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## 4 Crime

Murder, theft, assault, burglary—these are staples of news coverage. People hear a lot about crime, and nearly everyone thinks it's a bad thing. Yet there are huge differences in ways different actions are labelled as crime and in the attention they receive.

The first distortion is that most attention is given to low-level crime, the sort that hurts a few people and is carried out by relatively powerless individuals. This includes many murders, which attract a lot of attention. Indeed, so potent is murder for attracting attention that it has become a staple of news coverage as well as crime novels and television shows: think of Agatha Christie and CSI and many others like them.

Murder is usually thought of as something done by an evil person, who needs to be tracked down, proven guilty and punished. Most despicable of all is the serial killer who preys on victims over a period of years.

Yet there is another sort of crime that usually escapes the spotlight, and those responsible are seldom identified or exposed, much less ever prosecuted and convicted. This is crime by those with a lot of power.

Let's start with corporate crime. Corporate executives may enact policies that predictably kill people, sometimes large numbers of people. They may hide evidence showing how many people are dying due to their actions.

A classic example involved the Ford Pinto. As exposed in a classic 1977 article in the magazine *Mother Jones*,<sup>1</sup> Ford engineers and executives knew about a fault in the fuel system: collisions to the rear end of the vehicle could easily rupture the fuel system, leading to fire and potentially to death of the occupants. Ford already had a patent for a safer gas tank, but to save money—Ford was then in competition with Volkswagen for the US small-car market—the company retained the dangerous tank, and for years lobbied against government standards that would have mandated a safer tank. Hundreds of people died from burns, and Ford settled numerous damage claims out of court. The company's internal cost-benefit analysis showed that paying damage claims was cheaper than putting in the safer tank. Was this a crime? Technically not, because auto manufacturers had lobbied against any provision in the Motor Vehicle Safety Act providing for criminal sanctions for selling unsafe cars. However, it is not something that any company would want to admit, much less advertise.

On a vastly greater scale are the actions of tobacco companies. Executives know that smoking cigarettes leads to the illness and premature death of a great number of smokers. Furthermore, the companies carried out research of their own that showed the dangers while denying them publicly. They fought regulations tooth and nail.<sup>2</sup>

1 Mark Dowie, "Pinto madness," *Mother Jones*, September/October 1977.

2 Stanton A. Glantz, John Slade, Lisa A. Bero, Peter Hanauer and Deborah E. Barnes, *The Cigarette Papers* (Berkeley, CA: Univer-

The movement against smoking has been remarkably successful in exposing the actions of tobacco companies. Fines of hundreds of billions of dollars have been imposed. Yet the companies still do all they can to expand sales around the world and to resist regulations, such as plain-paper packaging, that discourage smoking.

If ever there was an industry causing mass death, it is the tobacco industry. One estimate is that a billion people may die this century due to tobacco-related diseases. How many tobacco company executives have gone to jail for their responsibility?

Another example is the scandal involving the Australian Wheat Board (AWB), a government agency (privatised in 1999) with a monopoly on selling Australian wheat. Between 1991 and 2003, Iraq was subject to UN sanctions that blocked the import of many items. The AWB was eager to make sales to Iraq during this time—so eager that extra payments were paid to dealers, money that went to the regime in violation of the sanctions, right up until the time the Australian government sent troops as part of the 2003 invasion of Iraq. A\$290 million in bribes was involved, a huge support for Saddam Hussein's regime. The story eventually broke in Australia, and there was an inquiry and recommendations for criminal charges, but the police did not proceed: no AWB officials were prosecuted for crimes, much less went to jail.<sup>3</sup>

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sity of California Press, 1996); Robert N. Proctor, *Golden Holocaust: Origins of the Cigarette Catastrophe and the Case for Abolition* (Berkeley, CA: University of California Press, 2012).

3 Caroline Overington, *Kickback: Inside the Australian Wheat*

Despite payments by the AWB and other importers, the sanctions against Iraq were remarkably effective, not in hobbling Saddam Hussein's grasp on power, but in harming the Iraqi people. Due to shortages of sanitation equipment, medicines, and other vital materials, the death rate due to malnutrition and disease soared. Perhaps one or two million Iraqis died as a result of the sanctions. In a famous quote, US secretary of state Madeleine Albright was asked whether the sanctions could be justified given the death of half a million Iraqi children. She answered, "I think this is a very hard choice, but the price—we think the price is worth it."

Some commentators have judged the sanctions against Iraq to constitute genocide: actions taken knowingly leading to mass death in a target population.<sup>4</sup> No one was ever charged with a crime.

The 2003 invasion of Iraq, led by the US government, was not approved by the UN Security Council. In the eyes of many legal scholars, it was an illegal war, yet no one responsible was ever charged.

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*Board Scandal* (Sydney: Allen and Unwin, 2007).

4 Geoff Simons, *The Scourging of Iraq: Sanctions, Law and Natural Justice*, 2nd ed. (Basingstoke: Macmillan, 1998). For a discussion of the shortcomings of international governance in this case, see Joy Gordon, *Invisible War: The United States and the Iraq Sanctions* (Cambridge, MA: Harvard University Press, 2010), pp. 221–230.

Journalist James Risen has told of corruption in the aftermath of the invasion.<sup>5</sup> To prop up the collapsed Iraqi economy, masses of US cash were flown from the New York Federal Reserve Bank to Iraq. The amounts were so great, even in US \$100 bills, that entire cargo planes were filled with the cash, ultimately \$12 to \$14 billion. To be handling so much cash was a temptation for everyone involved, including US soldiers who were supposed to count or distribute some of the money. Accounting procedures were so lax that billions of dollars went missing, no one knows where—at least no one in official places. Information was pieced together indicating that a couple of billion dollars were stored in Lebanon on behalf of corrupt Iraqi government figures. Although provided with addresses, US officials showed little interest in pursuing the cash or the criminals. Apparently it was all too embarrassing for US figures involved in the operation.

### **Crime and the law**

Breaking the law is an offence, and not breaking the law is okay, right? Well, it depends. Some laws are broken so often and enforced so infrequently that few are concerned. Laws against jaywalking are an example, in places where pedestrians routinely cross the street anywhere they please. So is photocopying or scanning a book that's in copyright. Cash-in-hand payments to tradespeople enable tax avoidance. Technically, in many places, these actions are illegal, but no one bothers about them.

<sup>5</sup> James Risen, *Pay Any Price: Greed, Power, and Endless War* (Boston: Mariner Books, 2015).

Then there are legal loopholes, which are ways to cheat legally. In the US tax code, legislators have written in hundreds of special exemptions that apply to a single business or individual.<sup>6</sup> Corporate lawyers search for loopholes to minimise the tax their companies pay. Tax havens—countries imposing little or no company tax—are legal, and expressly designed to help multinational companies avoid tax in the countries where they do most of their business.<sup>7</sup>

There's an old saying that the golden rule means "He who has the gold makes the rules." In other words, those with wealth have influence over how the law is written and enforced. Consider an example: a company owner decides to fire all the employees and hire new ones at lower wages. In some places, this is legal; in other places, it's not legal, but government regulators would not bother to prosecute. In such circumstances, the main restraint on this sort of action is the organised action of workers and their supporters, for example via a work-in or a blockade.

So there are two ways to think about crime and the law. One is the technical one: something is only a crime if it's against the law. The other is the social one: something is a crime if it defies widespread community expectations for fair and ethical behaviour.

<sup>6</sup> Donald L. Barlett and James B. Steele, *America: Who Really Pays the Taxes?* (New York: Simon & Schuster, 1994). They also describe a multitude of ways the US tax system has been manipulated to serve the rich.

<sup>7</sup> See chapter 11, "Trade deals and tax havens."

If someone is homeless and sleeps on a park bench, is this a crime? If someone passes out leaflets in a shopping centre, is this a crime? Technically, these behaviours may or may not be legal, depending on local laws. Socially, observers will differ in their views about homeless people or leafletting: whether something is a crime depends on the way you think about the behaviour and about the law.

### **State crime**

State crime refers to crimes committed by governments and government agents.<sup>8</sup> However, in many cases, actions by governments are treated as above the law. An example is torture. Nominally, in nearly every country in the world torture is considered a crime, but seldom is anyone charged or convicted of committing torture, least of all by the governments that sanction it.

Consider first the manufacture of equipment used for torture, everything from thumbscrews to electroshock batons. This is a huge industry.<sup>9</sup> There are “security fairs” held in countries around the world displaying the latest

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8 Jeffrey Ian Ross, ed., *Controlling State Crime*, 2nd ed. (New Brunswick, NJ: Transaction Publishers, 2000); Jeffrey Ian Ross, ed., *Varieties of State Crime and Its Control* (Monsey, NY: Criminal Justice Press, 2000); Dawn L. Rothe, *State Criminality: The Crime of All Crimes* (Lanham, MD: Rowman & Littlefield, 2009); Dawn L. Rothe and Christopher W. Mullins (eds.), *State Crime: Current Perspectives* (New Brunswick, NJ: Rutgers University Press, 2011). See also the discussion of state terrorism—a type of state crime—in chapter 7.

9 See publications of the Omega Research Foundation, <https://omegaresearchfoundation.org/publications/>.

equipment for surveillance and control. There is also a well-developed system for training personnel in “advanced interrogation techniques,” a euphemism for torture. Yet it is rare, indeed almost unheard of, for anyone involved in what should be called the torture trade to be considered a criminal.

Then there is torture in practice. Governments know it is going on, but usually will do nothing unless there is adverse publicity, and naturally enough they usually avoid publicity if at all possible.

In the aftermath of the 2001 invasion of Afghanistan and the 2003 invasion of Iraq, there were reports about torture in US facilities. There wasn’t much concern until photos from Abu Ghraib prison in Iraq became public in 2004. These showed Iraqi prisoners being piled naked on top of each other, a hooded Iraqi prisoner in a stress position apparently in fear of being electrocuted, and an Iraqi prisoner being threatened by a dog, among other gruesome images. It was only because of the massive publicity generated by these photos that a few US prison guards were charged with crimes. However, the US government avoided the word “torture,” referring instead to “abuse,” and the US mass media followed suit. The government implied actions by guards at Abu Ghraib were their own initiative, ignoring evidence of higher responsibility.<sup>10</sup>

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10 Jennifer K. Harbury, *Truth, Torture, and the American Way: The History and Consequences of U.S. Involvement in Torture* (Boston: Beacon Press, 2005); Alfred W. McCoy, *A Question of*

Abu Ghraib prison torture was an anomaly, not because it involved torture, but because it was exposed. It was business as usual in the sense that higher officials escaped any censure.

Then there are more routine forms of torture. In US prisons, it is commonplace for prisoners to be subject to treatment that fits usual definitions of torture. Supermax prisons, in which prisoners are kept in isolation most of the time, serve as a form of torture, using the techniques of sensory deprivation pioneered by the British in Northern Ireland.<sup>11</sup> Restraint chairs and electroshock weapons are regularly used to control resistant prisoners, and guards may knowingly allow prisoners to assault each other.<sup>12</sup> It would be possible to argue that there are more crimes committed against prisoners in US prisons than the prisoners ever committed on the outside, especially considering that many are in prison for victimless law-breaking such as using drugs. Yet the guards responsible for direct assaults on prisoners are almost never charged with crimes. Even less likely is it that politicians and planners who design prison systems will ever be thought of as criminals.

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*Torture: CIA Interrogation, from the Cold War to the War on Terror* (New York: Metropolitan, 2006).

11 Carol Ackroyd, Karen Margolis, Jonathan Rosenhead and Tim Shallice, *The Technology of Political Control* (Harmondsworth: Penguin, 1977).

12 On one aspect of this, see Joanne Mariner, *No Escape: Male Rape in U.S. Prisons* (New York: Human Rights Watch, 2001), <https://www.hrw.org/legacy/reports/2001/prison/report.html>.

To summarise several points covered so far, most attention in the media is to crimes of individuals and to crime by people lower down the social hierarchy. Corporate crime is neglected because it is systemic and those most responsible are top executives. In practice many laws are broken all the time with impunity, and powerful and influential groups are able to influence lawmakers and prosecutors so that their shady operations, such as tax avoidance, are technically legal. One special category is state crime, which is crime by governments and their agents. It receives little public attention and is seldom punished.

### **Collins on crime**

Sociologist Randall Collins provides a valuable insight into the dynamics of crime.<sup>13</sup> He notes that conservatives explain crime as an individual failing, due to genetics or poor character: their solution is punishment. However, this approach doesn't solve the problem and is best understood as a moral and political position.

Liberal explanations focus on crime cultures, including poverty, with the solution being rehabilitation. These explanations are not satisfactory either, because many poor people are not criminals and many rich ones are.

Radical explanations see crime as a category of behaviour that is labelled as criminal, with convictions produced by the law-enforcement machinery. From this viewpoint, laws create crime, especially victimless

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13 Randall Collins, "The normalcy of crime," in *Sociological Insight: An Introduction to Nonobvious Sociology* (New York: Oxford University Press, 1982), pp. 86–118.

lawbreaking such as illicit drug use, thereby fostering the creation of criminal cultures. This explanation doesn't work well for property and personal crimes such as theft and assault.

The class-conflict model, derived from Marxism, sees crimes as due to class relations, especially the existence of private property. However, socialist societies still have crime; indeed, they create new categories of it, especially crimes against the state.

Collins notes that in Denmark in 1944, there were no police. Property crimes greatly increased but crimes against people stayed about the same.

Collins' own preference is a picture derived from Emil Durkheim, one of the founders of sociology: crime and punishment serve as a bond for the rest of the community. A stratified society, in which some groups have far more wealth and power than others, can be unified by rituals, and one potent ritual is punishment of those labelled criminals. This helps explain the attraction of murder mysteries. Collins says that in power struggles, there are plenty of actions that can provide offence. Some of these are criminalised—turned into crimes by laws and expectations for punishment—and thus provide opportunities for ceremonies of punishment that dramatise the moral feelings of the community. Each type of society has its own forms of crime.

### **Tactics: dilemmas for the state**

For government leaders and supporters, the topic of crime contains opportunities and dangers. Fears about crime can

be drummed up, but there is a risk the spotlight might be turned on crimes by those with power and wealth.

The first tactic used by governments to foster a preferred orientation towards crime is exposure. Government leaders direct attention towards low-level crime, and crime by individuals, and the media usually are willing accomplices. Murder—usually involving killing of one individual by another—has become a topic that, to many people, is fascinating. The mass media report on murders, some of which become ongoing sagas. The case of O J Simpson, a famous US gridiron star accused of murdering his wife and a friend, attracted enormous media attention. Fictional treatments of murder, in novels and television shows, are also popular. It's as if news media and the entertainment industry are saying, "Look, here's what you should be concerned about."

The attention to individual crime—murder, yes, and assault, robbery and embezzlement—serves to create a perception that crime is due to bad people. There is correspondingly little attention to state and corporate crime, including the arms trade, illegal wars, and sales of dangerous products such as pharmaceutical drugs. The crimes by states and corporations cause far more deaths than individual murders but in comparison receive little attention.

A similar disparity occurs with the second tactic, valuing. This doesn't mean valuing crime, of course, but rather valuing efforts against crime. The police, courts and various agencies are commonly portrayed in news stories and entertainment as the good guys, taking up the noble cause of cracking down on drug dealers, robbers, hooligans and welfare cheats. Valuing comes into play in the

resources given to enforcement agencies. For example, huge amounts of money are provided to anti-terrorism bodies but comparatively little to agencies targeting high-level white-collar crime.

The third tactic is to explain the government's efforts against crime, and why they are the right ones and effective. This might involve statistics on crime rates, arrest rates, expenditures on policing, and so forth. These accounts of anti-crime efforts normally ignore questions of what should count as crime and whether the most damaging types of crime are being addressed. The figures include, typically, murder, assault, burglary and so forth, and omit a separate classification for state crime. Explanations of crime-fighting are sometimes designed to placate the public by indicating that everything is under control but sometimes designed to stimulate support for greater expenditures. This can be a delicate balancing act. Alarms about escalating criminal activity can scare the public and provide support for greater spending on prisons and policing, but these at the same time send a signal that the government is not doing its job of protecting the population. In either case, the most important message is what is assumed, namely that crimes by individuals, especially those with less power, are of primary concern and that institutionalised state and corporate crime is off the agenda.

To provide credibility to the government's policies, it is useful to have endorsements, which constitute the fourth tactic. Endorsements can come from police, politicians, government officials, media, experts or celebrities, among others. The basic line is normally is that the government is

doing the right thing, which might be keeping crime under control or expanding its efforts against a new type of crime, due for example to the drug ice or cybercriminals.

It is a different story when it comes to experts who present a non-standard view about crime, a story pointing to fundamental flaws in crime control. This will differ from country to country, but consider the idea of restorative justice. In countries like the US, convicted criminals are incarcerated and seldom provided extensive support for rehabilitation: the dominant approach is retribution, namely punishment. It is so standard that it is simply taken for granted in most commentary by police, prison officials and politicians. There is another approach, called restorative justice, involving meetings between offenders and those harmed and finding a mutually agreed response, often with apology and restitution (payment, community service and sometimes incarceration). The motivating philosophy behind restorative justice is to reintegrate offenders into the community, not to brand them for life.<sup>14</sup>

There are many ardent advocates for restorative practices but, in the US at least, they receive little public attention. Endorsements of the standard retribution model are given far more visibility.

Consider also the radical critique of US prison policy, for example by eminent Norwegian criminologist Nils Christie, author of *Crime Control as Industry: Towards*

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<sup>14</sup> John Braithwaite, *Restorative Justice and Responsive Regulation* (Oxford: Oxford University Press, 2002).

*Gulags, Western Style*.<sup>15</sup> There are other critics too, within the US, who advocate abolishing prisons. These alternatives receive little visibility in the media.

The criminal justice system—what critics might call the criminal injustice system—offers ample rewards for those who emphasise the usual sorts of low-level crime. There are many jobs in the system, in what has been called the prison-industrial complex, for building prisons, running police operations and a host of related activities.<sup>16</sup> In comparison, there are relatively few rewards for those pushing for alternatives such as restorative justice and prison abolition.

### **Conclusion**

If Randall Collins' ideas about the role of crime in society are accepted, then it is predictable that in just about any society some actions will be labelled criminal, stigmatised and penalised. However, this can be done in various ways, with differing social and political effects. In the restorative justice approach, damaging behaviours are dealt with by community-based efforts to reintegrate the offender into a meaningful social group.

For rulers, though, there are two great temptations. The first is to use the advantages of power to commit crimes or, even better, to set up the rules so that personal wealth can legally be extracted from the population. The

<sup>15</sup> Nils Christie, *Crime Control as Industry: Towards Gulags, Western Style* (London: Routledge, 1994).

<sup>16</sup> Joel Dyer, *The Perpetual Prisoner Machine—How America Profits from Crime* (Boulder, CO: Westview Press, 2000).

second temptation is to raise the alarm about other sorts of crime, by enemies or by people lower in the social hierarchy. A parallel double process of persuasion is involved: hide high-level crime or make it legal, acceptable and even laudable, and at the same time encourage people to project their fears and anger about crime onto scapegoats.

The result of these temptations and tactics is obvious in media coverage (encouraged by government priorities, for example funding police and anti-fraud agencies) and hence in everyday conversations. If the size of a crime, or the proceeds of rules that enable unfair distribution of wealth, were the determinant of attention, hardly anyone would get excited about low-level theft when corporations and governments are extracting, legally or not, billions of dollars from the populace. When it comes to crimes of violence, if the scale of devastation and death were the determinant of attention, then media coverage would concentrate on state terrorism, not the small-scale efforts of non-state groups.

To challenge the dominant narrative about crime is difficult, but can be done. It involves continual exposure of the techniques used by governments and others to direct attention to individual criminals, and efforts to promote alternatives. There are many people doing this, in all sorts of ways. Useful lessons can be learned from efforts to challenge the so-called war on drugs: exposing its sordid origins and harmful effects, showing the rationality and publicising the beneficial effects of decriminalising drugs (as in Portugal), and fostering sensible ways to reduce the harmful effects of addiction (rather than assuming legali-

sation on its own is sufficient).<sup>17</sup> Proponents of harm reduction want to treat drug use as a social and health problem rather than a legal and policing problem. Similar efforts can be taken on other issues in which the “crime problem” is used to serve vested interests.

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<sup>17</sup> Johann Hari, *Chasing the Scream: The First and Last Days of the War on Drugs* (New York: Bloomsbury, 2015).