

Crime, Criminology and Human Rights: Towards An Understanding of State Criminality¹

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This paper explores issues related to the analysis of a type of criminality frequently ignored in criminological literature: crimes of the state. It explores the potential of critical criminology to deal with state criminality via investigation of such issues as state interventions, overlapping activities of criminal versus non-criminal organizations and the distinction between individual and state actors. The paper specifically examines state criminality via analysis of the activities of the CIA and FBI in the United States. These activities include methods of surveillance, wiretapping, mail tampering, and the use of agents provocateurs. It also examines issues related to relativity in the definition of terrorism and the use of terrorism by the state. It is argued that, unless criminologists begin to address these issues, criminologists may find themselves in the awkward position of aiding the criminalization of non-criminal peoples around the world.

State criminality or the harm illegally or legally organized and inflicted upon people by their own governments or the governments of others have skimpily but increasingly been documented by social scientists/criminologists (Schwendinger and Schwendinger, 1970; Block and Chambliss, 1981; Falk, 1988a; Block, 1989; Chambliss, 1989; Luyt, 1989; Scott, 1989; Zwerman, 1989; and Barak, 1990). Nevertheless, it is still safe to argue that after some twenty years of recognizing state criminality as a concept, little progress has been made in either precisely specifying what the various forms of 'state criminality' are, or, in analyzing such 'case studies' as those which present themselves, for example, before the United Nations Human Rights Commission. In other words, despite the many mass mediated discussions of these 'crimes against humanity' as found in publications like *Newsweek*, *Time*, and *The Wall Street Journal*, or in those more critically-oriented discussions as found in such publications as *Mother Jones*, *The Nation*, and *In These Times*, one still observes a scarcity of scholarship by criminologists on this topic. Until such time as this scarcity is removed, or until such time as there is serious development in the study of state criminality, there will remain significant gaps in the study of crime and in the study of the state and social control.

More specifically, the relationship between state criminality and social control requires recognition by criminologists that we, too, play a role in not only defining the boundaries of the discipline, but in helping to create what constitutes 'crime' in the real world. It is important, therefore, that as critical criminologists, we develop ways of communicating progressive perspectives on crime and social justice to popular audiences (Barak, 1988). It is my further contention that the study of state criminality must become central to the study of crime and social control,

if we are to develop a left realist critical criminology that is capable of intersecting with the common-sense social reality of crime and violence. Efforts at developing an understanding of these relationships have been occurring for the past couple of decades. Beginning in the late sixties and early seventies, revisionist historians and critical sociologists alike were starting to focus attention on the interrelationships between the modern state and the various systems of social control (Cohen and Scull, 1985).

Out of this work there has re-emerged the 'macro' or classical 19th century socio-historical interest in the importance of the connections between questions of order, authority, power, legitimization, hegemony, organization, and change. These questions of social control have gone well beyond the 'micro' or predominant 20th century questions which merely created various typologies of the means and processes involved in the socialization of conformity. The abandonment of a social-psychological perspective on a social control divorced from the history and the politics of individual, group, and class struggles, and the preference for a social control grounded in the interplay of cultural production, ideological construction, and political economy, has served to resurrect the role of the state as central to each of these areas of social control.

It was precisely these 'macro' political and economic relations, ignored by traditional or positivist criminology during most of the 20th century, that has historically limited the scope of the field to the study of the criminal behavior of the powerless. Gradually, however, over the past fifty years there has been an expansion over the 'acceptable' boundaries of criminological focus to include the criminal behavior of the powerful, beginning with the professional, white-collar, organized, and most recently, corporate criminals. During this shifting in criminological paradigms, the establishment of a critical criminology reunited the study of the state with the study of crime which had previously been separated by positivist criminology. Although progress has been made in describing the integral connections between class, race, gender, crime, social control, and the state, very little light has been shed upon understanding the role and the development of state organized criminality in the reproduction of both the crimes of the powerful and the powerless. Before such an understanding can come about there must first be a development of state criminality and its legitimation within the field of criminology.

TOWARDS AN UNDERSTANDING OF STATE CRIMINALITY

Is it not an ultimate contradiction that the state has been both a crime-regulating and crime-generating institution? That is to say, the state through its formal and informal policies not only engages in crime control, but it also engages in the development of crime, its own and others. As a criminogenic institution, the state not only violates the rights of individuals, but it contributes to the production of other forms of criminality as well. From the

Gregg Barak

perspective of critical criminology, these injuries or harms ('crimes') may or may not violate law *per se*.

The criminological journey toward the development of a criminology of state criminality will not be accomplished without resistance from both inside and outside the boundaries of academic criminology. Simply put, there are a number of disciplinary biases and political obstacles to overcome. To begin with, the study of state criminality is problematic because the very concept itself is controversial. This is due, in part, to the debate over whether or not one should define 'crime' in terms other than the law codes of individual nations.

Traditional criminology has always ascribed to the legalistic state definition of crime, investigation and analysis confined to legally proscribed behavior and its control (Schwendinger and Schwendinger, 1970; Platt, 1974; Michalowski, 1985). Outside of the conventional confines of criminology have been those acts such as imperialism, exploitation, racism, and sexism or those acts not typically prosecuted such as tax-evasion, consumer fraud, government corruption, and state violence. Critical criminology, accordingly, has not confined itself to studying legally defined crime. Utilizing other definitions such as crimes against humanity or politically defined crime, critical criminology has studied harmful and injurious behavior which may or may not be sanctioned by particular nation-states' definitions of illegality, but which are recognized in the 'higher' criteria established in various international treaties, covenants, or laws. Therefore, for the purposes of this discussion, crimes by and of the state, like those crimes against the state, may be viewed similarly as involving exploits of both a violent and non-violent nature. They may, in fact, involve violations of the same established legal relations or prohibitions, including but not limited to such behaviors as: murder, rape, espionage, cover-up, burglary, illegal wiretapping, illegal break-in, disinformation, kidnapping, theft, assassination, terrorism, secrecy, unaccountability, corruption, exporting arms and importing drugs illegally, obstruction of justice, perjury, deception, fraud, and conspiracy. In addition, state criminality may include the more general transgression of both domestic and international laws, not to mention the more subtle institutional relations or behaviors which cause social injury such as the bankrupting and the destroying of whole economies or the violation of universally shared notions of fundamental human rights.

Now then, these critical definitions of crime which have opened up the scope of 'criminality' have certainly not as yet been adopted by conventional criminologists nor even considered by the general public. In fact, both leftists and rightists, inside and outside of criminology, have found such conceptualizations of crime to be unreal, unnatural, idealistic, impractical, or irrelevant. The point, however, is that for those critical criminologists who think otherwise, the time is long past due for the serious development of the substantive areas of state criminality. Through this type of critical

development within criminology there stands the possibility of transforming the very nature of the study of criminality from the individual to the political.

In order to carry out such a criminological agenda, investigators cannot be deterred in their study of state criminality by the lack or failure of the state to adjudicate itself or its agents as criminals. After all, just because it has been the case that states have chosen to ignore, dismiss, or down play their own criminality, it does not follow that we criminologists should do the same. Similarly, criminologists should extricate themselves from the trap of viewing state crimes within the old political double standard: treating the phenomena as though it involves the behavior of certain designated 'bad guy' states and not the behavior of so-called 'good guy' states.

For example, the case of terrorism presents much theoretical, strategic, and ideological work to be done. Scholarly interest in this area, especially as conducted by students of criminology and criminal justice, has been highly focused or selected on some but not all terrorist acts. This selectivity refers not only to countries emphasized and neglected, but to the various forms of terrorism committed. By most legally-defined or state-based notions of terrorism, the typically incorporated crimes include those 'retail' terrorist acts committed by groups or individuals against agents or symbolic representatives of a real or imaginary enemy state. Typically omitted from most discussions are those 'wholesale' acts of terrorism waged by state-supported networks against various independence or national revolutionary movements (Chomsky and Herman, 1979; Herman, 1982).

Or what about the role of covert and overt aid in the domestic affairs of developing nations, especially in trying to effect the outcomes of elections? It used to be in the glory days of the American empire, that neither the President, the Congress, nor the people considered whether we had a right to intervene in the domestic affairs of another nation. U.S. aid in those days, mostly covert, "was routine, and so pervasive as to be immune to political criticism" (Weinstein, 1989: 14). But with respect to the practicalities, if not the underlying principles, U.S. foreign policies are now beginning to be publicly questioned. At the same time, however, for example, the Bush administration during its first year in office, attempted to redefine the term assassination in an effort to circumvent President Ford's 1975 executive order formally banning U.S. assassinations of foreign officials. According to a recent 'memorandum of law,' the original order has not been changed, only watered down to exclude the possibility of assassination without premeditation (Wright, 1989: 1C). Whatever the state finally decides about these 'murders,' elections, and other forms of covert and overt intervention, criminologists should not be precluded from exploring and examining these actions as state crimes against humanity.

Like the study of corporate crime the study of state crime is problematic because it involves examining behaviors engaged in by agents and

Gregg Barak

organizations which are both socially and politically acceptable (Clinard and Yeager, 1980; Ermann and Lundman, 1982). Access to studying the politically powerful, especially with respect to deviant behavior, has always been difficult. While both corporate and state criminality have the potential for undermining the very stability of the system that the corporate-state strives to protect, it is the latter crimes by the state which pose the greater threat to the political legitimation of the system as a whole. State criminality, in other words, provides the type of inherent contradictions which simultaneously challenge the prevailing political ideology yet accommodate the same behavior in the name of greater common interests or national security. The political repression or governmental crimes committed against the Chinese demonstrators in 1989 was an excellent example of this point. To label and to study such behavior as criminal was to participate in a de-legitimation of the Chinese state; one can well imagine the consequences for any Chinese criminologist who would have attempted to examine this form of state criminality.

Analysis of state criminality is further complicated because it involves not only the overlapping activities of 'criminal' and 'non-criminal' organizations, but also because it involves the study of state-supported corruption and violence which never can be totally separated from individual acts of criminality and terrorism as each is somehow related to the inequitable distribution of economic wealth and legal-juridical privileges. Concerning the former set of relationships, Block summarized the situation nicely when he argued that traditionally organized crime and state organized crime are inseparable in many cases because:

organized crime has been and continues to be inextricably linked to transnational political movements and to that segment of the American political establishment known as the espionage community or more aptly, the transnational police force" (1986: 59).

He further concluded that this kind of interplay between organized and state criminality results in the situation where:

it may very well be the case that certain political assassinations or other intelligence moves may be done not in the interests of foreign policy carried out by hired goons and thugs, but rather in the interest of drug smugglers and international gamblers carried out by their clients in the intelligence services (1986:76).

As for the connections between individual criminality and state criminality, Dieterich has argued, for example, that the material debasement of the "majority of the Latin American peoples is an inevitable consequence of the current capitalist accumulation model" (1986: 50) and the physical and psychological submission of these peoples "into a state of apathy and fear is a functional prerequisite for that accumulation model." On the U.S. domestic front, Henry (1990) has already demonstrated the relationship between a 'free market' economy and street criminality as both are tied to policies of omission and marginality and to the viability of informal economic activity as an alternative response to legitimate work. Therefore, the ability of

criminology to recognize not only the criminal content and the criminogenic nature of various forms of state intervention into the affairs of other countries, but also the criminality and the crime-producing influences of domestic policies of non-interventionist omission, becomes a necessary prerequisite for the development of the serious study of state crimes.

In sum, the development of a criminology of state criminality requires that criminologists move way beyond the rather one-dimensional media portrayals and political discourse associated with the selectively chosen crimes by the state. In order to establish a criminology of the structural and etiological reasons ('causes') of state criminality, criminologists and other legal and political scientists must first present the kinds of conceptual frameworks which not only incorporate the full array of state crimes, but which can aid us in understanding the relative harm and injury inflicted by the behaviors and policies of nation-states.

STATE CRIMINALITY AND THE U.S. EXPERIENCE

It should be pointed out that state criminality is not indigenous or symptomatic of any particular socio-economic formation, including pre-capitalist, capitalist, or socialist. As far back as the fifth century A.D., for example, state criminality had been acknowledged in the course of realizing that the actions of pirate bands were essentially the same as those actions of states and empires. That is to say, both pirates and empires had the capacity to seize property by force or violence. The only real difference between the two was the scale of their endeavors, and the success of pre-states or empires to impose a justifying rhetoric or ideology for their theft of land, property, and people (Jenkins, 1988; Chambliss, 1989). In the contemporary world, of course, regardless of the particular socio-economic and state formation, crimes by and of the state can be found globally. In other words, historically it has been the case that both democratic and undemocratic regimes have engaged in state criminality. It may very well be the case, that political repression and state crime have less to do with the democratic nature of the government *per se*, and more to do with the power of a particular state regime such as the U.S. or the U.S.S.R.

A glance at the 'democratic' history of the United States reveals the patterned actions of state criminality. Whether we are discussing the 19th century crimes of the U.S. government which were in violation of the fundamental rights of Native and African American peoples, or we are examining those state crimes which have violated the legal and civil rights of workers, minorities, and dissidents over the past century, the evidence clearly demonstrates that these crimes were not accidental or due to some kind of negligence. On the contrary, those state actions engaged in and/or the consequences of the policies of a developing political economy were the outcome of premeditated and intentional decisions. In fact, some of these

Gregg Barak

'crimes against humanity,' such as slavery, were in full compliance with the supreme laws of the land.

In light of these historical realities, the student in 20th century state criminality of the U.S., for example, when studying the role of the Federal Bureau of Investigation as a formal institution of social control, should strive for an integration of the dual-sided nature of state 'crime-fighting' and 'political-policing.' The Palmer Raids and the Red Scare of 1919, the McCarthyism of the early 1950s, and the counter-insurgency campaigns of the late 1960s and early 1970s used against those citizens protesting the involvement of the U.S. in Southeast Asia, reveal a domestic history of extraordinary political repression or state criminality against those who have seriously challenged or posed any kind of a threat to the status quo (Glick, 1989). Such activities, covert and overt, have not been limited to domestic enemies alone, but have included foreign political enemies as well. Since it was established in the late 1940s, The Central Intelligence Agency has had a rather consistent history of supporting repressive dictators in such countries as Cuba, Iran, the Philippines, Nicaragua, Brazil, South Korea, and Argentina, and of overthrowing or destabilizing democratically elected governments in Guatemala, Chile, Jamaica, and Nicaragua — to name only a few (Bodenheimer and Gould, 1989). Here again, as with the domestic state crimes, these international state crimes, would appear to select their victims in response to the needs of laissez-faire or the free market economy, consistent with the real or the perceived needs of capitalist accumulation.

What these domestic and international examples of state crime have shared in common has been their ongoing series of legal and illegal clandestine operations used against those politically-labelled deviants. Within the United States, the FBI's Cointelpro, or counter-intelligence programs, of the 1960s and 1970s used against the Black Panther Party for Self-Defense, the anti-war movement, and the American Indian Movement, included a variety of illegal and unconstitutional techniques to de-legitimate or to otherwise criminalize lawful organizations (Churchill and Wall, 1988). These state crimes have involved such everyday illegal activities as surveilling, burglarizing, and tampering with the mail. In addition, there have been the more exotic forms of state criminality such as employing propaganda to smear progressive organizations, or sending out disruptive *agents provocateurs* (Wolfe, 1973; U.S. Congress, 1976; Cauter, 1978; and Churchill and Wall, 1988).

The study of state criminality, more so than the study of any other form of criminality, is by definition a highly politicized undertaking. In other words, the study of state crimes cannot be separated from the emotionally-charged landscape of a changing political economy, which involves among other things, the study of law, power, and ideology as well as the study of public policy, foreign and domestic. A case in point is the study of terrorism where one person's 'terrorist' has been another person's 'freedom fighter.' For

example, with respect to U.S. supported state terrorism, it should be recognized that such forms of state criminality as the involvement in systemic counter-revolutionary warfare, pro-insurgency, or interventionism, are responsible for all kinds of human casualties. The tens of thousands of lost lives and an even larger number of permanently injured citizens of Latin American countries, over the past few decades, reveals just some of the harm done by international state criminality. I refer specifically to the illegal detentions and the mass torturing, murdering, and kidnapping by U.S. trained secret police and militia in such countries as Guatemala and El Salvador (Nelson-Pallmeyer, 1989).

This kind of U.S. state-engaged criminality or what has otherwise euphemistically been referred to by the military, the U.S. State Department, and the mass media as 'low-intensity' conflict or warfare, has been virtually ignored by students of governmental or organizational crime. Such state policies have been designed "not only to defend the U.S. empire against the rising challenges from the poor but also to conceal from U.S. citizens the unpleasant consequences of empire" (Nelson-Pallmeyer, 1989: 2). These low-intensity activities have involved an unprecedented degree of coordination among the White House, the National Security Council, the Central Intelligence Agency, the State Department, the Agency for International Development, conservative private aid groups, and a semi-private network of drug-runners, arms merchants, and assassins (Nelson-Pallmeyer, 1989). The 'secret' crimes of low-intensity conflict have strived to integrate the more traditional military, political, economic, and psychological aspects of warfare with the more modern, technological aspects of mass communications, private consumption, and social control. Such interventionism, for example, into the affairs of Nicaragua eventually wore the people down and contributed to the defeat of the Sandinistas in the elections of 1990.

The study of U.S. state criminality should not only include those 'proactive' crimes of the state, at home or abroad, such as the Iran-Contra Affair and the subsequent behaviors of the Contras and Sandinistas or the recent invasion of Panama, but they should also include the crimes by state 'omission' such as the denial of the fundamental right to work for an adequate income or the right to be permanently free of homelessness in a society as rich as the United States. With respect to the former crimes by the state, the syndicated columnist, David Broder, has drawn out the important parallels between Oliver North and Manuel Noriega. In response to an editorial which appeared in *The Wall Street Journal* shortly after General Noriega and his people stole the results of the May 1989 election in Panama, Broder maintained that the correct lesson to learn was the one concerning U.S. hypocrisy in relationship to Noriega in particular and to the crimes against the people of Nicaragua in general. He wrote:

Gregg Barak

When the executive branch of the U.S. government evades laws passed by Congress, when it brushes aside the verdict of the World Court on its illegal mining of Nicaraguan harbors, then it cannot be surprised when the head (Noriega) of a client government decides to ignore the election returns (Broder, 1989: 2B).

With respect to the crimes of omission, it is precisely those state domestic and economic policies of non-interventionism and de-regulation which have combined not only to deny people of their basic human needs, but which have also helped to contribute to the production of the more traditional forms of criminality (Henry, 1990; Barak, 1991).

In the context of global human rights for the people of both developed and developing countries, therefore, it is my contention that the study of state criminality should be connected to those struggles which have historically attempted to expand the notions of fundamental justice for all. In the next section, I will attempt to show the linkages between crime, criminology, and human rights and the worldwide effort of the United Nations Human Rights Commission to challenge some of the more commonly experienced state crimes against humanity.

THE POLITICS OF HUMAN RIGHTS VIOLATIONS

The politics of struggling for worldwide social justice and the politics of condemning the human rights abuses of nation-states by such organizations as Amnesty International or the United Nations Human Rights Commission (UNHRC) will not put an end to the global spectacle of human rights violations and to the suffering of millions of people any time in the near future. More likely, the politics of condemning human rights violations will continue to 'heat up' as the strength of the various geographical blocs continue to increase. Most recently, for example, regional blocs involving nations from Latin America, Africa, and the Middle East have begun to 'rival' the blocs of the two superpowers and the older European nations. For example, at the 1990 UNHRC meetings in Geneva, resolutions were passed against the human rights abuses of the Israeli re-settlement of Soviet Jews in the Occupied Territories and the U.S. invasion of Panama. At the same time, the Commission rejected a loosening of the sanctions on South Africa. China, however, despite the massacre at Tiananmen Square, managed to escape an official sanction from UNHRC. Also escaping sanction were the 1989 human rights abuses which occurred in such other countries as Guatemala, Iraq, Sri Lanka, Cambodia and the Philippines. What effects the current democratic revolutions in Eastern Europe and the Soviet Union will have on the centuries-old struggle for social justice is still too early to discern.

The problem in studying the politics of human rights violations cannot be separated from the problem of studying state criminality because they are both related to the basic issue of confronting the fundamental and irreconcilable differences between empire and social justice. Countries which have lived under the 'sphere of influence' of the U.S.S.R. or the U.S.

have experienced various forms of exploitation and domination. Neither superpower has been very likely to admit to its own crimes against humanity. In fact, both countries have gone to great lengths to rationalize and justify their politically necessary behavior. Through propaganda and disinformation efforts, each of the superpowers have attempted to suppress or to put a noble label around their seamy and contradictory behavior as these have been in conflict with the professed ideals of each country.

The principles for addressing human rights abuses globally have been evolving at least since the French and American revolutions. Today the means for addressing these violations include the shaping of world opinion and the holding of nation-states accountable to edicts of international law, to global treaties and declarations, and to universal concepts of human rights, in short, supporting those worldwide efforts aimed at achieving self-determination and independent development for all peoples of the earth. The role of the United States in the domestic and international affairs of developing nations serves as an example. Since 1945, U.S. dominated foreign intervention in places like Africa and Asia have certainly served more as a deterrent than as a facilitator of the materialization of human rights for Third World people. And for the past two decades, of all governments in the West, it has been the U.S. that has most consistently opposed the realization of the right of self-determinism by the peoples of developing nations. As Falk (1989) has argued, it comes as no surprise, therefore, that the United States has been the nation consistently portrayed as an implacable foe of the rights of people. This hegemonic resistance by the U.S. places both ideological and physical obstacles in the way of maximizing human rights worldwide.

When it has come to the ratification of the major multi-lateral human rights agreements or instruments, the USA has one of the very worst records among Western liberal democracies. By refusing to sign and recognize these various documents, the U.S. has, at least indirectly, contributed to the worldwide abuse of human rights. For example, it was not until 1988 that the United States finally ratified the Prevention and Punishment of the Crime of Genocide which was opened for signature in 1948. As of 1989 the U.S. had still failed to ratify such human rights documents as the Convention on the Reduction of Statelessness (1961), the International Convention on the Elimination of All Forms of Racial Discrimination (1965), the American Convention on Human Rights (1965), the International Covenant on Economic, Social and Cultural Rights (1966), the International Covenant on Civil and Political Rights (1966), the International Convention on the Suppression and Punishment of the Crime of Apartheid (1973), and the Convention on the Elimination of All Forms of Discrimination Against Women (1979).

Naturally, signing and enforcing any of the documents that have identified and attempted to de-legitimize those public and private policies, domestic and foreign, which have helped to reproduce crimes against humanity, have often

Gregg Barak

been correctly viewed as impediments to capital accumulation. This is true whether we are discussing developed or developing nations. With regard to the post-1945 construction of a USA foreign policy based on isolationism and interventionism, the international recognition of 'human rights' as legally binding, would certainly help to alter the philosophy of a leadership that has never truly "trusted law or morality or international institutions as the basis for maintaining international security" (Falk, 1988b: 4). Grounded in the failures of Wilsonian idealism and the inter-war diplomacy, U.S. post World War II diplomacy, policy, and ideology has always been based on the belief that the way to peace (and 'democracy') was through superior military power and the contradictory preparation for war as the only basis for peace. Perhaps, in light of the current thawing of the Cold War, and in response to the liberalization and democratization in Eastern Europe and the Soviet Union, the U.S. may be 'forced' to rethink its policies, for example, on low intensity conflict.

The mere rejection of low intensity conflict as business as usual or its recognition as a form of state criminality *vis-à-vis* the internationalization of human rights law, would, in effect, outlaw such behaviors as counter-revolutionary terrorism and structural violence that afflict the poor and underdeveloped peoples of the world. Accordingly, Falk has stressed that:

the rights of peoples can be undertaken at its deepest level as a counter-terrorist code of rights and duties, especially directed against state terrorism of the sort associated with foreign policies of leading imperial governments (1989: 68).

More generally, resisting all forms of state criminality is no simple enterprise as it calls for challenging the prevailing ideologies of militarism, nationalism, and regionalism. The struggle for world peace, social justice and the reduction in the crimes of and by the state also necessitates, on the one side, a decreasing role of the national police apparatuses and, on the other side, an increasing role of multi-lateral cooperation among nations. To put it simply, this utopian world vision requires that peoples of the global community understand that "no problem we face, not the nuclear one, not the ecological one, not the economic one, can possibly be handled, even addressed, on a unilateral national basis" (Ellsberg, 1988: 18).

Nevertheless, some people have argued that it is simply naive to believe that these kinds of agreements are going to eliminate the state criminality of human rights abuses. After all, as they say, these agreements have no teeth. Others, however, have argued that it is just as naive to dismiss these efforts simply because of the politicalization of the process itself. In other words, since the end of WWII the struggle for social justice in general and the work of the UNHRC in particular has minimally functioned to successfully:

establish norms and goals for the international community. The growing consensus on an expanded definition of fundamental human rights can be linked to the existence of U.N. covenants and the efforts of the Commission (Allen, 1990: 12).

Karel Vasak, former UNESCO legal advisor, has called on nation-states worldwide to sign on to what has been termed the 'third generation of rights.' The third generation of rights goes further in its attempts than the 'first' and 'second' generation of rights did in their attempts to maximize the realization of human rights for all the people of the world. Each generation of politically evolved human rights violations have been the product of different historical struggles waged by people without rights to obtain them. With each passing historical period, there has been the expansion of both the notions associated with fundamental rights and with respect to whom those rights pertained.

The first generation of rights have been referred to as 'negative rights' in that they have called for restraint from the state. These rights were derived from the American and French revolutions and the struggle to gain liberty from arbitrary state action. These rights can be found in the Civil and Political Rights of the International Bill of Rights. The second generation of rights have been referred to as 'positive rights' in that they have required affirmative action on the part of the state. These rights can be found in the Economic, Social, and Cultural Rights of the International Bill of Rights. They emerged from the experiences of the Soviet Union and they also resonate in the welfare state policies of the West.

Finally, the third generation of rights has called for international cooperation. These rights are currently evolving out of the condition of global interdependence confronting the earth today. For example, in 1990, UNHRC members introduced a resolution that "encouraged an expanding role for the world body in defining the relationship among technology, development and the ecological integrity of the planet" (Adler, 1990: 13). The UNHRC resolution, while not recommending any action at this time, has gone on record to say:

that the preservation of life-sustaining ecosystems under conditions of rapid scientific and technological development is of vital importance to the protection of the human species and the promotion of human rights (Quoted in Allen, 1990: 13).

Such a resolution, of course, recognizes that human rights obligations can no longer be satisfied within the boundaries of individual nations. Therefore, the rights of people independent of states, are required not only for a reduction in state organized violence and the maintenance of world peace, but for the protection of the environment and for a massive scale of global development (Crawford, 1988).

Putting human rights into practice by all types of universal agreements reached by both state and non-state representatives, is certainly one of the prerequisites for a reduction in all forms of state criminality, especially the more blatant forms often ignored by even the most 'democratic' of nations like the United States. The argument here is that a recognition of these critical relationships by criminology and the adoption of basic human rights obligations as part and parcel of a progressive criminological practice, are

Gregg Barak

absolutely essential for the establishment of a criminology of state criminality. Moreover, without the legitimation of the study of state criminality both inside and outside of our academic discipline, criminology will remain captive of the prevailing social and moral contexts of legally defined state crime.

CONCLUSION

This essay has implicitly argued that state criminality is ubiquitous. It has also been explicitly argued that state criminality is victim-producing and criminogenic. Consequently, crimes by and of the state are responsible for much of the global crime, injury, harm, violence, and injustice. Historically, it has been suggested that we are in the emerging period of the third generation of rights as evidenced by various declarations and the expanding movement or struggle on behalf of universal human rights. Accordingly, I have contended that the time has come for criminologists to actually devote serious time to the study of state organized crime.

If such work is finally emerging,² then the lag in time between the introduction of the concept 'state' to the field of criminology and the actual practice of studying state criminality, may be roughly parallel to the time lag between the introduction of white collar/corporate crime as a concept and the actual practice of studying this form of criminality. That is to say, it took some two decades after Sutherland first introduced 'white collar crime' before criminologists were seriously engaged in studying the crimes of the 'privately' powerful. It now appears that it may have also taken about two decades between the time, when radical criminologists of the late sixties first introduced the concept of state criminality to the discipline, and the time when criminologists finally began to seriously examine the crimes of the 'publicly' powerful.

To reiterate, whether the study of state criminality involves the detailed investigation of agents or organizations violating the rights of its own citizens, or whether it involves the examination of inter-state terrorism, or whether it involves exploring the patterned interaction between the two, analysis requires that criminologists and others appreciate the two-sided and often hypocritical nature of this form of political deviance. A case in point would demand the unraveling of the connections between the U.S. savings and loan (S L) 'scandal' and the involvement of known CIA agents and members of organized crime. Of course, with respect to these S L state-organized thefts, what laid the foundation or ground work was the federal deregulation of the S L industry passed into law by a bi-partisan Congress during Ronald Reagan's first term as President. Without this change in the legal structure and in the policies controlling the operations of the individual savings and loans, there would not have been the institutionalized opportunity for the biggest theft in U.S. history. A theft which is currently being estimated, at a cost to the American taxpayers, of something on the order of \$500 billion to one trillion dollars (Reeves, 1990).

Moreover, with respect to the study of state criminality and crime in general, both the S L thefts and the S L bail-outs as well as the de-regulation itself, cannot be divorced from the underlying changes in the political economy which were creating economic dilemmas that de-regulation sought to obviate. Failure to develop such macro-level analyses and criminological constructs of the crimes of the powerful, typically results in very unsatisfying and highly reductionist analyses about individual greed and organizational survival divorced from the political economy itself. Such contradictory analyses, which are perhaps better than no analyses at all, may help explain to some degree why it has often been the case that these allegedly unacceptable behaviors can be so easily swept under the political and criminological carpets.

In *Revolutionaries and Functionaries: The Dual Face of Terrorism*, Falk (1988a) has underscored this point with respect to state terrorism in particular. He has argued persuasively that unless there is the development of both objective and neutral scholarship and action, then the chances are strong that the study and transformation of political violence and state criminality will fall victim to the often employed double standard of justice. This kind of victimization can come about by the unscientific and uncritical acceptance of the language and discourse used to describe politically deviant global behavior. As criminologists, therefore, not only should we be involved in the process of demystifying political deviance, but we should also be on the look-out for all forms of state criminality brought about by anti-democratic and repressive forces, whether they operate at home or abroad.

I know that there are skeptical criminologists out there, consisting of both the sympathetic left and the adversarial right, who question not only the value of a criminology of state criminality, but of an expanded definition of 'criminality' in the first place. These criminologists and others have asked me, for instance, what kinds of contributions can criminologists make to the study of crimes by and of the state that the other social scientists and even journalists could not make? Let me briefly respond to each of these concerns.

Regarding the appropriateness of a criminology of state criminality and the expanded definition of crime: First, I believe that both are consistent with the more critical trends in criminology as represented traditionally by arguments advanced by Sellin and Sutherland in the 1930s and 1940s, and more recently by the radical arguments advanced by Chambliss, Quinney, Platt, and others beginning in 1970 with the Schwendingers' classic statement: "Defenders of Order or Guardians of Human Rights." Second, as I have argued throughout this essay and elsewhere, the serious study of the systems of exploitation, including the state and its policies as a crime producing institution, have yet to be considered, especially as these are related to the processes of both victimization and criminalization.

Gregg Barak

As for the critical contributions that I believe could be made by the scientific study of state criminality as opposed to the traditionally 'non-criminological' study of crime by other social scientists, or by those treatments of the mass mediated or even the alternatively mediated discussions of crime by journalists, they appear to me to be self-evident. As students of the convergence of crime, law, justice, control, politics, and change, criminologists are in the unique position of having a focus on the interaction of the dynamics of these properties as they have shaped the development of crime, criminology, and social control. Bringing this kind of 'special' knowledge to the study of state criminality presupposes having undergone the type of demystification of crime and justice not typically experienced by either social scientists in general or journalists in particular. And, I would argue that while this will vary by degree, it is still equally true of bourgeois or critical social scientists and of mainstream or alternative journalists.

In the end, if criminology does not become engaged in the serious study of crimes by and of the state, then this omission will not only have stood in the way of criminology providing the complete picture of crime, but it will have been partially responsible for the reproduction of the ongoing criminalization and victimization of people around the globe. Stated differently, the lines of inquiry pertaining to the theoretical questions posed by the crimes of the powerful and by the relationships between social control and social justice, requires that the examination of state criminality be central to this whole area of investigation. Finally, to confront state criminality as a legitimate enemy of civil society is to join the struggle for universal human rights and social justice.

ENDNOTES

1. An earlier version of this manuscript was presented at the annual meetings of the American Society of Criminology in Reno, Nevada (November 1989) and to the Department of Criminology at the University of Ottawa (January 1990). With respect to this substantially revised version, the author wishes to acknowledge the feedback and discussion generated by the persons in attendance in Ottawa. He would also like to thank the anonymous reviewers of the earlier draft for their criticisms and suggestions.
2. See, for example, my forthcoming edited anthology of original essays on state criminality, *Crimes by the Capitalist State: An Introduction to State Criminality*.

REFERENCES

- Allen, Terry, "The Politics of Human Rights" *In These Times*, April 25-May 1, 1990:12-13.
- Barak, Gregg, *The Violence of Homelessness in America*, New York, 1991.
- Barak, Gregg, (ed). *Crimes by the Capitalist State: An Introduction to State Criminality*, Albany, N.Y.: State University of New York Press, 1990.
- Barak, Gregg "Newsmaking Criminology: Reflections on the Media, Intellectuals, and Crime." *Justice Quarterly* 5, 4, 1988:565-587.
- Block, Alan, "Violence, Corruption, and Clientelism: The Assassination of Jesus de Galindez, 1956" *Social Justice* 16, 2, 1989:64-88.
- Block, Alan "A Modern Marriage of Convenience: A Collaboration Between Organized Crime and U.S. Intelligence" Robert J. Kelley, (ed.), *Organized Crime: A Global Perspective*, Totowa, N.J.: Rowman and Littlefield, 1986.
- Block, Alan and William Chambliss *Organizing Crime*, New York: Elsevier, 1981.
- Bodenheimer, Thomas and Robert Gould *Rollback! Right-wing Power in U.S. Foreign Policy*, Boston: South End Press, 1989.
- Broder, David "Lawlessness At Home Invites Defiance" *The Montgomery Advertiser and The Alabama Journal*, Sunday, May 14, 1989.
- Caute, David *The Great Fear: The Anti-Communist Purge Under Truman and Eisenhower*, New York: Simon and Schuster, 1978.
- Chambliss, William "State-Organized Crime" *Criminology* 27, 2, 1989:183-208.
- Chomsky, Noam and Edward S. Herman *The Washington Connection and Third World Fascism*, Boston: South End Press, 1979.
- Churchill, Ward and Jim Vander Hall *Agents of Repression: The FBI's Secret Wars Against The Black Panther Party and The American Indian Movement*, Boston: South End Press, 1988.
- Clinard, Marshall and Peter Yeager *Corporate Crime*, New York: The Free Press, 1980.
- Cohen, Stanley and Andrew Scull (eds) *Social Control and the State*, Oxford: Basil Blackwell, 1985.
- Crawford, James *The Rights of Peoples*, Oxford: Oxford University Press, 1988.

Gregg Barak

- Dieterich, Heinz "Enforced Disappearances and Corruption in Latin America" *Crime and Social Justice*, No. 25, 1986.
- Ellsberg, Daniel Remarks presented at the session, "The Growth of the National Security State," at the conference on *Anti-Communism and The U.S.: History and Consequences*, sponsored by the Institute for Media Analysis, Inc., Harvard University, Nov. 11-13, 1988.
- Ermann, David and Richard Lundman *Corporate and Governmental Deviance: Problems of Organizational Behavior in Contemporary Society*, New York: Oxford University Press, 1982.
- Falk, Richard "United States Foreign Policy as an Obstacle to the Rights of People." *Social Justice*, 16, 1, 1989:57-70.
- Falk, Richard *Revolutionaries and Functionaries: The Dual Face of Terrorism*, New York: E.P. Hutton, 1988a.
- Falk, Richard Remarks presented at the session, "The Growth of the National Security State," at the conference on *Anti-Communism and The U.S.: History and Consequences*, sponsored by the Institute for Media Analysis, Inc., Harvard University, Nov. 11-13, 1988b.
- Glick, Brian *War At Home: Covert Action Against U.S. Activists and What We Can Do About It*, Boston: South End Press, 1989.
- Henry, Stuart "The Informal Economy: A Crime of Omission by the State?" G. Barak (ed.), *Crimes by the Capitalist State: An Introduction to State Criminality* Albany, N.Y.: SUNY Press, 1990.
- Herman, Edward *The Real Terror Network: Terrorism in Fact and Propaganda*, Boston: South End Press, 1982.
- Jenkins, Philip "Whose Terrorists? Libya and State Criminality" *Contemporary Crises*, 12 (2) 1988:1-11.
- Luyt, Clifford "The Killing Fields: South Africa's Human Rights Record in Southern Africa" *Social Justice* 16 (2) 1989:89-115.
- Michalowski, Raymond *Order, Law, and Crime: An Introduction to Criminology*, New York: Random House, 1985.
- Nelson-Pallmeyer, Jack *War Against the Poor: Low-Intensity Conflict and Christian Faith*, Maryknoll, N.Y.: Orbis Books, 1989.
- Platt, Tony "Prospects for a Radical Criminology in the United States" *Crime and Social Justice* (Spring-Summer) 1974:2-10.
- Schwendinger, Herman and Julia Schwendinger "Defenders of Order or Guardians of Human Rights?" *Issues in Criminology*, 5, (2) (Summer), 1970:123-157.
- Scott, Peter "Northwards Without North: Bush, Counterterrorism, and the Continuation of Secret Power" *Social Justice*, 16 (2) 1989:1-30.
- U.S. Congress Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities, vol. 6, *Intelligence Activities: Senate Resolution 21*, Washington, D.C.: Government Printing Office, 1976.
- Weinstein, James "Now That It's Out in The Open, The Underlying Principles Should Be Debated" *In These Times*, October 11-17, 1989.

The Journal of Human Justice, Vol. 2, No. 1, Autumn, 1990

Wolfe, Alan *Repression: The Seamy Side of Democracy*, New York: McKay and Company, 1973.

Wright, Robin "U.S. redefining ban on assassinations" *The Montgomery Advertiser and Alabama Review Journal*, October 15, 1989.

Zwerman, Gilda "Domestic Counterterrorism: U.S. Government Response to Political Violence on the Left in the Reagan Era" *Social Justice* 16 (2,)1989:31-63.