

THE CRIMES OF THE POWERFUL AND THE GLOBALIZATION OF CRIME

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ABSTRACT

Inspired by the theme and written for the Seminario Internacional de Direcito, Democracia & Sustentabilidade, 13-14 de agosto de 2015, IMED, Passo Fundo, this article examines the effects of the crimes of the powerful as represented by multinational corporations, state organizations, and non-state actors. The essay sets out to exhaustively define the crimes of the powerful while providing an overview of the globalization of crime and victimization. Additionally, as a matter of discussing the relations of the globalization of crime, capital, and social control, I summarize the primary lessons learned from *The Routledge International Handbook of the Crimes of the Powerful* (2015) that I was the Editor for and contributor to. Finally, I conclude by responding to the dialectical question of whether the current economic recessions, contractions, and unchecked expansion of financial and corporate wealth are sustainable and represent a prototype of things to come or are not sustainable and represent the need for the development of alternative archetypes of change and sustainability?

Keywords: Crime. Globalization. Political Economy. Powerful. Sustainable.

1 INTRODUCTION

From the Preface to *Globalization and Its Impact on the Future of Human Rights and International Criminal Justice* (2015), Editor M. Cherif Bassiouni assessed the current state of international criminal justice, globalization, and the common good as follows: “We are living through a period of decline in the observance of and respect for human rights as they have evolved since the end of World War II. And we may well be witnessing a setback in the evolution of international criminal justice... in a curious, not to say perverse, way—our globalized world is becoming more interdependent and interconnected at the same time that it is becoming less committed to the identification and enforcement of the common good.” Prof. Bassiouni, “the godfather of international criminal law,” also concludes that over the past couple of decades:

Globalization has not only enhanced the power and wealth of certain states...it has also given these states a claim of exceptionalism. That claim has also extended to certain multinational corporations and Other non-state actors because of their wealth, worldwide activities, and their economic and political power and influence over national and international institutions. For all practical purposes, many of these multinational entities have grown beyond the reach of the law, whether national or international (ibid.).

Though Bassiouni and I reach similar conclusions, our arguments vary. In his edited volume, Bassiouni talks of the present state of globalization in terms of paradoxically positive and negative effects, I talk of the co-existence of these contemporary outcomes of globalization in terms of the historical contradictions of capital accumulation and reproduction in my edited volume as we will see throughout this essay.

Before I launch into an overview of the social relations between the crimes of the power-

ful and the globalization of crime I need to make some introductory remarks. First, I have to clarify what is meant by the phrase, the crimes of the powerful. Next, I have to contextualize the state of the contemporary global economy. Subsequently, I will present an historical and unifying framework for examining the crimes of the powerful, followed by a general overview of the globalization of crime with examples from Nigeria, Somalia, and Diego Garcia while touching on Mexico, China, and Bangladesh, as well as providing a more detailed case study from the United States. Next, I will highlight the lessons learned from my edited volume, *The Routledge International Handbook of the Crimes of the Powerful* (BARAK, 2015). Finally, in the context of a global political economy, I will conclude this presentation by responding to the dialectical question of whether the current economic recessions, contractions, and unchecked expansion of financial and corporate wealth are sustainable and represent a prototype of things to come or whether these contemporary 21st century means of capital accumulation and reproduction are not sustainable and need to be challenged by alternative archetypes of social change and development?

2 CRIMES OF THE POWERFUL

Unlike most people who attach a variety of ideas or meanings to the term globalization, few people have any thoughts about the meanings attached to the idiom, “the crimes of the powerful.” By contrast, early in the 21st century when criminologists, legal scholars or practitioners, and human rights activists, talk about the crimes of the powerful, they are **not** referring primarily to the criminal violations of atomized individuals. Rather, they **are** referencing the crimes of the economy or the crimes of capital accumulation and reproduction. Within the prevailing interests and relations of global capital, these crimes include those institutionalized political and economic arrangements that structurally routinize harm, injury, and victimization. These contradictions of bourgeois legality are part and parcel of capital formation and of the associated activities that have made these violations ideologically normative or culturally acceptable. In other words, the crimes of the powerful refer to those transgressions that simply normalize victimization as “the costs of doing business” and as “collateral damages.”

Thus, the crimes of the powerful have managed to avoid or escape both the criminalization and stigmatization that should come with these legal and illegal violations of both civil and human rights. Time and again, these powerful criminal activities in particular are conventionalized or neutralized by way of alliances, negotiations, and justifications that undermine the moralizations of these offenses (CARSON, 1979; PRINS, 2014; RUGGIERO, 2013). Concurrently, the legal reactions to as well as the ideological rationalizations of elite offenses by capitalist state actors and other defenders of the status quo contribute to this demoralization and to the denial of victimhood and liability for those harmed or injured. The tendency of noncriminal state enforcement to concede to the organizational interests of the powerful and to capital accumulation is as old as capitalism itself. Two illustrations of the offenses of the powerful, some 150 years apart, were the habitual crimes of large manufacturers in 19th century England and the epidemic of securities frauds by major global financial institutions in the United States and elsewhere early in this century.

In each of these sets of distinct economic circumstances and criminality, there were criminal laws in place to impose negative sanctions on these reoccurring offenses. In the case of the daily victimization of 19th century manufacturing workers, there were laws to avert their wretched working conditions. Nevertheless, impoverished factory workers, adults and children alike, in locations like Manchester, Leeds, and Birmingham were subject to floggings, starvation, and 18-hour workdays. In response, the biggest manufacturers regularly received state immunity for their routine violations of laws prohibiting mistreatment of their employees (HARVEY, 2014).

Early in this millennium, the wave of institutionalized crimes by the financial services industry in the US and elsewhere, which precipitated the Wall Street implosion of 2008 were committed with the assistance from the national deregulation of certain securities transactions that were previously criminal. At the same time, there were other laws still in place to protect consumers or investors and to criminally punish the world’s largest financial firms for failing to engage in due diligences or for trafficking in toxic securities masquerading as triple AAA certified investments. As most informed people are now aware, these and other systemic criminal violations throughout the

financial services industry created housing bubbles and crashes and a subsequent global recession, which resulted in the losses of trillions of dollars in capital and the victimization of hundreds of millions of people worldwide. And yet, not one of those financial entities or their principal agents responsible for the high-stakes securities frauds has ever been subject to criminal penalty.

In both of these “business as usual” crime scenarios, the lack of criminal prosecution of the routinized illegal behaviors have been justified or rationalized away because of the alleged necessity of capitalizing accumulation, of enhancing the interests of the capitalist state, and of elevating the national well being of all citizens. These social relations of criminal non-enforcement are reflective of a legal order where the capitalist state not only possesses the monopoly over the legitimate use of force and violence, but also the sovereignty over the currency and the law. In addition, the capitalist state possesses the power to tax and to redistribute incomes and assets as well as the regulatory authority over other institutions, such as education, health care, and criminal justice. Most importantly, the capitalist state has the ultimate power or *eminent domain* over private and public property, as these are most often deferential to the needs of capitalist accumulation and reproduction. However, in an age of global capital, accumulation and reproduction are transnational and the capitalist state is increasingly dependent upon and subject to the growing interests of multinational corporations.

To be both formalistic and legalistic, the crimes of the powerful are typically committed by well-established private and/or public organizations in violation of the rights of workers, women, children, taxpayers, consumers, marketplaces, political and eco-systems, or against the interests of equity and religiosity, ethnicity and race, and gender and sexuality. Furthermore, the crimes of the powerful are inclusive of the less commonly practiced forms of social harm and injury such as those involving torture or genocide. These extreme examples of human rights violations are typically known internationally as the crimes of war and/or crimes against humanity and the peace. In a nutshell, the crimes of the powerful concern a wide range of activities that are performed illegally as well as a narrower range of illegal avoidances or omissions that frustrate or do not sustain morally bounded obligations, and finally,

a plethora of harmful and dangerous activities that are routinely beyond legal incrimination and safe from civil action.

3 ON THE CONTEMPORARY GLOBAL ECONOMY

When it comes to contextualizing the contemporary state of global capital, most economists will agree that the complexities of forces shaping macroeconomic institutions today are a product of the fact that the rates of output growths have declined around the world, a legacy in part of both the Eurozone and supranational economic crises still prevalent in many countries throughout the world. With respect to these global forces, there are to varying degrees, high levels of debt—public, corporate, and household—that continue to weigh in on spending and growth, on failed and nonperforming loans, and on limiting the credit supply for new borrowers. Concerning declining consumption and output growth in the advanced economies, these were occurring even before the global economic crisis made them worse by decreasing investment lending and weakening growth productivity.

In emerging markets, the effects have been even more pronounced, especially where ageing populations, lower capital accumulation, and slower productivity growth are combining to foreshadow a weaker overall potential for sustainable expansion in the future. In a few words, growth or the lack of growth is uneven at best and catastrophic at worst, especially as winners and losers are created in relation ordinarily to larger monetary movements and extraordinarily during international economic crises that precipitate global depressions. In the case of ordinary monetary relations, there are, for example, the relative prices between the exchange rates of the dollar, the euro and the yen or whether the price of oil or corn is increasing or decreasing, or in establishing the international prime borrowing and other benchmark interest rates. In response to the extraordinary debt crises brought about by the ripple effects of the Wall Street financial implosion of 2008, central banks around the world have spent more than \$10 trillion trying to stimulate the economy.

As a result, a tidal wave of cheap money has been key to propping up or sustaining growth in

many countries, to cutting unemployment, and to starving off, if not preventing, panic. Nevertheless, the prospects of Greece's default created a panic of sorts that reverberated in stock markets around the world as nervous investors sold off stocks pushing down the value in several major stock markets, including a decline of more than 20 percent in China. Similar bear runs occurred in other stock markets as sellers turned to safer government bonds paying less and adding to the problem of tighter money. The point is that while Greece and Puerto Rico represent extreme cases of borrowing, high borrowing by governments and corporations generally, is also bogging down the globally significant economies of Brazil, Turkey, Italy and China. In terms of the future economic climate, the question becomes: how long can credit be extended to member nations for unpayable debts?

In addition, to the global economic slowdown, if not, outright stagnation in some geographical locales, there is the increasing competition between multinational conglomerates, coupled with the geopolitical and neoliberal economic policies of austerity and privatization that synergistically facilitate the "race to the bottom." Sustained by the development of such asymmetrical international trading deals as the North American Free Trade Agreement in the 1990s, or by the recently authorized Trans Pacific Partnership Agreement setting in motion the trading relations of some forty nations, and enabled by the world's concentrated pockets of corporate wealth accumulating exponentially, multinationals and their transnational leverage—political, economic, and legal—also expands accordingly. Globally, however, there are other nations in varying geographic regions, developing trading blocs and associations, such as the newly formed Regional Comprehensive Economic Partnership in 2015, involving ten Southeast Asian nations, including China but excluding the United States, and constituting 50 percent of world's population compared to the TPPA's 40 percent. Here's a pertinent question: Perhaps, a trading agreement or bloc of countries involving both China and the United States would be better for more citizens of the world than with China and the US making it harder for each other and their respective trading partners?

In the meanwhile, the more common asymmetrical trading agreements lower tariffs, depress wages, bring havoc to environments, and disenfranchise citizens as well as the sovereignty

of states having the combined effects of minimizing corporate risks and of decriminalizing numerous kinds of institutionalized harms and injuries. Former U.S. Labor Secretary Robert Reich has described TPPA as NAFTA on steroids. As part of the newest generation of global trade agreements, TPPA and others such as the Trade in Services Agreement (TISA), which if universally adopted, would gut the abilities of democratic governments to protect their citizens en masse. For example, investor arbitration clauses that have been inserted will have established specialized corporate courts and a framework of international corporate law, allowing multinationals to sue governments as well as their regulations for interfering with the growth of their bottom lines.

4 AN HISTORICAL AND UNIFYING FRAMEWORK OF THE CRIMES OF THE POWERFUL

As part of the institutional crises and the changing social and political landscapes of the 1960s and 1970s, the study of "white collar" criminals began to shift to illegalities committed by private business organizations or corporations and by state institutions. As Alan Block and William Chambliss (1981:2) wrote about the changing discipline at the time: "criminology underwent a 'paradigm revolution'" with the "emergence of 'the new criminology'" (Taylor, Walton & Young 1973) and "the study of the 'crimes of the powerful'" (Pearce 1976), which included those "crimes of nation states, through the illegal and immoral acts of large corporations, to misuses of police and political office by local, state, and national power holders." As part of a newly radical and subsequently emerging critical paradigm, investigators were free to examine the crimes of power and privilege (Krisberg 1975) as well as the institutional abuses of racism, sexism, imperialism, neocolonialism, and capitalism (Schwendinger & Schwendinger 1970).

This paradigmatic shift allowed for entertaining the idea that these institutional arrangements were criminogenic. Similarly, in 1981 Block and Chambliss were writing about why the "criminal law and criminal behavior are best understood *not* in terms of customs, norms, or value-conflict and interest-group activity, but as directly linked

to efforts by the state to create laws as a resolution to dilemmas created by conflicts that develop out of the basic contradictions in the political economy” (p. 10). Some twenty-five years later, David Whyte (2008) the editor of *Crimes of the Powerful: A Reader*, underscored that the study of the crimes of the powerful is “not merely about crime; it is really about power” and the institutionally powerful who have become “the central agents of power in contemporary societies” (p.3). And, as I maintain in the recently published, *The Routledge International Handbook of the Crimes of the Powerful* (Barak, 2015: 4), “the unifying framework for examining the crimes of the powerful is found in the dialectical expansion or contraction of harms informed, on the one hand, by the reciprocal relations of accumulating licit and illicit capital and, on the other hand, by the reciprocal relations of capitalist reproduction interloping with the systems of bourgeois legality and the apparatus of the capitalist state.”

In everyday terms, the crimes of powerful are inclusive of a panoply of criminal and civil offenses that range from the more mundane thievery, swindling, corruption, usury, predation, violence and coercion to the more arcane practices of monopolization, manipulation, market cornering, price-fixing, and Ponzi schemes, to the more exceptional war crimes or crimes against humanity, to the more common crimes against the physical environment. More abstractly, the contemporary crimes of the very powerful are where the personal and the collective intersect and where all species might just depend for their common survival. Finally, the crimes of powerful have recently been classified into seven clustered or developing sets of activities for the purposes of organizing the international handbook (Barak, 2015) as follows: (1) crimes of globalization, (2) corporate crimes (3) environmental crimes, (4) financial crimes, (5) state crimes, (6) state-corporate crimes, and (7) state-routinized crimes. At the same time, these overlapping and semiautonomous forms of the crimes of the powerful often coincide with one or more of the other forms.

For example, in the case of environmental crimes, which are harmful to the air we breathe, the water we drink, and the food we eat, these may overlap with other powerful forms such as global, corporate, financial, state, state-corporate, and state-routinized crimes. Similarly, the globa-

lization of crime that is responsible for much of the world’s ecosystem destruction and environmental pollution, are also associated with those multinational corporations that have often abandoned traditional employment models as they are simultaneously ridding themselves of union contracts, healthy work places, direct liability, and employment taxes. In their place, these corporations substitute government-subsidized business models that pay excessively low wages, engage in wage theft and retaliation, and use contingent workers.

5 THE GLOBALIZATION OF CRIME

Whether one is discussing Jock Young’s (1999) logics of exclusivity and the social bulimia of late modernity or Saskia Sassen’s (2014) logics of expulsion and the elementary brutalities of advanced political economies, each of these analyses of a post-Keynesian multinational world order captures the new realities of advanced capitalism and the globalization of crime. These social realities include neoliberal policies of austerity and privatization, the diminution of the welfare state, the immiseration and exclusion of not only the indigenous or migrant classes but also the former working and middle classes of developed societies, as well as the critically shrinking role of mass consumption for profits in a number of economic sectors, especially those intertwined with an increasingly driven financial globalism marked by the systemic extraction and destruction of the social, the economic, and the biospheric (Klein 2007; Harvey 2014). These crimes of scale and technology not only push people out or away from societies as they contract the spaces of traditional geo-economies, but they also expand those spaces of the newer corporate and transnational sectors.

More precisely, the crimes of globalization refer to “those demonstrably harmful policies and practices of institutions and entities that...by their very nature occur within a global context” (Rothe and Friedrichs 2015: 26). These crimes of globalization are empowered, in part, by the policies of neoliberalism and the actions of international financial institutions such as the World Bank and the International Monetary Fund and, in part, by the competitive needs of capital accumulation and global markets. As these four spheres of powerful interests and relations of capitalist

reproduction interact in the commercial affairs of nations and multinational corporations, they often negatively affect the well being of both animal and human populations as well as the ecosystems and natural environments more generally, in which they all struggle to ultimately survive.

These global crimes are represented by violations of domestic, international, and humanitarian law and are not limited to a myriad of abuses and harms, including the contamination of natural resources, health complications, high rates of poverty, extreme inequalities, global dysnomie, predatory activities, toxic waste dumping, violations of sovereignty, assassinations and disappearances, forced evictions, thefts of homelands, recolonization, human trafficking, and the violations of workers, women, and children's rights. Let us now briefly discuss some examples of the globalization of crime and its lack of control from the Global South, followed by a more probing illustration from the Global North involving the first, "first world third world" nation and the vagaries of crime and crime control in one metropolitan downtown and urban area.

In one study, "Capital and Catharsis in the Nigerian Petroleum Extraction Industry: Lessons on the Crimes of Globalization," which is consistent with a growing body of literature that conceptualizes market-driven harms as criminogenic, Ifeanyi Ezeonu (2015) examined the political economy of oil extraction in the Niger Delta and the harmful activities of transnational corporations. Ezeonu concludes that without a strong regulatory framework in Nigeria the Niger Delta region has become a perfect landscape for neoliberalism and economic activities that have been sustained at highly negative costs to the indigenous population, to healthiness, and to the natural environment. While such practices manifest high rates of poverty and extreme economic inequality, he also underscores how these abuses by a significant number of Western transnational corporations involved in crude oil and marketing have been aided by the various regimes of the Nigerian government. Ezeonu also concludes that while the crimes of globalization aptly capture the Niger Delta region as a site of neoliberalism and enormous wealth and plunder, the collaborate roles of domestic capitalists, many of whom control apparatuses of state power, also encourages the re-contextualizing of these crimes as domestically preventable market generated harms.

In a second study, "State and Corporate Drivers of Global Dysnomie: Horrendous Crimes and the Law," Anamika Twyman-Ghoshal and Nikos Passas (2015) examined the extent to which neoliberal policies contribute to criminogenic processes. They did so by applying the analytical framework of global anomie theory (GAT) to two different cases of global intervention, the first involving maritime piracy off the coast of Somalia, and the second involving the forced eviction of an entire group of people from the island of Diego Garcia in order to establish a US military base and the accompanying theft of this nation from the Chagossian people. They argue that global anomie theory is useful for both understanding transnational misconduct and explaining how the processes of globalization can lead to anomie, dysnomie, and horrendous crimes. Among their conclusions, Twyman-Ghoshal and Passas maintain that their examinations expose not only the double standards and inexcusable abuses of power, but these also explain how global policies of neoliberalism are conducive to mass victimization.

In a third study, "Truth, Justice and the Walmart way: Consequences of a Retailing Behemoth," Lloyd Klein and Steve Lang (2015) scrutinize the workings of Walmart and other multinational global retailing businesses, spotlighting an international business model that bypasses environmental standards, creates dangerous manufacturing conditions, and subverts workers rights as a strategy for importing cheaply manufactured goods primarily to the United States. After exploring the negative consequences of Walmart's business model for workers and communities in several countries, including China, Mexico, and Bangladesh, they turn their attention to focusing "on the ways in which workers and communities struggle to resist Walmart's exploitative corporate practices." They also point out how countries such as Germany in the Global North have successfully resisted the expansion of Walmart's global reach and its exploitation of workers and environments alike. I would now like to turn to an exemplary case study in the logics of crime, social disorganization, privatization, and differential law enforcement from Detroit, Michigan.

6 CAPITAL DISINVESTMENT, AUSTERITY, CRIME AND GENTRIFICATION: A TALE OF TWO CITIES

The decline in the automobile industry in the Motor City and the devastation of Detroit has been, in a part, a product partly of global competition and, in part, has resulted from the massive exodus of capital and residents over the past six decades. Together, these global and local forces have left the city broken down and overgrown in municipal debt. In addition, years of budget cuts have dismantled Detroit's most basic public services and infrastructure—including police, fire, and even streetlights where as many as 40 percent of formerly lit streets were dark in 2014—to barely functional levels. The one time motor hub of the world with a peak population of 1,850,000 in 1950 had fallen to 701,000 by 2013, the year that Detroit filed the largest municipal bankruptcy in U.S. history. Not long after that, on December 10, 2014 the City successfully exited bankruptcy court and was ready to start over or reinvent itself. So eight short months later, how has Detroit been doing compared to before, during, and after the Emergency Managers were put in place by Michigan governors to administratively run the city without real input or say by the democratically elected mayor and city council members?

Well that answer depends because there are really two Detroits and each side tells a different story. One story is about “downtown, white and professional, bathed in state-of-the-art private security” and one story takes place in the “‘neighborhoods,’ poor and black where public safety has become a do-it-yourself endeavor” (Sheehan, 2015). The brighter story making all the headlines is “Detroit, the Comeback City” and the narrative is all about the revitalization of the downtown and the concentrated investment, where, for example, Dan Gilbert, founder of Quicken Loans and Rock Ventures, and owner of the Cleveland Cavaliers’ Basketball team, has poured \$1.6 billion of his own money into the revival of a single square mile of Detroit’s downtown. The other story buried in the back pages of the newspapers is about how a much larger Detroit is still experiencing urban decay and destruction, winning the most dangerous city in America honors five out of the last seven years.

In particular, let’s consider the infamous community of Highland Park, a tiny 3-squa-

re mile neighborhood located within Detroit. Extremely dangerous, blighted, and 94% black, Highland Park is a concentrated example of the conditions in Detroit’s poorest neighborhoods. When Highland Park was slapped with its first appointed emergency manager in 2001, he fired the entire municipal police force, outsourcing patrols to the Wayne County Sheriff’s Department. By late 2011, Highland Park “was so deep in debt to its public electric company, DTE Energy (formerly DTE Energy Services and Goldman Sachs Group, and currently a subsidiary of Commerzbank AG, of Germany) that the local government was forced to decommission all streetlights on its residential streets. Not only did DTE cut the power...it sent out workers to physically dig up and remove nearly 1,000 light-poles from the neighborhood” (SHEEHAN, 2015). Today, the residents of Highland Park live in permanent debt-induced darkness, plagued by some of the highest crime- and lowest arrest-rates in the United States.

At the same time, nearly six miles away, in Detroit’s rapidly gentrifying downtown area, DTE Energy has launched a pro-bono security program in the increasingly white area: “On its own dime, DTE operates a public ‘bait car’ program. It buys and sets booby-trap cars out on the downtown streets, outfitted with up to 18 hidden cameras, to lure and ultimately deter potential car theft.” Additionally, DTE’s partnership with downtown police “assures that cops will be on the scene within 90 seconds of when the bait car is entered.” Meanwhile, in Detroit’s black neighborhoods, “public safety has been sacrificed to the gods of austerity.” In short, with the city government “too poor to provide basic security, safety has become a private commodity, accessible to the wealthy, but far out of the reach for the majority of Detroiters” (Sheehan, 2015).

Here is some choice data from Detroit on the subject of crime, austerity, and law enforcement: In 2005 Detroit had 303 paramedics working the streets, by 2010 that number had been cut to 188 to match the city’s shrinking budget. In 2013, the same year that Detroit led the nation with 333 homicides, the police department took a \$75 million or 18 percent overall cut in funding. As for paramedic and 911 police response times in the affected areas, well don’t ask. Bottom line, the steady and long-term disinvestment in public safety shows up in Detroit’s crime and absence of arrest rates: In any given week, Detroit averages seven murders, 226 burglaries, 92 robberies, 169

aggravated assaults, 228 stolen cars, 331 larceny thefts, 12 rapes, and 279 violent crime. Meanwhile, the vast majority of those crimes occurring in the neighborhoods and leading to no arrests!

7 LESSONS LEARNED FROM THE INTERNATIONAL HANDBOOK: FAILING TO CONTROL THE CRIMES OF THE POWERFUL

If there were only three thematic refrains from *The Routledge International Handbook of the Crimes of the Powerful*, probably the most unifying of those would be the extent to which the enforcement apparatuses of capitalist states have failed miserably to control the crimes of the powerful. Another unifying theme would be the extent to which state apparatuses, corporations, and financial institutions will invest in strategies to deceive the consuming public, to distort and mystify harmful practices, to deny and dilute the effects of widespread victimization, and to co-opt or resist those interests, policies, or laws that contest the dominant relations of their power and abusive behavior. A third unifying theme, at least implicitly if not explicitly, would be the extent to which the existing power arrangements of the state-noncriminal nexus of unsustainable capitalist expansion needs to be fundamentally transformed through massive social, political, and economic change.

Certainly, one of the most prominent examples of the state-noncriminal working nexus failing to control the crimes of the powerful in general and state criminality in particular was when President Obama, the US Congress, and the Department of Justice in a shared “state of denial” did not pursue criminal charges against officials of President George W. Bush’s administration for torturing and other criminal misconduct that were integral parts of their “secret” war on terror. Not only did Mr. Obama declare that the United States should “look forward, as opposed to looking backward,” but his administration was also unwilling to entertain an independent investigation into the torture. Even after a Senate intelligence committee finally released its long-awaited summary of a 6,200 page “torture review” that had involved more than a year of legal review and redactions, there never was a full accountability from those who arranged, encouraged, and con-

ducted torture following the terrorist attacks of September 11, 2001. And, while the world is well aware, for example, that Khalid Shaikh Mohammed, the alleged mastermind behind the Twin Towers destruction and killing of close to 3000 persons, had been water-boarded 183 times by the CIA, the same cannot be stated about the hundreds of other enemy combatants who were tortured on behalf of the US at numerous black sites around the world.

Under the rule of law, the state apparatus should have focused its attention on and punished those who had abetted or committed this torturing. Accordingly, the European Court of Human Rights has ordered Poland and Macedonia to pay damages to detainees for their complicity in the C.I.A.’s secret torture program. The USA, however, like other global powers of exception continues to buck the, heretofore, prevailing trends in international law and justice. Although Mr. Obama in August of 2014 finally did publicly acknowledge, “we tortured some folks,” he continues “to resist the consequences of that admission. His administration has even pressed federal judges to close the door on civil suits by former detainees, citing state secrets” (HAFETZ, 2014). This type of state-routinized crime looks, sounds and smells strikingly familiar to the same modus operandi of denial used by the Obama administration to clear the banksters of Wall Street for their criminal and fraudulent wrongdoings that nearly collapsed the worldwide economy (BARAK, 2012).

These contradictory absences of the “rule of law” and the conventionalization or normalization of these crimes of the powerful across a liberal democratic society like the United States is also indicative of the degree to which its economic leaders and political institutions are not held accountable to and/or dependent on rules and regulations that are fairly applied. Historically, Francis Fukuyama (2014) has shown that political law, order, and decay fluctuate in response to the changing modes and relations of production. For example, throughout the laissez-faire 19th century, the US had a weak, decentralized, corrupt, and pre-industrial patrimonial state. During this period, graft and other forms of bribery contributed not only to the buying of justice by those who could afford it but also to national immorality. At the time, rackets, pull, and protection were common antidotes for stubborn legal nuances. Prevailing values of wealth and success predominated as guiding prin-

ciples of right and wrong (Barak 1980). Well into the 20th century, the “ability to ‘make good’ and ‘get away with it’ offset the questionable means employed in the business as well as the professional world. In short, disrespect for law, [order, and democracy] is the accompanying product of this scheme of success” (Cantor 1932: 145).

In the United States, from the turn of the 20th century up through the 1960s, changes brought about by a social revolution (first expressed by President Teddy Roosevelt and the Progressives and later by his distant cousin President Franklin Roosevelt and the New Dealers) and driven by the forces of industrialization, recognized the plights and the struggles of the poor and the marginal classes. As a response to those masses of individuals who were not benefitting from and were posing a threat to the expanding political economy, some sectors of the ruling strata in combination with the Progressive social movement set about to provide a Square Deal for everyday people and to “clean up” working environments as well as the political corruption within and without the legal systems. In addition, a strong unionization movement of working Americans and a “radical” way of thinking eventually gained the political support of some industrialists and other social leaders. As a result, a much stronger and centralized capitalist state emerged in the 1930s, subject to Keynesianism and a slew of new federal regulations, realizing a legal zenith of sorts with the “due process” revolution of the Earl Warren Supreme Court in the 1960s.

However, by the 1980s and up to the present, one could argue that a decaying process of workers’ rights or a reversal of legitimation of the common good has been occurring, in response both to the ideologies of neo-conservatism and neoliberalism and to the forces of global competitive capitalism. And by the 1990s, as the “me generation” of graduates from elite colleges and universities flocked to Wall Street to make their financial fortunes as investment brokers, arbitrage dealers, and derivative traders, unenlightened self-interest, unregulated financial markets, and unfettered victimization had become the order of the day. As Fukuyama (2014) argues political and social, if not, economic development in the US has been going in reverse, spurred by deregulation, privatization, growing inequality, concentrating wealth and power, a decaying infrastructure, and a contracting welfare state. Similarly, recent U.S.

Supreme Court decisions have facilitated this reversal, exemplified by Citizens United and Hobby Lobby, both further expanding the power and rights of “insider” corporate entities over those of “outsider” individuals. In the process, the political institutions have become less democratic, less fair, less efficient, and more dependent on corporate classes for their policy setting agendas. Failing to control the crimes of the powerful is only one manifestation of the decaying state of affairs in the United States and elsewhere.

8 CRISES, CONTRADICTIONS AND UNCHECKED CAPITAL ACCUMULATION: A PROTOTYPE FOR THE 21ST CENTURY?

More than six years after the financial collapse a global recession, if not economic crisis, still persists throughout the world. The well being of the relatively powerless people continues to deteriorate. Meanwhile, the superrich and the very powerful are getting much richer and more powerful than ever before. In 2012 the top 100 billionaires from China, Russia, India, Mexico, Indonesia, North America, and Europe added \$240 billion to their coffers, enough money Oxfam calculates to end world poverty overnight. Unfortunately, the current policies in place to address these contradictions are more likely to exacerbate rather than to ameliorate them. Unless the power relations behind the policies that speak to the problems of capital accumulation, reproduction, and consumption fundamentally change, then the prospects of controlling the crimes of the powerful as opposed to suffering from these will remain close to zero.

Policy wise, the contemporary world finds itself caught between neoliberal, supply-side and monetarist remedies as in Europe and the United States that emphasize austerity and privatization, on the one hand, or a centralized demand-side and debt-financed expansion that ignores the Keynesian emphasis on the redistribution of money to ordinary people as in China, on the other hand. Paradoxically, the economic and social outcomes are the same—widening and escalating inequalities—because in either case the world is increasingly turning to central banks, led by the US Federal Reserve and the European Central Bank, to manage the reoccurring financial global

crises. Their approaches to resolving the problem of capital accumulation depend, in other words, on the “dictatorship” of the world’s central bankers whose primary concern is about protecting and bailing out, when necessary, the megabanks, the plutocrats that run them, and the various systems of market capitalism with little, if any, regard for the well being of the general masses of people.

Dialectically, however, there are developing counter or alternative global financial institutions, involving major emerging national economies. The countries of Brazil, Russia, India, China, and South Africa, for example, now constitute the BRICS. These five nations have formed their own central bank for the purposes of competing with the other global central banks to regulate the world’s financial markets “on their own terms.” Perhaps, global competition for capital among several banking financial oligopolies the world over might result not only in more “fair” than “free” trade, but also in lower consumer prices for everyone.

In conclusion, unless the prevailing political and economic arrangements locally and globally as well as the contradictions of the bourgeois legal relations of the capitalist state are structurally addressed, it is very hard to imagine how any other kind of tinkering will alter the negative trends of unsustainable capital development or make any kind of dent in the volume of, let alone, in the driving forces underpinning the crimes and victimization of the powerful. Therefore, what is needed, as an alternative to the current economic malaises is a worldwide peoples movement on behalf of a global system of international Keynesianism, an Eco-welfarism, and a Marshall-like strategic plan of sustainable growth. Consistent with this utopian vision is a realpolitik recognition that resisting the crimes of the powerful has little in common with trying to make the existing regulatory or penal arrangements of social control work better through reformist type modifications of business as usual. Rather, fundamental changes of the political economy through social, cultural, and global activism are called for. In short, without addressing the contradictions of unsustainable capitalist expansionism and without eliminating the basic conditions that nurture the crimes of the powerful, new and improved social controls will not change the enduring reproduction of these crimes and their mass victimization of both humans and animals.

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Os crimes dos poderosos e a globalização do crime

RESUMO

Inspirado pelo tema e escrito para o Seminário Internacional de Direito, Democracia e Sustentabilidade, 13-14 de agosto de 2015, IMED, Passo Fundo, este artigo examina os crimes dos poderosos, representados pelas corporações multinacionais, organizações estatais e atores não estatais, tanto no contexto da geopolítica quanto da globalização do capital. O ensaio visa a definir exaustivamente os crimes dos poderosos, proporcionando uma visão geral da globalização do crime e da vitimização. Além disso, para discutir as relações da globalização do crime, do capital, e do controle social, eu resumirei as principais lições aprendidas a partir de *The Routledge International Handbook of the Crimes of the Powerful* (2015), do qual eu fui editor e colaborador. Por fim, concluo respondendo à questão dialética de se a atual recessão econômica, as contrações e a expansão desenfreada de riqueza financeira e corporativa são sustentáveis e representam um protótipo de coisas para vir ou não são sustentáveis e representam a necessidade de desenvolver arquétipos alternativos de mudança e de sustentabilidade?

Palavras-chave: Crime. Globalização. Economia Política. Poderosos. Sustentável.

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