defining state crime. This commentary discusses these problems and provides some tentative solutions to overcome the difficulties of conducting research and publishing findings on the topic of state crime.

PROBLEMS AND SOLUTIONS

First, it is extremely difficult to secure funding to study state crime. Most of the financial support for criminology/criminal justice comes from government agencies and they are generally not willing to fund research that would expose either their own wrongdoing or that committed by institutions that are linked to the state.³ The state defends and protects itself through the mobilization of power and bias in an inter and intra organizational way. The amount of pressure that can be brought to bear on the individual researcher cannot be underestimated. Once public servants or government bureaucrats are mobilized, controversial research is often systematically denigrated and undermined (e.g., Presdee and Walters, 1997). This means that researchers should turn to non-state organizations (e.g., Civil Liberties Unions/Associations, World Watch, Amnesty International, etc.) for possible funding. Also, we must remind researchers that good research on state crime does not necessarily require funding. I.P. Stone, a respected journalist and "one-man show" of a publisher, for example, managed to reveal the abuses of the Nixon regime by carefully reading press releases from government agencies, comparing them, and by scrupulously poring over obscure government documents.⁴

Second, it is difficult for academic researchers of state crime to get their work approved by the proliferating institutional IRBs or ethics committees. Unfortunately, most individuals who sit on these bodies are untrained to make decisions on the topic of state crime, or are sometimes employed by the very agencies engaged in state crime. Additionally, many IRBs and ethics committees are generally resistant to unconventional research. This has serious implications for the pursuit of research on crimes of the state (which is often considered "unconventional" for substantive rather than methodological reasons) because these bodies often have extensive powers. Such ethics committees often seem more interested in insuring the legal immunity of the institution, rather than monitoring unorthodox research but nonetheless methodologically sound. Proposals are either flatly rejected or sent back to the principal investigator (PI) repeatedly with question after question asking him/her to elaborate on various nuances detailed in the proposal. While ethical guidelines should be encouraged, the strict application of formal rules and regulations impinges on informal, inoffensive research which may be largely unproblematic except for its infringement on inflexible university codes (Punch, 1994). This often means that state crime researchers who conduct this type of work at institutions of higher learning either have to drop their study, delete the most important questions to be asked, engage in deception, or revert to the resource-consuming process of educating members on research oversight boards about the subject matter. Thus, it is incumbent on state crime researchers and those

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funded research. In *Justice Quarterly*, arguably the leading criminal justice academic journal, state funded research has risen from 10 to 38% since its inception.⁷

Sixth, good mentoring in this area rarely exists. The number of students who are graduating with Ph.D.'s with dissertations on the topic of state crime is small. This is likely because their professors either have no expertise in this area, do not have grant funding in order to sustain the students, or are all too familiar with the difficulty in conducting this type of research.

Critical scholars of state crime are often marginalized in part through their relegation to colleges and universities less likely to support doctoral programs and heavy research agendas. This sort of treatment becomes self-perpetuating in a number of ways, including the subsequent difficulty critical scholars face in reproducing their scholarship through doctoral students and newly-trained Ph.D.'s. It is little wonder, then, that for this and other reasons research into state criminality and related areas is slow to spread.⁸ On the other hand, this neglect or disinterest has served to a limited extent, in some cases, to grant exceptional freedoms for graduate students who are able to negotiate such a field of study and who are given greater scope by supervisors who are not well versed in the area. It should be noted that this is hardly a new phenomenon given feminist experiences of research in male dominated criminological institutes especially in the 1970's and 1980's (e.g., ASC 1996 plenary session on "The Status of Women in Criminology: A 25 year retrospective").

Seventh, public opposition to the concept of state crime, and a belief that it does not occur in capitalist democracies, is an enormous challenge to the field. Quite often the public is simply not aware of their own government's wrongdoing. The media does not give their own government's crime much attention. When it does, too often it is uncritical. If media coverage of state crime is critical, it generally focuses on crime committed by others countries against the United States or one of its allies (Herman, 1982; 1987).⁹ Both the media and the public see state criminality as something that happens to "us", but not an action we do to "them." Periodically the general public voices its concern through elected or appointed public officials, agencies, social movements, and the mass media when they perceive that state injustices have been perpetrated (e.g., anti-nuclear movement, police misconduct, etc.). Nevertheless, large segments of the general public dislikes identifying certain actions as state crimes. This can commonly be subsumed under the 'means and ends' approach. Sometimes state crime is perceived to be necessary for "the good of the country" or "raison d'etat." The ends justify the means and to criticize this action is perceived to be disloyal. For argument's sake, it would be interesting to look at survey evidence on how Americans felt about Oliver North's actions in connection with the Iran Contra scandal. A comparison of public attitudes before and after President Ronald Reagan called North one of the true great American patriots might be even more interesting. In all likelihood we would probably find the majority of respondents believing that North's actions were

perhaps questionable but legitimate. While public opposition and its sources is a big obstacle for critical criminologists to overcome, it only affirms the need for us to do more work in the area and make our findings accessible to the public when we can.

Eighth, extreme resistance comes from the state, its agencies, and academics who are co-joined with the state. Without question, government agencies are unwilling to give researchers funding, or access to research unless proposals or individuals are properly sanitized. This puts the burden on researchers to be self-funded, in receipt of private foundation grants, or to develop friendly relations with insiders who may be able to point investigators in fruitful directions to uncover materials through Freedom of Information searches etc.

Finally, perhaps the most important roadblock to state crime research is that the very concept of state criminality is regularly criticized as definitionally ambiguous or, worse, inherently contradictory (Turk, 1995, p. ix; Sharkansky, 1995, p. 36; Molina, 1995, p. 349). Such problems may well inhibit the study of state criminality, and may serve to delegitimize for some of our colleagues scholarship pertaining to state crime. In another sense, the difficulty in defining state criminality itself begins to reveal a significant dimension of the subject matter. It serves as a measure of state hegemony, of the state's definitional control over law and crime -- a sort of epistemic control that leaves scholars (and others) little but "subjective" frameworks for defining the nature of the state's own criminality. By setting the terms of the debate and the frameworks of perception, the state renders its own criminality "unthinkable," "unimaginable," "unarticulable," and therefore outside the bounds of conventional academic research. Certainly state authority operates not only through physical control, but by constructing and promoting particular perceptions and understandings; and it is within and against this definitional control that critical scholars, like others, live and work.

In this context, such definitional problems stress the connections between public opinion and lack of advanced training. Alternatively, most advanced industrialized states use various mechanisms to define the activities of other countries as crimes (most notably forms of international law). Concomitantly those laws are not used by the U.S. to define its behavior as criminal. In terms of our work, it is imperative that we do not allow the state to define our field of study, particularly if the state uses definitions or applications of law which preclude its behavior from the scope of our study.

Some individuals give up inquiry into this area because no one seems to know what state criminality is. Critical scholars (or others), however, must resist the temptation to abandon the conceptualization and study of state criminality, and instead engage the issue all the more aggressively. Indeed, such difficulties constitute the study of state criminality as an essential project for critical criminology. To study state criminality is not only to expose the violence and inhumanity of various state crimes, but to engage in a larger project of ideological demystification and deconstruction. It is to speak the unspeakable, to build new

publishing. Such research might well examine a variety of cases: (1) individual, organized, or spontaneous acts of resistance to everyday state crime and state abuses (vandalism, disobedience, etc.); (2) collective responses and strategies by activist groups, unions, etc. (e.g., The Lawyers Committee on Nuclear Weapons Policy, which forced the World Court decision); (3) historical patterns (e.g., The Industrial Workers of the World (The Wobblies) and their innovative counterattacks on state crimes against them and others), civil disobedience, organized sabotage of corporate and legal authority, etc., and (4) state crimes and popular counter-measures in a comparative and international context.

Research is also needed into the cultural politics of state criminality, that is, the mediated/cultural/ideological context in which state crime occurs, and through which state crime is masked. It is hardly possible to analyze state criminality without taking on the cultural machinery through which such criminality is (re)packaged as patriotism, honor, and national defense, and sold to the public through highly emotive symbols and outright misinformation (e.g., North's testimony). Cultural representations and reproductions of state authority facilitate particular moments of state criminality.

Controlling state criminality necessitates a cultural counterattack against the obfuscation factories that manage and mask it. Dismantling the apparatus of state criminality means not only taking apart the legal/political machinery, but exposing the cultural machinery as well. Thus, a criminology of state crime necessitates also cultural criminology (Ferrell and Sanders, 1995), newsmaking criminology (Barak, 1995), and constitutive criminology (Henry and Milovanovic, 1996); it exists as part of the larger, multi-faceted project of critical criminology.

Only when these interrelated approaches are utilized can we make more and better progress in our research on state crime. Moreover, it must be recognized that the marginality of state crime scholarship is part of the larger problem of lack of legitimacy of critical scholarship. Other disciplines have not so successfully marginalized their critical member's works.

NOTES

1. It is generally understood that the history of academic research on state crime can be traced back before the 1988 conference, however, many critical criminologists (perhaps erroneously) believed that the meeting was a signal that state crime was finally making its way into the mainstream of criminology/criminal justice discourse.
2. There is a recent tendency for criminologists to subsume whole bodies of work into some label that they "own." If we downplay this categorical hegemony, we might see that critical scholarship about state misconduct is alive and well. This point, however, should not minimize its struggle for legitimacy. One method is the creation of a market for the product, until critical criminologists "organized" into sections and developed their own journals and texts to compete with the current market, there is little hope of being legitimized.
3. Often, but not always when it is funded, it goes to sympathetic agencies (e.g., the IACP's study of police brutality).
4. A journalist, however, does not experience the institutional pressure to get funding and mass produce research.

understandings that undermine the carefully constructed understandings resident in state authority. Such research therefore also offers a fruitful blend of critical and interactionist traditions, reminding us that all definitions and meanings of crime are "subjective" social constructions (Mills, 1940; Berger and Luckmann, 1971). Thus to study state criminality is inevitably to study the power-laden process by which some social harms are defined as criminal, and others are not. In sum, we believe that there is a general innate knowledge of what a state crime really is, and an undue focus on the shortcomings of the existing definitions is unhelpful.

CONCLUSION

Instead of abandoning the research agenda, as we believe a number of our colleagues are suggesting, we should push forward with creative solutions and consequential studies. Clearly there have been other subfields of criminology/criminal justice (e.g., white collar and corporate crime) that have lacked "clear" definitions, but it has not prevented continued and important theory development and empirical research.

Perhaps the study of state crime should focus more on etiology and better ground the study of this subject in the literature on organizational crime, public policy, and public administration. Alternatively, or in a complementary fashion, building on the dichotomy identified by Gottfredson and Hirschi (1990), one area of research might be to conduct interviews with state criminals (i.e., those who engage in state crime) to understand their motivations and perspectives,¹⁰ rather than focusing on state crime (i.e., the criminal act). Unfortunately, we will probably find that they are not that different from the general population and were responding to organizational demands (i.e., following orders).

Likewise, we should focus on the organization of state crime. The ability to organize that crime, especially state violence, allows state criminality to flourish. We must be mindful that this approach also runs the risk of individualizing institutional and systemic issues and will perhaps do little to advance our understanding of crimes by the state. The key solution is to conduct research on organized state crime, culturally, structurally and a process of constructing reality not defining state crime.

Case studies of selected but important incidents, culprits, and victims of state crime have been conducted (e.g., Tunnell, 1993). If we are to advance the field we also need to conduct overarching and encompassing research that integrates this work.

Resistance to state crime is underresearched, particularly amongst organized and unorganized workers in the context of social movements and protest groups. Research into state criminality must focus on the ways in which both state crime and resistance to it are embedded in the practice of everyday life. It should seek to uncover the various situated dialectics between state crime and popular resistance (Scott, 1985) and be more reflexive on how academics resist it by

5. Admittedly this begs the question of whether state crime can be addressed in a truly effective way within the context of the contemporary state.
6. One must be cautious, however, insofar as the historical record is often vetted by the state with its interest in mind.
7. Personal conversation with current editor.
8. Personal conversation with Raymond Michalowski.
9. For example, the United Nations has declared that the U.S. embargo against Cuba is a violation of international law, and the World Trade Organization is currently considering the case with the sanctions mandated in the Helms-Burton Act. Media accounts have been sparse and the general public is unaware that its government has been violating international law with its embargo of Cuba. Conterminously, the last three U.S. presidents have defined the activities of other countries as "criminal" (i.e., Reagan with the Sandinistas, Bush with Iraq, and Clinton with Cuba) and media coverage of state criminality of this type has been fairly extensive compared to U.S. state criminality.
10. In general, how they socially situate behavior, not why they do it in a psychological sense.

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"This article summarizes the discussion initiated at the author meets critics session for CONTROLLING STATE CRIME held at the American Society of Criminology meeting, Chicago, November 21, 1996. The order of the authors loosely reflects the participants' respective contributions at this forum and subsequent correspondence."