Crit Crim (2016) 24:231–245
DOI 10.1007/s10612-015-9306-3

State-Organized Crime, International Law and Structural Contradictions

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Published online: 4 January 2016

Abstract Following the trail blazed by Bill Chambliss in his 1988 Presidential Address to the American Society of Criminology, this article engages two interrelated issues concerning the concept of state-organized crime that he pioneered. First, the article develops Chambliss's argument that criminologists should define state crime as behavior that violates international agreements and principles established in the courts and treaties of international bodies. Second, although Chambliss effectively argued that international law "on the books" provides a framework of substantive concepts and categories that allows criminologists to define certain state actions as a form of crime, "in action" international laws fail to provide legal accountability for states and protection for victims. This article demonstrates, however, that Chambliss's structural contradictions theory of law can help to explain this paradox.

Introduction

The 40th Annual Meeting of the American Society of Criminology (ASC) was held on November 9–12, 1988 at the Chicago Marriott hotel located on the "Magnificent Mile" section of Michigan Avenue in downtown Chicago. William J. Chambliss was the ASC President that year and Ray Michalowski served as the Program Chair. "State and Crime" was the overall theme of the conference. On Friday, November 11 at the annual banquet (which the ASC does not hold anymore), Bill Chambliss stepped to the podium to deliver his Presidential Address. The title of the address, later published in *Criminology* (Chambliss 1989), was "State-Organized Crime." Chambliss's address would later be compared favorably to another Presidential Address, that of Sutherland (1940) to the American Sociological Society in 1939 on "White Collar Crime."

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Chambliss (1989, p. 183) started the address by stating: "There is a form of crime that has heretofore escaped criminological inquiry, yet its persistence and omnipresence raise theoretical and methodological issues crucial to the development of criminology as a science. I am referring to what I call 'state-organized crime.'" Then he transported the audience back to the sixteenth and seventeenth centuries with vivid descriptions of state complicity in piracy. Many of us were mesmerized by Bill's colorful accounts of pirates like Borgnefesse and Sir Francis Drake, who looted Spanish and Portuguese ships of gold and silver in service to the British and French governments, and in direct violation of their laws. Just as we were absorbing the tales of long ago pirates, Chambliss abruptly brought us back to the 20th century. Now the accounts were of smuggling: of narcotics by the CIA during the Vietnam war and of arms by the National Security Council, the Defense Department and the CIA during the Reagan administration's Iran-Contra affair, all in violation of US laws. With his brilliant analysis Bill helped the audience to understand, as he had come to realize, that these were accounts of the same thing in different time periods: "Some of the piracy of the sixteenth and seventeenth centuries was sociologically the same as some of the organized criminal relations of [the twentieth century]—both are examples of state-organized crime" (Chambliss 1989, p. 183). Still other forms of state-organized crime were described—assassinations, political murders, and domestic spying, followed by a theoretical discussion that utilized the concept of *structural contradictions*.

It was a masterful address, and it caused quite a buzz that night during and after the ASC banquet. In addition to the publication of the address in *Criminology* (Chambliss 1989), the concept of state-organized crime was also further explicated in Bill's textbook, *Exploring Criminology* (Chambliss 1988). The influence of the address was far-reaching, and some scholars have argued that its legacy is similar to Sutherland's. Friedrichs (2010, pp. 72–73), for example, notes that:

> Chambliss' presidential address was made almost a half-century after another landmark presidential address, namely Edwin H. Sutherland's address on "White Collar Crime" in 1939. Needless to say, Sutherland's address is widely recognized as having initiated white collar crime as a scholarly endeavor within the field of criminology, and I believe that Chambliss' address is recognized as having given fundamental impetus to the study of state crime as a legitimate area of criminological inquiry. This is not to say, of course, that one cannot find some earlier forms of attention to such crime, but the significance of both Sutherland and Chambliss promoting white collar and state-organized crime from the high-profile venue of presidential addresses can hardly be overstated.

The "State-Organized Crime" address did have a huge impact on the discipline of criminology, despite the fact that the topic of state crime is often marginalized in introductory textbooks on criminology (Rothe and Ross 2008). Following the publication of Chambliss's address there was a significant increase in research by criminologists, particularly those who identified as "critical" criminologists, that focuses on "state crime" (the "organized" modifier is usually dropped). A partial list of just books and anthologies that deal in whole or in part with state crime published after 1990 include: Balint (2012), Barak (1991, 2015), Chambliss et al. (2010), Cohen (2001), Doig (2011), Friedrichs (1998, 2010), Green and Ward (2004), Kauzlarich and Kramer (1998), Michalowksi and Kramer (2006), Mullins and Rothe (2008), Ross (1995a, b), Rothe (2009), Rothe and Kauzlarich (2014), Rothe and Mullins (2006, 2011), Smeulers and Haveman (2008), Stanley (2009), Stanley and McCulloch (2013), Tombs and Whyte (2003, 2015), Tunnell (1993), Welch (2009), and Whyte (2009). At least two major journals have devoted special issues to the

topic of state crime since 1988: *Social Justice* (Volume 16, No. 2, Summer 1989); *The British Journal of Criminology* (Volume 45, Number 4, July 2005); and *Social Justice* again (Volume 36, No. 3, 2009–2010). Shortly before his death, Bill and co-editor Chris Moloney assembled a massive four-volume collection of most of the cutting edge and foundational research on state crime since Sutherland's address (Chambliss and Moloney 2015). Bill's impact on the field is captured in the fact that 68 of the 76 articles in the collection were originally published after 1988.

In recent years a number of special international conferences have been held that were directly or indirectly inspired by Chambliss' concept of state-organized crime: Prato, Italy in 2006 (*Roundtable on Transnational Crime*); Maastricht, The Netherlands in 2007 (*Expert Meeting: Toward a Criminology of International Crimes or a Supranational Criminology*); Onati, Spain in 2008 (*State Crime in the Global Age*); Wellington, New Zealand in 2010 (*State Crime and Resistance*) to mention a few. At the American Society of Criminology meetings there is a well-established annual workshop on state crime organized by Dawn Rothe of the International State Crime Research Center located at Old Dominion University. In 2010, the International State Crime Initiative (ISCI) was launched in London. The ISCI "is a multi-disciplinary, cross institutional and international initiative designed to collate, analyze and disseminate research based knowledge about criminal state practices and resistance to them," and it publishes the journal *State Crime* (Volume 1, Number 1, appearing in Spring 2012). And recently, several criminologists usually associated with more "mainstream" approaches have also decided that the issue of state crime warrants attention (Agnew 2011; Hagan 2010; Hagan and Rymond-Richmond 2009; Savelsberg 2010).

Following the trail blazed by Bill Chambliss, this article engages two interrelated critical issues concerning the important concept of state crime that he pioneered. First, it addresses the definitional debate concerning state crime. Following Chambliss (1995, p. 9) I argue that, "…criminologists must develop a disciplinary vision which defines crime sociologically as behavior that violates international agreements and principles established in the courts and treaties of international bodies." The second issue concerns what I call the "paradox of international law;" that is, while international law "on the books" provides a framework of substantive legal concepts and categories that allows criminologists to define certain state actions as "crime" and identify the "victims" of these crimes, international law "in action" ultimately has failed to provide legal accountability for states and protection and legal recourse for the victims. Chambliss's structural contradictions theory of law (Chambliss 1979; Chambliss and Zatz 1993) can help to explain this paradox.

State-Organized Crime Defined

Early in the presidential address, Chambliss (1989, p. 184) defined state-organized crime as follows: "The most important type of criminality organized by the state consists of *acts defined by law as criminal* and committed by state officials in the pursuit of their job as representatives of the state" (emphasis added). Despite all of the previous debates within criminology concerning expanding the definition of crime beyond narrow criminal law categories (see Kramer 1982, 2013), Chambliss, somewhat surprisingly, selected the existing criminal law as the set of standards he was going to use to classify behavior as criminal for the purpose of this study. Of course, Bill was not unaware of the debate over the definition of crime and the important implications it had for a radical or critical

criminology. However, he wanted to demonstrate that state officials, "in pursuit of their job as representatives of the state," were often willing to violate their own laws in order to advance the economic or geopolitical interests of the state. Chambliss (1989, p. 186) wanted to emphatically make the point that in pursuit of these interests, "the state specifically instructed selected individuals to engage in criminal acts, the law, it must be emphasized, did not change."

Chambliss's selection of existing criminal law standards in this particular work is rooted in the theoretical framework he used to understand the sociological relationships involved in state-organized crimes like smuggling. The answer to the theoretical question of why state officials will violate the state's own criminal laws lies in the structural contradictions that inhere in nation-states (Chambliss 1979). "No state can survive without establishing legitimacy," Chambliss (1989, pp. 195–196) points out, and "The law is a fundamental cornerstone in creating legitimacy and an illusion (at least) of social order." The universal principles contained in the law require certain behaviors while banning others. In explaining the state crime of smuggling, Chambliss (1989, p. 196) points out that:

> The protection of property and personal security are obligations assumed by states everywhere both as a means of legitimizing the state's franchise on violence and as a means of protecting commercial interests. The threat posed by smuggling to both personal security and property interests makes laws prohibiting smuggling essential. Under some circumstances, however, such laws contradict other interest of the state. This contradiction prepares the ground for state-organized crime as a solution to the conflicts and dilemmas posed by the simultaneous existence of contradictory "legitimate" goals.

For the purposes of his specific theoretical analysis of state-organized crime, the conventional definition of crime as behavior that violates the standards of the criminal law was perfectly suited to the task. Bill was aware that this definition has "obvious limitations." He notes that the issue of state-organized crime "raises again the question of how crime should be defined to be scientifically useful," and he hopes that the study of state crime "may facilitate the development of a more useful definition by underlining the interrelationship between crime and the legal process" (Chambliss 1989, p. 204).

A few years later, in a "Commentary" on an article by Dello Buono (1995 published) in *The Society for the Study of Social Problems* (SSSP) Newsletter, Bill revisited the question of how best to define state crimes and broadened his approach. Due to the process of globalization, he argues, "In the next century, if criminology is to remain a viable and vital discipline, it must undergo a fundamental transformation" (Chambliss 1995, p. 9). He points out that criminologists have never resolved the issue of how to define the concept of crime. The easy option, Chambliss (1995, p. 9) notes, "has been to say that crime is behavior that violates the criminal law." But, he goes on to argue:

> This is precisely the kind of option which globalization will render indefensible. State organized crimes, environmental crimes, crimes against humanity, human rights crime, and the violation of international treaties increasingly must take center stage in criminology.

Given the changing world of the global era, Chambliss (1995, p. 9) goes on to state that, as I noted above, "criminologists must develop a disciplinary vision which defines crime sociologically as behavior that violates international agreements and principles established in the courts and treaties of international bodies." He ends the Commentary with this powerful and prophetic statement:

> That this expansion of vision will be forced upon the discipline as the globalization of political, economic and social relations transpires cannot be in doubt. If we begin our work today by researching and analyzing state crimes such as described by Dello Buono, we will be on the cutting edge of a revitalized science. If we fail to do so, we will have little relevance to the world of the 21st Century.

State Crime and International Law

Given Chambliss's ringing call for criminologists to use international law as the set of standards to classify state behavior as criminal for the purpose of study, let's examine this body of law more closely. International law incorporates features of both the traditional legal definition of crime and the various social definitions based on human rights, the interpretations of social audiences, analogous injuries, and morally blameworthy social harms that have suggested by a number of criminologists in recent years (Kramer 2013). This approach defines crime as a violation of *public international law*. Public international law consists of the treaties and customary state practices that govern relations among nation-states and detail the standards of human rights that the world community has decided should regulate state practices. State crimes are the actions of nation states that violate specific forms of public international law such as the Charter of the United Nations, Humanitarian Law (HL) and Human Rights Law (HR).

International Criminal Law (ICL) is "a subset of public international law involving the use of criminal sanctions to enforce law that is primarily international in its origins" (Slye and Van Schaack 2009, p. 3). Historically, public international law regulated the behavior of states at the international level while domestic criminal law held individuals accountable for their illegal actions by meting out criminal penalties. ICL is an emerging body of law that assigns *individual criminal responsibility* for serious violations of international law. International criminal law is a relatively new branch of international law and it too is subject to many definitional disagreements (Cassese 2003; Slye and Van Schaack 2009). The development of ICL has been a catalyst for the creation of the International Criminal Court (Rothe and Mullins 2006). It should be noted that there is often an overlap between Human Rights Law, Humanitarian Law and International Criminal Law. Some elements of ICL have their origin in HR and some have their origin in HL. As Ratner and Abrams (2001, p. 12) point out:

> [T]he focus of international human rights law and humanitarian law is upon the prescription of norms for the protection of the individual in peace and war. Those norms are usually formulated as obligations upon states, whether to refrain from certain conduct or to provide remedies in case of their commission. But to the extent that those two bodies of law address accountability of the individual for their violation, they overlap with international criminal law…International criminal law should thus be viewed as but one of the alternatives along a continuum to enforce international human rights or humanitarianism, with criminality a means of enforcement when other methods prove inadequate.

Like Bill Chambliss, a number of criminologists have long argued that various forms of international law can provide a set of standards that can be used to classify behavior as criminal for the purpose of criminological work (Barak 1991; Galliher 1991; Kramer et al. 1992). As the study of state criminality has further developed, more criminologists have

joined them (Hagan and Greer 2002; Hagan et al. 2005; Rothe 2009; Savelsberg 2010). In his discussion of blameworthy harm as a core characteristic of crime, Agnew (2011, p. 31) also singles out the importance of international law in allowing criminologists to identify, "a range of human rights violations that can also be viewed as universally harmful." He goes on to point out (2011, pp. 31–32) that: "The international law is especially useful for identifying harms committed by states and, increasingly, groups within and across states-including corporations."

While bodies of international law such as Humanitarian Law, Human Rights Law and International Criminal Law also have their problems and limitations, following Chambliss I want to suggest that criminologists take a closer look at these standards as one possible way to answer the definitional question within the discipline. To do so, I will briefly examine some of the ways my colleagues and I have used various forms of international law in our work on state crime over the years. In these case studies we were able to demonstrate that the state acts in question clearly violated international law, but that in the final analysis, international law can do little to actually contain the imperial violence and human rights violations of the major powers, particularly the United States.

The 2003 Invasion of Iraq: The "Supreme International Crime"

Ray Michalowski, Dawn Rothe and I used international law as an epistemological framework with which to examine the 2003 US and UK invasion of Iraq as a war of aggression, a form of state crime (Kramer et al. 2005). We noted that one of the key principles of the Nuremberg Tribunal at the end of World War II was that a state that wages a war of aggression commits the "supreme international crime." As law professor Louis Henkin (1995, 111) pointed out: "At Nuremberg, sitting in judgment on the recent past, the Allied victors declared waging aggressive war to be a state crime (under both treaty and customary law) as well as an individual crime by those who represented and acted for the aggressor state."

The condemnation of aggressive war by the Nuremberg Tribunal was carried over into the Charter of the United Nations. The UN Charter is the highest treaty in the world, the embodiment of international law that codifies and supersedes all existing international laws and customs (Normand 2003). At the heart of the Charter is the prohibition against war. According to Weeramantry (2003, 22): "By its very structure, by its express provisions and by its underlying intent the UN Charter completely outlaws unilateral resort to armed force." The specific prohibition against aggressive war is found in Article 2 (4) of the Charter that requires that: "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state." Article 2(4) is a peremptory norm having the character of supreme law that cannot be modified by treaty or by ordinary customary law.

On its face, the 2003 US and UK invasion of Iraq was a clear violation of Article 2(4). However, American and British officials argued that the invasion was legally justified under exceptions to Article 2(4) contained within the Charter, specifically the exceptions of self-defense and Security Council authorization, and by the emerging doctrine of "humanitarian intervention." We carefully examined each of these claims and rejected them on both empirical and legal grounds (Kramer et al. 2005). Our conclusion was that the invasion of Iraq did in fact violate the UN Charter prohibition against aggressive war, did not meet the criteria for a humanitarian intervention, and thus did constitute the "supreme international crime," a war of aggression. Furthermore, we argued that since the invasion was illegal under international law, the intentional and unintentional deaths, injuries and

destruction that resulted from it were war crimes. We also demonstrated that beyond the illegality of the invasion itself, US forces also committed a large number of specific violations of Humanitarian Law in their pursuit of the war and the subsequent occupation (Kramer et al. 2005).

While we classified the invasion of Iraq as a crime based on a violation of international law, the war could have also been defined as a crime based on the criteria of "public condemnation" (Agnew 2011) or "application of a rule by social audiences" (Green and Ward 2004). As the Bush administration prepared for the invasion of Iraq a global antiwar movement came to life. On February 15, 2003, over ten million people across the globe participated in antiwar demonstrations. These protests "were the single largest public political demonstration in history (Jensen 2004, xvii). The next day the *New York Times*, seemingly in agreement with Hardt and Negri's (2004) view of the importance of multitude in the new global order, editorialized that there were now two superpowers in the world: the United States and world public opinion.

In the final analysis, neither the UN and the international political community, nor the superpower of world public opinion, expressed through the anti war movement, were able to deter the US from undertaking the illegal invasion of Iraq. While Michalowski and I defined the war as a state crime and moved on to provide a theoretical analysis of the causes of the invasion (Kramer and Michalowski 2005, 2011), other important questions concerning this state crime remained. Why was the UN unable to stop the United States from undertaking an illegal war? Why is there a "gap" problem between the formulation of international rules and their enforcement? Why is there such a blatant double standard in the enforcement of international law? Why are the US and the UK able to operate with such impunity, while nations of the Global South and their leaders are more often held accountable for violations of international law at the international criminal court and in other venues? Michalowski (2010) later argued that it might "be more sociologically and politically informative to analyze" why these gaps and enforcement failures exist, "rather than to begin with the assumption that the acts in question are crimes, and then move directly to explaining their causes." As he points out, "beginning from the 'it's a crime' standpoint tends to minimize the analytic attention given to the political and sociological questions of why the act(s) in question have avoided legal consequences, which arguments have been successfully mounted to establish the claim that they are not crimes, and who finds these arguments persuasive and why" (Michalowski 2010, 18–19).

While both behavioral and definitional questions are important, the definitional/political labeling issue that Michalowski has raised is critical for understanding the operation of international law. In my view, one of the major reasons for the failure of international law "in action" to prevent or control state crimes, like the invasion of Iraq, is the undemocratic structure of the United Nations Security Council. The fatal flaw is the fact that that the five permanent members of the Council hold the veto power, which prevents the Council from taking enforcement actions that the "Great Powers," particularly the United States, do not want to be taken. According to Kennedy (2006, 76) this is the giant conundrum of the UN: "Everyone agrees that the present structure is flawed; but a consensus on to fix it remains out of reach."

While the United Nations Charter (which would codify important aspects of public international law), the creation of the Security Council, and the development of the International Court of Justice (World Court) and the International Criminal Court, imperfect as they were and distorted by Cold War politics, all represented a step in the direction of greater accountability for states and their leaders, all of this is undermined by the flawed structure of the Security Council. The veto power prevents the Council from

being able to take the necessary actions when the "Great Powers" are involved in a war of aggression such as the invasion of Iraq. While a strong defender of the United Nations overall, Kennedy (2006, 11) acknowledges the consequences of this great flaw, here speaking of the inability of the UN to prevent the illegal US invasion of Iraq in 2003:

> But the blunt fact was that a Great Power, indeed the strongest nation of all, could not be constrained from unilateral action by international organization and opinion; it therefore could do things that other, lesser powers could not, a further confirmation that not all member states were equal-as if they ever had been. The United Nations will never be in a position to block "warmaking" by a determined Great Power, not, that is, without the strong chance of another great war.

Humanitarian Law and the Bombing of Civilians

A further illustration of the enforcement failures of international law can be found with the state crime of bombing civilians. In a series of articles, my colleagues and I demonstrated that the bombing of civilians has been a recurrent and deadly feature of modern warfare since the early twentieth century (Kramer 2010a, b; Kramer and Kauzlarich 2011; Kramer and Smith 2014). Hundreds of thousands of people have been victimized by this form of criminality. This history also shows that while the United States was not the first country to bomb from the air, the US has bombed more civilians than any other country in the course of its various imperial wars, and, in 1945, was the first and only country to attack another nation with atomic weapons. While International Humanitarian Law (the laws of war) predates the rise of air power and the aerial bombing of civilians, there have been some attempts to use this form of public international law to both conceptualize and respond to these state crimes. The paradox of Humanitarian Law is, that while these laws (on the books) provide a framework of substantive legal concepts and categories that allow us to "see" (define) the bombing of civilians as a "crime" and identify the "victims," it ultimately fails (in action) to provide protection and legal recourse for those who are victimized by the state crime of bombing civilians.

Under international law there exist not only legal rules that focus on both the use of force and recourse to war in international affairs (*jus ad bellum*), but also rules that regulate the conduct of combatants in armed conflicts (*jus in bello*). The Hague peace conferences in 1899 and 1907 started the international community down the path toward the development of International Humanitarian Law (IHL). The original objective of the two Hague Conventions was to limit the use of force in international affairs but as Slomanson (2003, 485) points out, "Once the conference participants realized that there would be no international agreement to eliminate war, the central theme became how to conduct it."

The catastrophic Great War of 1914–1918 (World War I) shattered Europe, the Middle East and other parts of the world and brought renewed efforts to outlaw war. The most significant result of the Paris Peace Conference following the "war to end all wars" was a new organization of states called the League of Nations. The Covenant of the League did not prohibit war or the use of military force, but it did attempt to reduce their likelihood through "structures of consultation and arbitration." The experience of aerial bombing during the war also led to the creation of a commission of jurists that met in 1923 at The Hague to draft Rules of Aerial Warfare (Terry 1975). These rules were never adopted, and future efforts to constrain aerial bombardment would attempt to utilize the more general concepts in IHL concerning noncombatant immunity.

While the United Nations and Nuremberg Charters outlawed the recourse to war, the four Geneva Conventions of 1949 advanced international law concerning how wars are to be fought. The Geneva Conventions (and the additional protocols of 1977) are an important part of Humanitarian Law. This body of international law requires parties to an armed conflict to protect civilians and noncombatants, limits the means or methods that are permissible during warfare, and sets out the rules that govern the behavior of occupying forces.

While the existence of Humanitarian Law is an impressive achievement, allowing us to conceptualize the bombing of civilians as war crimes and to see the victimization these crimes cause, the historical record demonstrates the laws of war have failed to prevent these crimes from occurring or to hold the guilty parties accountable. HL, as it relates to the bombing of civilians, has failed for three primary reasons: (1) the failure to enforce the laws, particularly after World War II, (2) the elastic concept of military necessity contained in HL, and (3) the previously discussed undemocratic structure of the United Nations Security Council.

The primary problem with public international law in general, and international criminal law specifically, is the lack of any effective enforcement mechanism (Rothe and Mullins 2006; Rothe 2009). While a plethora of substantive laws and legal standards have been promulgated over the years (particularly with regard to conduct during war), states have been unwilling to give up enough sovereignty to allow for any formal procedural controls or coercive enforcement tools to be created which may be able to effectively punish or deter violations of these standards. Absent any effective formal legal controls that could put international law into action, the compelling drive to achieve nationalistic and imperialistic goals during the course of a war through the effective and available means of terror bombing has not been deterred by the mere existence "on the books" of the substantive legal principle of noncombatant immunity.

While no effective coercive enforcement mechanisms existed under international law at the time of the Second World War, the International Military Tribunals at Nuremberg and Tokyo prosecuted, convicted and then punished a number of German and Japanese government officials for "criminal" acts they had allegedly engaged in during the war. But it is important to note that the aerial bombardment of civilian populations, whether to destroy their morale or for any other purpose, was not one of the war crimes that was prosecuted. As Jochnick and Normand (1994, 89) point out: "In order to avoid condemning Allied as well Axis conduct, the war crimes tribunal left the most devastating forms of warfare unpunished." They go on to argue that the decision not to include terror bombing among the war crimes to be prosecuted at Nuremberg or Tokyo helped to legitimate this behavior: "By leaving morale bombing and other attacks on civilians unchallenged, the Tribunal conferred legal legitimacy on such practices" (Jochnick and Normand 1994, 91). Thus, even the most significant effort in history to actually enforce the laws of war (put them into action), along with its undeniably important humanitarian accomplishments in advancing the legal categories of "crimes against peace" and "crimes against humanity," failed to even define the intentional bombing of civilians as a crime let alone punish the behavior or attempt to deter it in the future with formal sanctions. Thus, the legal legitimacy conferred upon terror bombing by the International Military Tribunals helped to normalize the practice and ensure that it would be a normal and acceptable method of warfare in the future.

But alongside the failure to control terror bombing due to a lack of formal enforcement mechanisms, there is an even more fundamental way that that Humanitarian Law legitimizes state violence and contributes to its normalization. As Jochnick and Normand (1994, 56) have convincingly argued, the laws of war provide "unwarranted legitimacy"

and "humanitarian cover" for violence during wartime due to the way in which states have created and codified an elastic definition of "military necessity" within the codes and conventions that constitute this body of law. Through overly broad and unchallenged conceptions of military necessity and military objectives, HL has legitimized and facilitated state practices during war such as terror bombing. During World War II the Allies did not openly violate the laws of war as much as they simply interpreted them in such a way as to justify and "legalize" their resort to the aerial bombardment of civilian populations in Germany and Japan.

The third reason for the failure of international law to prevent or control the state crime of bombing civilians since World War II is, again, the undemocratic structure of the United Nations Security Council. Just as the UN was unable to stop the US and the UK from carrying out the illegal invasion of Iraq, for the same reasons it has been unable to enforce Humanitarian Law relating to the illegal bombing of civilians.

Violations of Human Rights Law

In addition to the uses of international law to define state and corporate acts as criminal as described above, there are increasing calls by sociologists, criminologists and legal scholars to utilize the standards found specifically in Human Rights Law as well, in order to classify behavior as criminal for the purpose of study. For example, Blau and Moncada (2007, 370) argue that: "The violation of human rights of any kind is a criminal act or practice." And Savelsberg (2010, 1) has observed that: "The emergence of HR law and the criminalization of atrocities is one of the most important developments in recent criminology and penal law." Barak (2008) has also recently outlined an integrative approach to the study of international crimes and state-corporate criminality as "gross human rights violations."

The history of human rights is a long one stretching from ancient times to the globalization era (Ishay 2004). Human rights are those political, legal, economic and social rights that individuals possess simply by virtue of being human. As Ishay (2004, 3) points out: "They are rights shared equally by everyone regardless of sex, race, nationality, and economic background. They are universal in content." The modern institutionalization of human rights occurred in the aftermath of the two world wars. The most important postwar development was the adoption of the Universal Declaration of Human Rights by the UN General Assembly in 1948 (Glendon 2001; Morsink 1999). But it would not be until the 1990s that a global human rights revolution would be launched (Blau and Moncada 2009). While Human Rights Law trailed the earlier emergence of Humanitarian Law, both began "to restrict the older notion of state sovereignty under which states could act toward their citizens at will without the risk of interference by the international community" (Savelsberg 2010, 2).

Insofar as international law in general, and HR law specifically, evolves through a process of multilateral reasoning, debate, and treaty formation, it has been argued that it constitutes the best available standards for determining when states behave criminally. There is disagreement, however, over whether the international legal framework created in the post World War II era reflects genuine "universal" standards. In particular, post-colonial and feminist theorists have argued that the understanding of human rights that grounds the contemporary system of public international law is little more than a Trojan horse for essentialist doctrines of white, Western liberalism (Lambert et al. 2003; Otto 1997). Some have gone so far as to challenge the current international order as human rights imperialism (Hobsbawm 1996; Roy 2004). Supporters of the human rights model of international law counter that foundational documents such as the UN Charter and the Universal Declaration of Human Rights, as well as the many accords subsequently derived

from them, were forged through genuine international debate, and despite uneven implementation remain the best available global standard for distinguishing legal and illegal state actions (Steiner and Alston 2000; Glendon 2001; Donnelly 2003; Schultz 2003). As Agnew (2011, 24) notes:

> In sum, the international law represents the closest thing we have to a universal consensus regarding rights and rights violations. This provides compelling justification for its use and gives some moral force to the work of criminologists who draw on it.

Just as with Humanitarian Law, however, the paradox remains. While Human Rights Law provides a framework of substantive legal concepts and categories that allow us to "see" (define) gross human rights violations as a "crime" and identify "victims," it ultimately fails to provide much in the way of protection and legal recourse for those who are victimized. Once again, we face the "gap" problem and the issue of the double standard with regard to enforcement. Peck (2010, 280) notes that, "The human rights movement has raised a mountain of legislation to prevent crimes against humanity, but it is always the weak leaders, not the strong who face charges." And even worse than that, Peck (2010, 1) argues that after the Vietnam War, the U.S. government co-opted human rights, crafting the very idea into "a new language of power designed to promote American foreign policy" and shaping "this soaring idealism into a potent ideological weapon for ends having little to do with human rights-and everything to do with extending America's global reach." As an example, Peck analyzes how the Reagan administration in the 1980s used the language of human rights and democratization to provide an ideological cover for its political and military campaigns to support repressive dictatorships and defeat independent nationalist movements in Central America. And as noted above, the George W. Bush administration used the language of human rights violations to justify what it called a humanitarian intervention in Iraq in 2003.

Conclusion: Structural Contradictions and the Paradox of International Law

As Bill Chambliss and other criminologists have argued, public international law provides an important epistemological framework, a set of important legal standards and substantive concepts that allows us to classify certain state actions as crime for the purpose of scientific study. While these legal standards and categories "on the books" help us to define state crime and bring it within the boundaries of the field of criminology, as the cases discussed above demonstrate international law "in action" has done little to prevent or control the state crimes of the major powers or hold accountable responsible state officials who engage in these forms of crime. Selective enforcement, the undemocratic structure of the UN Security Council, legal loopholes like the doctrine of military necessity, and other factors constrain the enforcement of the law. This is the paradox of international law.

While space limitations preclude an extended analysis, Chambliss's concept of structural contradictions can provide a starting point as to why the major powers like the US violate the very laws they helped to bring about and why those laws are not enforced against them. In his presidential address Chambliss (1989, 201–202) noted that:

> Law is a two edged sword; it creates one set of conflicts while it attempts to resolve another. The passage of a particular law or set of laws may resolve conflicts and

> enhance state control, but it also limits the legal activities of the state. State officials are thus often caught between conflicting demands as they find themselves constrained by laws that interfere with other goals demanded of them by their roles or their perception of what is in the interests of the state. There is a contradiction, then, between the legal prescriptions and the agreed goals of state agencies. Not everyone caught in this dilemma will opt for violating the law, but some will. Those who do are the perpetrators, but not the cause, of the persistence of state-organized crime.

After World War II, in response to the violence of the war and in an attempt to consolidate its economic, political and military dominance, the US helped to foster a new world order with the establishment of the United Nations, the passage of the UN Charter, the adoption of the Nuremberg Charter, the creation of the Geneva Conventions, and the passage of the Universal Declaration of Human Rights (Sands 2005). Thus, a new (or greatly strengthened) international legal framework for judging aggression and war crimes and for promoting human rights was born. This international legal framework was extremely useful in extending the geopolitical dominance of the US Empire and advancing the economic interests of American transnational corporations (Kramer 2012).

However, there were two great inter-related challenges to the US imperial project in the post-World War II era: the threat of independent nationalism and the Cold War with the Soviet Union. Both would fuel state criminality in the form of various illegal interventions, war crimes and human rights violations on the part of the United States, its allies and its client states in violation of the international legal framework American officials had created to serve other purposes (Kramer 2012). Law is indeed a two edged sword and the emerging international legal system did create in many of these situations conflicting demands for American policy-makers. US officials wanted to use covert operations and military interventions (illegal under international law) to contain Soviet aggression and rollback its geo-political gains. The United States wanted to halt the proliferation of nuclear weapons but would not consider nuclear disarmament that it was legally bound to pursue under the 1968 Nonproliferation Treaty. In these situations American leaders opted for violating international laws and were able to use their military and economic power and their control of the international political and legal system to shield their crimes from international sanctions. A particularly important tool was the veto power that the US often exercised as a permanent member of the UN Security Council.

As we consider the history of state and corporate crimes and the paradox of international law in relationship to these crimes, perhaps we should reflect, as Michalowski (2013, 210) suggests, on Audre Lorde's observation that "the master's tools will never dismantle the master's house." Can international law and international institutions confront the crimes of powerful states and transnational corporations? Many Marxist scholars have long disputed the notion that any progress toward greater accountability for the state and corporate officials of capitalist societies has occurred, arguing that international legal norms have always been complicit with the violence of empires (Mieville 2006). Likewise, Michalowski (2013, 210) asks the question: "Can a legal apparatus designed by powerful capitalist states address the social harms, particularly the systemic social harms, committed by those states?"

The answer is no. International law may help resolve certain conflicts and dilemmas that arise within the international system from time to time, but as Chambliss documented in his pioneering research (Chambliss and Zatz 1993), laws never address the underlying structural contradictions. The postwar global order was structured to advance the economic and geo-political interests of the US and its allies. The international legal system that emerged with that order was meant to help the Western powers deal with a wide variety of

conflicts and dilemmas that would develop, particularly during the Cold War. But that legal system would not, and could not address the underlying economic and political structure that the US had created. International law might help "remodel the master's house," as perhaps Nuremberg, Geneva, the UN Charter and the International Criminal Court have done, however that still leaves "intact the basic structure that guarantees relative immunity for powerful states" (Michalowski 2013: 210).

Effective resistance to and accountability for state crimes will not come from the current system of international law. Resistance and accountability will only come from structural and cultural changes; that is, from challenges to the US Empire, the normalizing narrative of American exceptionalism, and the political immunity provided by current international legal institutions (Kramer 2012). As Michalowski (2013: 221) astutely points out: "It can only come from mass social movements that demand not simply after-the-fact punishment of state criminals, but rather a recalibration of the political and economic structures that facilitate systematic state crime." Unless such structural changes occur, these crimes will continue.

But as Bill Chambliss (1995) pointed out, international law in all of its forms can still provide a rhetorical touchstone for criminologists to frame judgments about what is and is not criminal. It can allow us to "expand the core" of the discipline to better take into account state-organized crimes. And perhaps it can provide us with a reference point to analyze what Agnew (2011) calls "unrecognized blameworthy harms" and bring them to the attention of various publics, so that perhaps in the future, structural changes will take place, political immunity and double standards will end, the idea of human rights will not be co-opted, and justice will be served for those whose most basic human rights have been violated by powerful states and corporations.

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